Northwest Bank
& Trust Company
Investment Management Group

Attorney/CPA Corner

Estate Planning Update

November/December 2017

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.

Transfer tax provisions of H.R. 1, the Tax Cuts and Jobs Act

We now have some of the missing details on how repeal of the federal estate tax might work, with the release of the legislative text of the Tax Cuts and Jobs Act.

- The amount exempt from the federal estate tax would double next year, to $10 million plus inflation adjustments per estate. Because current law calls for a $5.6 million exemption next year, presumably that means $11.2 million per taxpayer, $22.4 million per married couple.
- Repeal of the estate and generation-skipping transfer taxes would be delayed until 2024.
- The federal gift tax would be retained after 2024, but with a reduced top tax rate of 35%.
- Most surprisingly, basis step-up at death would be retained. Candidate Trump hinted that step-up might not be available for larger estates, but this element has not been included as this Estate Planning Update is written.
- Qualified Domestic Trusts (QDOTs) created in 2024 and later will not be subject to transfer tax. QDOTs created before that date will become nontaxable ten years after their creation.

According to the IRS Statistics of Income, in 2016 there were 12,411 federal estate tax returns filed, of which only 5,219 were taxable. The 2,402 taxable returns in the $5 million to $10 million category represented almost half of the taxable filers but only 15% of the collected revenue. The 5.7% of taxable returns larger than $50 million paid over 41% of the total estate tax. Thus, doubling the exemption keeps most of the revenue while further narrowing the number of families affected by the estate tax.

Repeal of the estate and GST taxes is permanent in the bill, but we've already seen the movie about repealing the estate tax in the future. Another Congress can change course before repeal becomes reality, or even reinstate the estate tax after it expires. Accordingly, many planners are warning that reliance on the future elimination of death taxes may be a mistake.

In 1981 the Economic Recovery Tax Act called for dropping the top estate tax rate from 70% to 50% over four years. Three steps occurred on schedule, but the last step, from 55% to 50%, didn't happen until 2001.

The same IRS report on the 2016 estate tax said that total estate tax collections in 2016 came to $18.2 billion. Yet the Joint Committee on Taxation "score" for the legislation shows the cost of repealing the estate tax to be well over $30 billion per year in 2025 and later years. JCT must be projecting estate asset growth in value of 8%

or more. In contrast, the Urban-Brookings Tax Policy Center estimates estate tax collections of roughly $24 billion in those years.

The Senate has yet to weigh in with its version of tax reform. Significant departures from the House bill are expected, especially if the Senate aims to keep its bill revenue neutral. What that might mean for the transfer tax items is unknown. Some observers believe that the Senate is likely to enlarge the estate tax exemption but eliminate the repeal as the price for keeping the basis step-up at death.

Priority guidance

In October the IRS announced new project priorities for 2017-2018. At the top of the list this year were steps to identify and reduce regulatory burdens—the already-announced withdrawal of the §2704 regulations on valuing the transfer of an interest in a family-owned business was number one.

In the estate and gift area, three projects were identified:

- Guidance on basis of grantor trust assets at death under §1014.
- Final regulations under §2032(a) regarding imposition of restrictions on estate assets during the six-month alternate valuation period. Proposed regulations were published on November 18, 2011.
- Guidance under §2053 regarding personal guarantees and the application of present value concepts in determining the deductible amount of expenses and claims against the estate.

The number of projects in the plan fell to 197, from 281 the year before. Other projects have not been abandoned, the IRS warns, but, realistically, they are not likely to be completed in the coming fiscal year.