AFTER their election victory on Tuesday, Republican leaders in the House promised progress on many fronts, including a turn toward more fiscal discipline and less economic uncertainty. They have a chance to start work on these goals almost immediately, because the lame-duck Congress soon will face a pressing issue that directly concerns both themes: the estate tax.

The uncertainty imbedded in this tax was actually written into the law in 2001 by a Republican-controlled Congress. In what some wags have called the “throw momma from the train” provision, the law stipulated that the estate tax would disappear in 2010, only to reappear in 2011 at the lower exemption level and higher rates that were in place in 2001. (To give proper credit, this provision should really be called the “planned Bush tax increase.”) The law has made 2010 the best time for tax-conscious rich people to die.

Right now, no one has any idea what rules will be in place in January — or even how to interpret some particulars of the current rules, as we shall see. (And if Congress does nothing, rich relatives might want to watch their backs on New Year’s Eve.)

The essentials of estate tax law can be captured in two numbers: the amount of an estate that is exempt from taxes, and the rate paid on estates larger than that exemption. In 2001, the exemption was $1,350,000 for a married couple, and half that for a single person. The maximum tax rate was 55 percent. Between 2002 and 2009, the exemption for a couple was gradually raised to $7 million and the maximum rate was lowered to 45 percent. Gifts of any size from one spouse to the other are not taxed, unless the spouses are of the same sex. (But don’t expect that inequity to be fixed anytime soon.)

If Congress had simply indexed the 2009 limit to adjust automatically for inflation, and left the tax rate at 45 percent, we would have a reasonable law in place and would have avoided a decade of uncertainty. Instead, we have granted a tax holiday to the heirs of rich people who have done their families the courtesy of dying in 2010, but we’ve left everyone else in a muddle.

Consider three courses that Congress might take:
• Do nothing and go back to the 2001 exemption and rates.

• Make the 2009 rates and exemption permanent, an approach that the Obama administration favors.

• Make the 2010 rules permanent, thereby eliminating the estate tax, as the Republican leadership would like to do.

In thinking about these options, let’s debunk two common misconceptions.

First, it is incorrect to say the estate tax amounts to double taxation. The wealth in many large estates has never been taxed because it is largely in the form of unrealized — therefore untaxed — capital gains. A 2000 study found that for estates worth more than $10 million, unrealized capital gains represented 56 percent of assets. For estates with active farms and businesses, the percentage is much higher. If no estate tax is imposed, capital gains taxes can be avoided indefinitely.

The second myth is that the estate tax somehow threatens family farms — that they would need to be sold if they couldn’t pay the tax. But under the $7 million exemption proposed by the Obama administration, such cases would be exceedingly rare.

What should Congress do? The most important step would be to end the uncertainty by legislating a permanent set of rules. If Congress doesn’t act, even middle-class households might soon be facing an estate tax. And of all the taxes in our system, the estate tax probably requires the most advance thought. (It is called “estate tax planning,” after all.) To avoid future showdowns in Congress, the exemption should be indexed for inflation if the estate tax remains.

But what about the tax rate? The proposed 45 percent rate is the lowest since 1932, but it still sounds high, almost confiscatory. Yet we must keep that $7 million exemption in mind. The Tax Policy Center estimates that in 2009, the average effective rate (taxes paid as a proportion of the entire estate) was 19.4 percent for all taxable estates. Even for estates above $20 million, the rate was only 22.4 percent.

We could lower the rate if we also lowered the exemption, but that would be a mistake. Dealing with the estate tax is a major nuisance, so it should apply to as few people as possible. With the $7 million exemption, only 3 estates in 1,000 would have to pay any tax. And those with estates that big could certainly afford a good lawyer to help them further increase the effective size of their exemption.

ONE might think that eliminating the tax — that is, continuing the 2010 rules — would end this reporting burden for everyone. In fact, the opposite is true. There are new filing provisions in 2010 for any estate with more than $1.3 million in unrealized capital gains. Previously, the original prices for assets in an estate weren’t important because the income tax bases were “stepped up” to current levels. Now, the I.R.S. wants to know the original purchase prices, which you will have to enter on a form that the agency has not yet provided.
So if your affluent grandpa died this year, now might be a good time to start looking for the receipt for that original Picasso he bought in Paris 50 years ago.

Which brings us to fiscal discipline. The Congressional Joint Committee on Taxation estimates that eliminating the estate tax would cost about $500 billion over the next decade. The Obama proposal, if indexed to inflation, reduces that loss of revenue by about half. Some Republicans will want to hold out for a complete elimination of the tax and may try to postpone acting until the new Congress convenes. If a spike in deaths occurs in late December, we will know whom to blame.

So let’s be serious. There are lots of ways to spend $250 billion. Trim the deficit, improve education, support the troops, or make sure heiresses like Paris Hilton have the proper attire for trips to St.-Tropez. At this time in our history, which of them seem prudent?

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