Northwest Bank
& Trust Company
Investment Management Group

Attorney/CPA Corner
Estate Planning Update

March/April 2018

Greetings

Northwest Bank's Investment Management Group would like to help you stay informed on the issues shaping your clients' financial and estate planning needs.

If we can be of any assistance please contact one of our estate and financial planning professionals. We look forward to working with you.

Deductions for executors' fees in peril?

Catherine Hughes from the Treasury Office of Tax Legislative Counsel told a February meeting of the ABA Section of Taxation that there is some uncertainty about the deductibility of fees for executors and trustees, now that miscellaneous itemized deductions no longer are permitted. There's also a question concerning those fees when an estate or trust terminates. Excess deductions may be miscellaneous deductions in the hands of the beneficiaries, even if they were not so characterized in the hands of the terminating entity.

Hughes also told the group that the Service is working on guidance to avoid clawbacks in the event that the unified credit drops back to $5 million, as now scheduled. Gifts that were not taxable when made should not become taxable in an estate in a later year simply because the unified credit is reduced (something that never has happened in the history of the federal transfer tax). The concept is easy to state, but the guidance may prove difficult to write.

The Democrats' tax plan

Senate Democrats have released a proposal for funding more government spending on infrastructure. Revenue would be obtained by scaling back the just-enacted Tax Cuts and Jobs Act. Specific targets include:

- reversal of the enlarged exemption from the alternative minimum tax;
- reversal of the doubling of the unified credit against estate and gift taxes;
- raising the corporate tax rate to 25%;
- closing the carried interest loophole; and
- bringing back a 39.6% top income tax rate.

All told, these changes are projected to increase federal revenue by roughly $1 trillion over the next ten years. An increase in the gas tax was not a part of the proposal. Query: Does this mean that the Democrats finally have given up on the idea of lowering to $3.5 million the amount exempt from federal estate tax?

Money coming home

According to a new survey of CEOs, 69% foresee an increase in repatriated funds following the changes of the Tax Cuts and Jobs Act. Some 18% expect to repatriate 10% or more of their offshore earnings, and 66% will share the savings with their customers.

An unrelated survey of 137 CEOs showed a significant uptick in business optimism, though perhaps not directly related to the new tax law. Some 93% expect an increase in corporate sales in the next six months, and 68% foresee an increase in capital spending. Both figures are up sharply from the final quarter last year.

Technical corrections work begins

The Joint Committee on Taxation has begun its analysis of the Tax Cuts and Jobs Act to find areas where the legislative language appears garbled or not matched properly to legislative intent, according to the JCT Chief of Staff, Thomas Barthold, at a Federal Bar Association conference in early March. It's apparently going to be a big job, comparable to the Tax Reform Act of 1986, which was enacted on a much longer time frame. Whether a technical corrections bill appears this year is uncertain, as Democrats have signaled that they may need extensive hearings on the matter before proceeding.

Doubtful future for "tax extenders"

Some 26 tax provisions expired in 2017, mostly in the energy area. At a mid-March hearing, there were 22 witnesses testifying in favor of extending these credits and tax favors for at least another year. House Ways and Means Committee Chair Kevin Brady (R-Texas) dislikes temporary tax provisions that need to be revisited annually, especially given the substantial tax overhaul just enacted in December. He appears to favor making some provisions permanent, while allowing the rest to lapse. The preliminary estimated cost of making all the provisions permanent would be $92 billion over ten years. Some $35 billion of that amount would be for biodiesel support.

Virtual currency

IRS Criminal Investigation Division Chief Donald Fort told a Federal Bar Association conference that IRS is increasingly concerned about the role of virtual currencies, such as bitcoin, in tax fraud cases. Use of these currencies makes it much harder for the IRS to "follow the money." The reporting of gains and losses from the use of virtual currencies has been lax. In some cases virtual currency has been used in place of an ordinary bank account, thus escaping IRS scrutiny. Should virtual currency usage become more routine in business transactions, the IRS' challenge will be magnified.

Tax scamming is not going away

In February the IRS warned of a new scam variation that begins when scammers steal information from tax professionals. The criminals then deposit money in the taxpayer's real bank account.

In one version of the scam, criminals posing as debt collection agency officials acting on behalf of the IRS contacted taxpayers to say that a refund was deposited in error, and they asked the taxpayers to forward the money to their collection agency. In another version, the taxpayer who received the erroneous refund gets an automated call with a recorded voice saying that he is from the IRS and threatens the taxpayer with criminal fraud charges, an arrest warrant, and a "blacklisting" of their Social Security Number. The recorded voice gives the taxpayer a case number and a telephone number to call to return the refund.

Erroneous refunds are possible, and the IRS has a process in place to return them. They do not involve buying gift cards or doing wire transfers.