

Trump, Taxes, and the Future of Estate Planning



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A UNIQUE OPPORTUNITY

REPUBLICAN CONTROL OF CONGRESS AND THE PRESIDENCY

- Election of Donald Trump, along with retaining majorities in House of Representatives and Senate
- Congressional Republicans Plan – “A Better Way”
- Trump Campaign Platform/Promises



FIVE THINGS TO DISCUSS

- Where we are now
 - Current Tax Law
- Where are we going?
 - Congressional Republican Proposals
 - President Trump's Tax Plan
- How will we get "there"?
 - Budget Reconciliation
- What will it look like?
 - Current Uncertainty
 - Effect on current estate planning tools
- What to do now?
 - Current Estate Plans
 - Future Planning
 - How to talk to our clients

CURRENT LAW

THE AFFORDABLE CARE ACT (OBAMACARE)

- Multiple Taxes Likely to be Repealed
 - **Individual Mandate:** \$695/person without coverage
 - **Employer Mandate:** Fines employers with 50+ employees that do not offer qualifying coverage and whose employees obtain subsidized health insurance
 - **Net Investment Income Tax:** 3.8% of lesser of (a) taxpayer's net investment income or (b) the amount their modified adjusted gross income exceeds \$200,000 (\$250,000 married filing jointly)
 - **Medicaid Surcharge:** 0.9% additional tax on amounts earned over \$200,000 (\$250,000 married filing jointly)
 - **Medical Device Excise Tax:** 2.3% tax on sales of medical devices by manufacturers

CURRENT LAW

INCOME TAX

- Individual
 - **Seven Brackets:** 10%, 15%, 25%, 28%, 33%, 35% and 39.6%
 - **Standard Deduction:** \$6350/\$12,700
 - **Personal Exemption:** \$4,050
 - **Capital Gains:** 15% and 20%
 - **Pass-through Entities:** Taxed at Ordinary Rates (up to 39.6%)

CURRENT LAW

ESTATE, GIFT, GENERATION SKIPPING TRANSFER TAXES

- Estate Tax
 - Rate: 40%
 - Exemption: \$5.49 Million (during life + at death)
- Gift Tax
 - Rate: 40%
 - Exemption: \$5.49 Million (during life + at death)
- Generation Skipping Transfer Tax
 - Rate: 40%
 - Exemption: \$5.49 Million

CURRENT LAW

OTHER

- Basis Consistency & Reporting
 - **Effective:** June 30, 2016
 - **Requirement:** Basis of any property in hands of an inheritor may not exceed its final value determined for estate tax purposes
 - **Reporting:** For property that increases an estate's tax liability (where estate tax is due), the Personal Representative must provide a statement to the IRS and beneficiaries acquiring an interest in such property identifying the value of each interest in property reported on the estate tax return
- IRC § 2704 Proposed Regulations
 - **Purpose:** Valuation of interests in closely held businesses

WHERE ARE WE GOING – INDIVIDUAL INCOME TAX

Trump

- 3 Brackets (12%, 25%, 33%)
- Standard deduction \$15,000 (\$30,000 MFJ), eliminates personal exemption. Caps itemized deductions at \$100,000 (\$200,000 MFJ)
- Repeals AMT
- Current capital gain and dividend rates (0%, 15%, 20%)
- Repeal Net Invest. Income Tax
- 15% rate for pass-through entities that retain profits

House Republicans

- 3 Brackets (12%, 25%, 33%)
- Std. deduction \$12,000, \$18,000 Single with child, \$24,000 MFJ, eliminates personal exemption, state and local tax deduction.
- Repeals AMT
- 50% deduction for capital gains, dividends & interest (6%, 12.5%, 16.5%)
- Repeal Net Invest. Income Tax
- 25% rate on “business income”

WHERE ARE WE GOING – ESTATE, GIFT, GST TAX

Trump

- Repeals Estate Tax
- Capital gains held at death greater than \$10 Million taxed at capital gains rates, basis step-up
- Contributions of appreciated assets to a private charity/foundation established by decedent disallowed
- Repeals Gift Tax
- Repeals GST Tax

House Republicans

- Repeals Estate Tax
- Repeals Gift Tax
- Repeals GST Tax
- Carry-over basis

HOW ARE WE GOING TO GET “THERE”

BUDGET RECONCILIATION

- Republicans don't have filibuster-proof 60 votes in the Senate
- Reconciliation requires 51 votes for spending, tax and debt limit bills
 1. House and Senate must pass concurrent Budget Resolution with instructions to committees to change spending or revenue amounts
 2. Must then pass reconciliation bills that adhere to the instructions
- Two opportunities for reconciliation in 2017
 - Currently for 2017 fiscal year budget: Being used for ACA repeal
 - 2018 budget: Likely to be used for tax reform

LIMITS ON BUDGET RECONCILIATION

BYRD RULE

- Prohibits extraneous matters from budget reconciliation bills and requires 60 votes in the Senate to waive. Applies to provisions that:
 - Do not create a change in spending or revenue
 - Create changes in spending or revenue that are merely incidental to non-budgetary elements of the provision
 - Are outside the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure
 - Increase spending or reduce revenue if overall the provision does not meet the instructions given to the reporting committee
 - Increase net spending or reduce revenue during a fiscal year after the years covered by the reconciliation bill unless the provision as a whole remains budget neutral
 - Contains recommendations regarding Social Security trust funds
- Consequence of limitations
 - Need to create “sunset” to avoid provisions that worsen the financial position of the government beyond the 5 or 10 year period covered by the bill
 - Affordable Care Act cannot be completely repealed via reconciliation

WHAT WILL THE FUTURE LOOK LIKE

MUCH UNCERTAINTY STILL

- Clear consensus to repeal Estate Tax, unclear what form this will take
- What about the Gift Tax? What about GST Tax?
- Proposed §2704 Treasury Regulations
- What about basis?
- Will repeal be “permanent”?
- How does repeal of the Federal Estate Tax affect state estate taxes

MUCH UNCERTAINTY

- What about Gift Tax? GST Tax?
 - Estate/Income Tax “backstop”
 - Avoid shifting income to lower brackets
 - In 2015 House of Representatives passed legislation repealing Estate & GST Tax but keeping Gift Tax
 - Trump and Republican Proposals eliminate Gift Tax
 - Less relevant as “backstop” now
- Proposed § 2704 Regulations
 - Restrictions on valuation discounting for closely held businesses
 - Unlikely to be finalized in current form
- Basis Consistency & Reporting
 - If Estate Tax repealed, there is no “final value determined for Estate Tax purposes.”
 - Need for carry-over basis reporting

MUCH UNCERTAINTY

- What about Basis?
 - **Trump Capital Gains Tax Regime**
 - Death as a realization event
 - \$10 Million exemption
 - Step-up
 - How to determine basis for gain calculation
 - Canadian experience
 - Can you avoid the tax? Would you want to?
 - **House Republican Proposal**
 - Carry-over basis
 - 2015 legislation included step-up basis
- Will repeal be “permanent”?
 - **Budget Reconciliation process:** 10 year time frame, must comply with Byrd Rule
 - **Byrd Rule:** Need 60 votes to pass legislation that will significantly increase deficit after Reconciliation period.
 - **Likely Result:** Repeal would “sunset” at end of the Reconciliation period (2010 revisited)

EFFECT ON COMMON ESTATE PLANNING TOOLS

- Intentionally Defective Grantor Trusts
 - Grantor trust for income tax purposes, not in estate for federal Estate Tax
 - If pay tax on unrealized gains at death, does IDGT avoid the tax? Does it miss a potential step-up in basis?
- Bypass Trusts
 - Still necessary?
 - Funding language issues: “largest amount that can pass free of federal estate tax,” will a capital gains tax at death be an “estate tax”?

EFFECT ON CURRENT ESTATE PLANNING TOOLS

- Qualified Terminable Interest Trusts (QTIPs)
 - If there is no federal estate tax, there is likely no federal QTIP – can you make the election for state law purposes if IRC §2057(b)(7) no longer exists?
 - What about a trust with a General Power of Appointment – can you utilize this option for state law purposes if IRC §2044 no longer exists?
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- **RCW 83.100.047**
- (1)(a) If the federal taxable estate on the federal return is determined by making an election under [section 2056 or 2056A of the internal revenue code](#), or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, [consistent with section 2056 or 2056A of the internal revenue code](#) and (b) of this subsection.....
- (b) The department... a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with [section 2056 or 2056A of the internal revenue code](#) but regardless of whether such interest would be deductible from the federal gross estate under [section 2056 or 2056A of the internal revenue code](#).
- (3) Notwithstanding any department rule, if a taxpayer makes an election consistent with [section 2056](#)...adjusted as follows:
- (a) For the taxpayer that made the election, any amount deducted by reason of [section 2056\(b\)\(7\) of the internal revenue code](#) is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.
- (b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to [section 2044 \(a\) and \(b\)\(1\)\(A\) of the internal revenue code](#) is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.

WHAT TO DO NOW

DEPENDS ON CLIENT'S SITUATION

- Clients beginning EP process
 - Wait and see (if possible): “First, do no harm”
- Planning in process
 - Wait and see?
 - Flexibility
 - Diversification
- Estate Plan in place
 - Review current plan
 - Options for modifying
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WHAT TO DO NOW

REVIEW CURRENT PLAN

- Bypass Trusts
 - Do you need them now?
 - Does the language “work”?
- QTIP Trusts
 - Capital Gains tax?
 - Clayton QTIP for flexibility
- Disclaimer Trusts
 - May continue to work
 - No asset protection if opt out

UPDATING ESTATE PLANS

OPTIONS FOR MODIFYING PLANS

- Some items may not be affected/able to be changed
 - Installment Note Sales
 - GRATs
- New documents
 - Amending & Restating Trusts
 - Wills
 - Powers of Attorney
- Modifying Irrevocable Trusts
 - Authority of Trustee or Trust Protector
 - TEDRA
- Lack of capacity
 - Power of Attorney
 - TEDRA

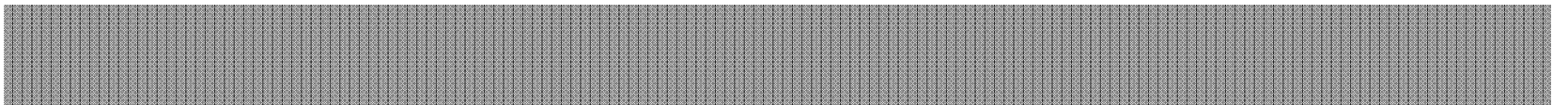
WHAT TO TELL OUR CLIENTS

- Education
 - Need to review their Plan
 - How new laws may effect their plan
 - Washington and Oregon still have estate taxes
 - Taxes not only reason to plan
 - Asset protection
 - Control over assets
 - Family dynamics
 - Potential protection against elder financial abuse

WHAT TO TELL OUR CLIENTS

- Gifting/Asset Protection Planning
 - Move assets while no Gift Tax
 - Use irrevocable trusts to get creditor protection and retain some control
 - Push assets “down” to younger generation(s)
- Diversification
 - Carry over basis eliminates major reason for holding onto assets
- Flexibility
 - Include options in documents
 - Empower fiduciaries to make decisions
- Pass-through entities
 - Lower rates may be major opportunity for business owners
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QUESTIONS AND COMMENTS?



REPRESENTED BY
Schwabe



HEALTHCARE



MANUFACTURING
& DISTRIBUTION



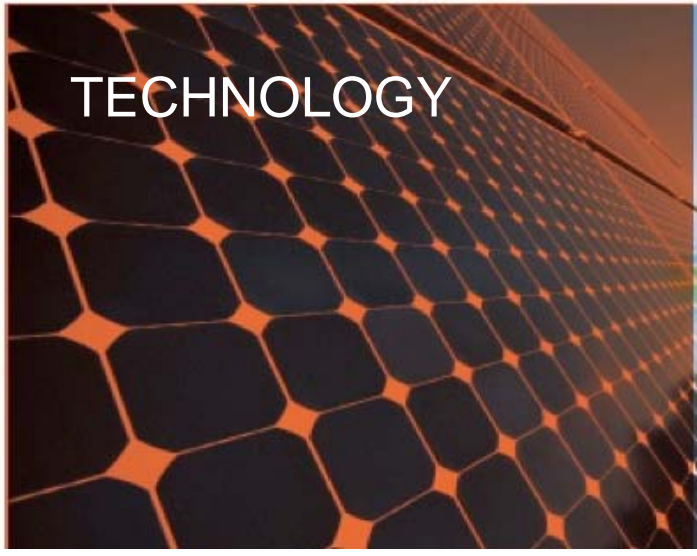
NATURAL
RESOURCES



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REAL ESTATE &
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TECHNOLOGY