



ESTATE PLANNING UPDATE

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MATTHEW J. BOCK, *Editor*

LDM Talks With Senator Ben Nelson



Senator Ben Nelson, formerly of counsel with Lamson, Dugan & Murray, LLP.

Lamson Dugan & Murray, LLP asked Senator Nelson for his take on the current political environment in Washington with respect to a full estate tax repeal. Senator Nelson's response follows in a question and answer format.

LDM: Senator, it appears there is a great deal of pressure growing to make the estate tax repeal permanent. Under the current law, as you know, the federal estate tax is slated to disappear in 2010 and then reappear in 2011 with a million dollar exemption. What is your take on the newest proposal to make the repeal permanent and what are the prospects for passage?

NELSON: *The current proposal to make the repeal of the estate tax permanent appears to have less than the 60 votes that a Point of Order would require thus Senator Breaux and others are considering a proposal to increase the unified credit for a couple to from six to nine million dollars permanently. There are likely 60 votes for this proposal.*

LDM: As lawyers who are involved in assisting clients with their estate plans, the uncertainty of the 2011 repeal really creates a problem for our clients since obviously there is no way to determine when a person will die or what law will be in effect. Do you have any suggestions for our Nebraska citizens on how they can get involved in a meaningful way to clarify this situation or must they just sit and wait?

NELSON: *Unfortunately, there is very little that the average citizen can do but wait, however, I do believe that the situation will be clarified yet this year.*

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LDM: A Senate vote on a proposal to make the total repeal permanent is apparently coming in late June. The backers of the repeal are claiming to have 58 votes out of the 60 that will be needed to get the proposal through the Senate. Do you agree with this assessment of the votes in favor? Where do you stand on this legislation and its effect on Nebraska?

NELSON: *I agree that the backers of the repeal, which include me, do not have 60 votes. I don't know whether we have 58 votes or less. I favor the repeal but will be supportive of increasing the unified credit if we are unable to get the required 60 votes.*

LDM: We understand the Democrats will be proposing their own estate tax package with lower rates and a higher exemption as an alternative to a complete repeal. Do you have an opinion as to the Democratic package? What are its chances of success?

NELSON: *I am not aware of any separate Democratic package. The Breaux proposal appears to be an alternative which could be attractive to those who fail to first get a total permanent repeal of the federal estate tax. The chances are good for the Breaux approach.*

As we went to press, the Senate voted on the permanent estate tax repeal on June 12, 2002. Sixty votes were needed for the permanent repeal to pass, and the bill received only 54 votes. However, some senators have pledged to renew the effort yet this year.

Several events likely contributed to the failure of the bill to pass, including: a change in the budgetary outlook (no more forecasted surpluses); competing budget needs after September 11, 2001; and proposed estate tax reforms that tax only the super-wealthy, instead of repealing the estate tax.

Additionally, two Democratic alternatives failed to get the sixty votes needed to pass. One alternative, proposed by Senator Conrad, would have increased the amount of total assets exempt from any tax to \$3 million next year. The other alternative proposal, advocated by Senator Dorgan, would have combined a \$4 million exemption with a special provision exempting qualified heirs of all family-owned businesses.

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