Northwest Bank
& Trust Company
Investment Management Group

Attorney/CPA Corner
Estate Planning Update

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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.

The "ultra-millionaire tax"

Senator Elizabeth Warren, D-Mass., has proposed a dramatic shift of emphasis for the federal government's focus in taxing "the rich." Rather than looking to income, she wants an annual wealth tax, which would apply in addition to any other federal taxes due. The exemption would be $50 million. At family wealth levels above that cut-off, an annual tax of 2% would apply. A second 3% bracket kicks in at wealth levels above $1 billion (a "billionaire surtax"). The tax presumably would apply each year to unrealized capital gains. It would continue to apply during economic downturns, when family wealth is shrinking. Some 75,000 American households are projected to be snared by the tax, which would raise an estimated $2.75 trillion over ten years.

Any family that wanted to escape this annual tax bite by giving up American citizenship would be subject to a new 40% "exit tax" applied to its entire net worth.

Six American law professors from around the country have weighed in supporting the constitutionality of a wealth tax, citing Knowlton v. Moore, 178 U.S. 41 (1900). The Tax Foundation, on the other hand, has criticized the proposal on administrative and economic grounds. Much family wealth is very difficult to value accurately on an ongoing basis. Interests in privately held businesses, real estate, art collections, and the like are much harder to value than publicly traded securities. Today wealthy individuals face the valuation puzzle only once, for paying death taxes. Having to do so every year would be a substantial burden (but a bonanza for tax lawyers and accountants). Wealth taxes have declined in popularity around the world due to their negative economic impacts—in 1990 12 OECD countries had wealth taxes; today only four do.

A wealth tax is justified, according to Warren, because the share of wealth held by the top 0.1% of Americans zoomed from 7% in the late 1970s to 20% by 2016. "Put another way, the richest 130,000 families in America now hold nearly as much wealth as the bottom 117 million families combined," according to her press release.

Estate tax repeal

At the other end of the political spectrum, Senator John Thune, R-S.D., has again introduced legislation to repeal the federal estate tax permanently. "Oftentimes, family-owned farms and ranches bear the brunt of this tax, which threatens families' agricultural legacies and makes it difficult and costly to pass these businesses down to future generations," said Thune. Senate Majority Leader Mitch McConnell, R-Ky., a co-sponsor of the bill, called the estate tax a "final insult to force grieving families to visit both the undertaker and the IRS on the same day."

Neither bill is expected to gain much traction before the next Presidential election.

“Cadillac tax” repeal proposed

One critical element of sharing the costs of the Affordable Care Act equitably was the so-called “Cadillac tax” on high-priced health insurance plans, those costing more than $11,000 annually for individuals and $29,750 for families. The application of the tax has been postponed repeatedly, and now Reps. Joe Courtney, D.-Conn., and Mike Kelly, R.-Penn., have introduced H.R. 748 to repeal the tax entirely. No replacement sources of revenue were identified.

Shutdown fallout

When the Tax Court returned to work after the end of the partial government shutdown, it faced a “mountain of mail” that had accumulated during the 35 days, as well as a backlog of electronically filed petitions. All mail should have been held by the Post Office, but any taxpayers who received mail returned as undeliverable should retain the envelope and postmark for future proof of timely filing.

The shutdown would not have affected refunds for the simplest e-filers, as the automated systems were in place and ready to go. However, filers who are claiming refundable credits won’t have their returns processed until February 15, to give the IRS more time for matching documents. Those filers may experience additional delays from the shutdown.

Another shutdown may begin on February 15, unless there is some movement on the issue of border security.

A solar power scam

Two Utah companies sold solar thermal lenses. Part of the sales process included the suggestion that buyers might be eligible for depreciation deductions as well as a solar investment tax credit under IRC §48. Problems with the scheme included the fact that the solar lenses did not work and that the buyers could not qualify for tax benefits because they were not in the trade or business of leasing solar lenses. The companies were ordered by a District Court to disgorge $50 million.

That order is now on appeal. The companies claim that they did not represent themselves as tax experts, and warned all buyers that they should seek independent tax advice before proceeding.