

Impact of the Presidential Election on Federal Estate and Gift Tax Planning

Under current federal tax law, the federal estate tax applies to estates valued at more than \$5.49 million for individuals or more than \$10.98 million for married couples who elect to establish “portability”.

Since the election of Donald Trump, there have been many predictions and opinions about the future status of federal estate and gift tax law. Predictions range from immediate repeal to no change at all due to “the politics of repeal.” However, the Trump Administration and many Republican lawmakers are on record as calling for repeal of what they refer to as the “death tax”. Specifically, the Donald Trump website provides:

“The Trump Plan will repeal the death tax, but capital gains held until death and valued over \$10 million will be subject to tax to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent’s relatives will be disallowed.”

Even with Republicans in control of both the House and Senate, repeal of the “death tax” will not be automatic. Some Republicans have cautioned that tax breaks perceived as benefiting only the wealthy could be politically problematic. In addition, the Senate vote will require some Democratic support to reach the 60 votes required for a total repeal, although a decade long repeal could be achieved with only 51 votes utilizing the “reconciliation” process. Ultimately, any change or repeal of the estate tax will most likely be the product of compromises between Republicans and Democrats as part of an overall comprehensive tax reform package.

There also has been much debate about what will happen to the proposed regulations to curtail estate and gift valuation discounts. Following a public hearing on December 1, 2016, the Treasury Department indicated that changes will be made to the proposed regulations before they are finalized. Many practitioners initially interpreted the proposed regulations as essentially eliminating minority discounts for transfers of closely-held family business entities. However, Catherine Hughes of the Treasury Department Office of Tax Policy recently stated that with the final regulations “...we will make it very clear that these regulations are not intended to eliminate minority discounts.”

Due to the post-election change of the political landscape, there have also been calls for a complete withdrawal of those proposed regulations. While Hughes indicated that it is too early to determine if the regulations will be withdrawn, there is strong sentiment among practitioners that the regulations will not be finalized in the near future and may, in fact, ultimately be withdrawn.

As a result of these potential changes, some taxpayers may choose to delay implementing a comprehensive estate plan until there is more certainty regarding the future of the estate and gift tax. However, other taxpayers may choose to implement a plan based on his or her specific situation including income tax, family, philanthropic, and other economic goals that should be considered in conjunction with estate tax savings.

If you have any questions, or require any additional information, please contact your Whitley Penn LLP tax advisor or contact Josh Plunk directly at (817) 259-9074 or josh.plunk@whitleypenn.com.