

## The Candidates On Estate Tax Reform

By **Patricia M. Soldano**, president and CEO of the Costa Mesa, Calif.-based Cymric Family Office Services

**W**hile neither the presumptive Republican nor Democratic candidate for president has been very vocal about estate tax reform legislation, both have expressed a position:

**Senator John McCain** (R-Arizona) voted for full repeal of the estate tax in the past but then changed his position, deciding that repeal was not the right answer. Since changing his mind on repeal but before running for president in 2008, he supported a proposal by Senator Jon Kyl (R-Arizona) that the top rate be reduced to 35 percent and the exemption raised to \$5 million per spouse in 2007. Now that McCain is vying for the White House, he instead supports a \$5 million exemption per spouse and a 15 percent to 20 percent estate tax rate. He also suggests that the lifetime exemption should be indexed for inflation.

**Senator Barack Obama** (D-Illinois) has said little about the estate tax, but has indicated that he supports a 45 percent rate and a \$3.5 million exemption per spouse—with the exemption indexed for inflation. That is what the law will be in 2009. Obama thus favors freezing the tax at the 2009 level and not allowing repeal to occur in 2010.

Even though estate tax reform has not played a large role in the presidential debates, it will be an issue that the new president will have to face in 2009, as current law calls for a full repeal in 2010 and for 2011 to bring the return of the pre-2001 tax regime.

Both Democrats and Republicans in the House and Senate know that they must act to avoid having just one year of repeal (often referred to as the “throw momma from the train” year). As a result, the consensus is that some legislation finally will emerge from Congress and be sent to the new president for his signature.

That compromise will be driven by the politics of

both houses of Congress and estimates of how much revenue will be lost as a result of that reform. These estimates, in turn, will depend in part on which party controls the House and the Senate in 2009.

## Tax Law Update

By **David A. Handler**, partner, & **Alison E. Lothes**, associate, in the Chicago office of Kirkland & Ellis LLP

**P**artnership restrictions disregarded under IRC Section 2703. Estate-planning lawyers are buzzing about the Tax Court’s recent decision on family limited partnerships, *H. Holman, Jr.*, 130 TC 12 (May 27, 2008), because the court ignored commonly used restrictions on transfers of partnership interests for gift tax valuation purposes under Internal Revenue Code Section 2703.

In November 1999, Thomas and Kim Holman transferred about 70,000 shares of Dell stock to a limited partnership in exchange for general and limited partnership interests. A trust for their children contributed 100 Dell shares for limited partnership (LP) interests. Just one week later, they made a gift of LP interests to a custodial account for one of their daughters. A month later, custodial accounts for their other three children contributed Dell stock for LP interests. In January 2000 and January 2001, the Holmans made gifts of LP interests to the trust for their children.

The Internal Revenue Service audited the gift tax returns on which the gifts were reported, claiming:

- (1) the first gift of LP interests in November 1999 was an indirect gift of Dell stock rather than LP interests; and
- (2) certain provisions in the partnership should be disregarded under IRC Section 2703 when valuing the LP interests.

The IRS argued that the Holmans’ transfers were like those in *Shepherd v. Commissioner*, 115 T.C. 376, 389 (2000), *aff’d*, 283 F.3d 1258 (11th Cir. 2002), and in *Senda v. Comm’r*, T.C. Memo. 2004-160, *aff’d*, 433

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