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WEALTH PLANNING BLOG

Something Old, Something New

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Over the years, estate and gift taxation has often been a see-saw of policy and tax rate changes. As administrations come and go, it seems so do the tax rates on estates and gifts. From 1 million to 5 million to unlimited millions, the administrations lead our planning to be based on a “best guess” of what’s coming next.

Then, last year we finally got a “permanent law” that indexed the rates for inflation but otherwise left them predictable. Or, so some of us thought. As many of our wealth planning team members predicted and planned for under their “best guess” model, “permanent” in the administration’s dictionary did not mean the same thing as “permanent” in our friend Merriam-Webster’s dictionary. So, what is the definition of “permanent” in the dictionary the administration uses? Apparently, it could mean for a duration of one year.

The Obama administration recently released its 2015 Budget Proposal, which both restated tax changes it had previously proposed, and added a few new ones, all of which would affect estate and gift tax planning that was allegedly set in stone. Below is a non-exhaustive list of some of Obama’s proposed changes:

- Prevent additional tax-preferred retirement saving by individuals who have already accumulated tax-preferred retirement savings sufficient to finance an annual income of over $200,000 per year in retirement (i.e., more than $3 million per person).
- Require non-spouse beneficiaries of deceased IRA or annuity (IRA) owners and retirement plan participants to take inherited distributions over no more than five years.
- Effective for taxpayers who attain age 70— by Dec. 31, 2014, and for taxpayers who die on or after that date before attaining age 70—, eliminate the required minimum distribution (RMD) rules for IRA or annuity (IRA) plan balances of $100,000 or less.
- Beginning in 2018, return the estate, generation-skipping transfer (GST), and gift tax exemption rates to 2009 levels. Thus, the top tax rate would be 45%, and the exclusion amount would be $3.5 million for estate and GST taxes, and $1 million for gift taxes.

- Effective for transfers after the year of enactment, require that the basis of property in the hands of the recipient of a gift or devise could be no greater than the value of that property as determined for estate or gift tax purposes (subject to subsequent adjustments).
- Effective for trusts created after the enactment date, require a grantor retained annuity trust (GRAT) to have a minimum term of ten years and a maximum term of the life expectancy of the annuitant plus ten years.
- Effective for trusts created after the enactment date (and to the portion of a preexisting trust attributable to additions to such a trust made after that date), limit the duration of GST tax exemption by, on the 90th anniversary of the creation of a trust, providing that the GST exclusion allocated to the trust would terminate.
- Simplify gift tax exclusion for annual gifts by eliminating the present interest requirement for gifts that qualify for the gift tax annual exclusion. Instead, the budget proposal would define a new category of transfers (without regard to the existence of any withdrawal or put rights) and would impose an annual limit of $50,000 per donor on the donor's transfers of property within this new category that will qualify for the gift tax annual exclusion.
- Expand the applicability of the definition of an "executor" to expressly make the Code's definition applicable for all tax purposes, and authorize such executor to do anything on behalf of the decedent in connection with the decedent's pre-death tax liabilities or obligations that the decedent could have done if still living.

In summary, if Obama’s Budget Proposal actually ends up happening, there will be many unfavorable estate, gift and GST tax consequences, as well as income tax consequences. While you should review your estate plan every couple of years and upon a significant change in familial or financial circumstances, you should also pay close attention to these proposals as they represent this Administration’s and the IRS’s blueprint for estate planning areas in which they desire to effect significant changes.

Hence, these proposals represent both something old (the tax administration playing revenue and tax planning “catch up”), and something new (the specific proposals being sought).