U.S. ELECTION UPDATE: ARE CHANGES TO THE ESTATE AND GIFT TAX COMING?

Hodgson Russ Trusts & Estates Alert
November 11, 2020

With the apparent election of Joseph R. Biden, Jr. as the 46th President, changes to the federal estate and gift tax regime could be brewing. As a result, some of our clients are asking if they should be planning for these possible changes now.

In 2020, an individual is permitted to pass (by gift or on death) up to $11.58 million before federal gift or estate tax is imposed (at a tax rate of up to 40%). For married couples, this amount is doubled to $23.16 million.

President-elect Biden's formal campaign tax plan included a proposed reduction of the gift and estate tax exemption to $3.5 million, and an increase in the highest marginal tax rate to 45%. While it is, of course, uncertain whether such changes will actually be passed into law, particularly considering the uncertainty regarding majority control of the Senate, there is a very real chance these changes (and possibly more) could be made if the Democrats win both of the run-off elections in Georgia (or if a Republican votes in favor of such changes). Further, if such changes are made, it is possible they could be retroactively effective on January 1, 2021.

Planning For Possible Changes

Given the possibility of such substantial change, planning now could help to avoid having to pay additional estate tax later.

Who should be planning?

- Anyone who would face an estate tax burden under the potential lower exemption amount.

What can be done?

- Making lifetime gifts prior to year-end, whether outright or in trust, will allow you to utilize the current heightened exemption amount before it is reduced ("use it or lose it"). Note - in order to fully leverage the current exemption, gifts over the anticipated $3.5 million exemption must be completed. Gifts under such amount will provide no additional benefit, as they will not lock in the current heightened exemption.
- Sophisticated planning techniques, such as Spousal Lifetime Access Trusts ("SLAT"), may allow you to make completed lifetime gifts, while also retaining

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some access to and/or control over the gifted assets.

Advantages to planning today?

- Making lifetime gifts in order to utilize the heightened exemption before it is reduced or eliminated takes advantage of the current exemption, which can result in substantial estate tax savings. For example, the difference between $11.58 million and $3.5 million is $8.08 million, which, at a 45% tax rate, would result in an increased tax liability of over $3.6 million.
- A future reduction in the exemption will not result in a "clawback" or inclusion of the previously gifted amounts. Those gifted amounts will remain shielded from estate tax.
- The appreciation in value of the gifted assets between the date of gift and the date of the donor's death is not subject to estate tax.

While it is impossible for us to predict exactly what changes (if any) will be made to the gift and estate tax, our team would be happy to discuss the possible implications with you. If you were considering making lifetime gifts in the near future, or have concerns regarding the potential estate tax you could face under a reduced exemption, we strongly recommend that you contact us, as soon as possible, to explore your options to take advantage of the current favorable legislative environment before it is gone.

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