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ESTATE PLANNING AND THE 2016 PRESIDENTIAL ELECTION

The recent election of Donald Trump as the 45th President of the United States, coupled with Republican control over both the House and Senate, suggests that we will see some major changes to the tax law in the near future. How might these changes affect your estate plan?

As part of President-elect Trump's tax reform plan, he has proposed a repeal of the federal estate tax, something that has long been advocated for by the Republican party. There is no guarantee, of course, that the estate tax will be repealed; however, the GOP's control over the House and Senate makes it likely, in our opinion, that President-elect Trump will be able to push through this part of his tax plan.

The potential repeal of the federal estate tax does not eliminate or even diminish the need for an estate plan. **The core benefits of a comprehensive estate plan using revocable and irrevocable trusts remain. Such benefits, include, but are not limited to**:

- Avoidance of Probate;
- Providing for how and to whom your assets will pass upon your death;
- Management of your assets and decision making (financial, personal and health related) without court supervision during periods of incapacity;
- Procedures for care of your minor children if you are unable to care for them;
- Income tax efficiency;
- Asset protection for spouses and other beneficiaries;
- Planning for beneficiaries with special needs; and
- Government benefits planning.

The reality is that the estate tax affects very few families and individuals. In 2017, the exemption amount will be $5,490,000 per person, with the option of "portability" for married couples (i.e., a law that allows the surviving spouse to use the remaining estate tax exemption of the deceased spouse and pass both exemption amounts [totaling $10,980,000 in 2017] to beneficiaries free of estate tax). With exemptions this high, the estate tax has already effectively been repealed for about 99.5% of Americans.

If the estate tax is repealed, will the repeal be phased in over multiple years as was done in 2001 under President George W. Bush? Will the gift tax also be repealed, as Trump has proposed? Will the repeal be temporary? Unless 60 Senators support a tax bill that contains estate tax repeal, such bill will "sunset" in 10 years. As you may recall, this scenario occurred under

President Bush's 2001 tax bill when we had one year of full estate tax repeal in 2010 only to return to an estate tax in 2011.

There is a great deal of uncertainty as to what might replace the estate tax, if repealed. President-elect Trump has proposed replacing the estate tax with a capital gains tax imposed at death for estates valued over $10,000,000, exempting family farms and small businesses. This capital gains tax would be at a significantly lower rate than the current estate tax rate, which imposes a tax of 40% on assets in excess of the exemption amount. If this is the case, it may be more advantageous to have assets included as part of a person's estate so that those assets get a new cost basis at the date of death, as opposed to removing the assets from the person's estate during life.

While there is uncertainty as to when, how, and if the estate tax law will be repealed, it is likely that there will be significant changes. Over the summer, the IRS announced proposed regulations targeting valuation discounts on transfers of entity interests among family members. With an estate tax in place, transfers of assets at a discounted valuation is a powerful wealth transfer strategy for many clients and families whose estates might otherwise be subject to an estate tax at death. Many clients were contemplating or began intra-family transactions in anticipation of a democratic president and enactment of the IRS regulations. These transactions may still make sense depending on specific family situations, but some clients may want to put these transactions on hold until the new Trump tax laws are effective and can be evaluated. Please call us to discuss your specific circumstances if this applies to you and your family.

We recommend reviewing your estate plan if (i) you have not reviewed your plan within the past 3 years; (ii) your circumstances or your beneficiaries' circumstances (i.e. health, wealth, family) have changed; (iii) you no longer wish for the person or entity named as your trustee/executor/agent to act on your behalf; or (iv) you have concerns about asset protection.

If you have questions about this newsletter or wish to review your estate plan, please call our office at (818) 338-3252
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