

WINTER 2017 NEWSLETTER

Dear Clients and Friends:

We now have a new President. Although we cannot be certain what the new Trump Administration will seek to change in the federal tax laws, we do know that during the campaign season President Trump expressed these intentions with regard to federal estate, gift and income taxes:

Individual Income Tax:

- Lower the top income tax rate from 39.6% to 33% and eliminate the additional tax on net investment income and the Medicare Tax
- Repeal the Alternative Minimum Tax (AMT)
- Increase standard deduction amounts
- Cap itemized deductions
- Increase the tax on carried interests from a maximum 20% to a maximum 33%

President Trump's plan for the estate, gift and generation-skipping transfer taxes is far less clear. His tax plan on his official website states verbatim:

The Trump Plan will repeal the death tax, but capital gains held until death and valued over \$10 million will be subject to tax to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed.

There is no further detail on the website about how this plan might be implemented, whether the gift tax will remain in place, or even whether the capital gains tax on appreciated assets will be imposed at death or when the beneficiaries later sell the inherited property. We will have to wait to see what the new President and Congress propose with regard to these taxes and whether any repeal would be immediate or phased-in over a multi-year period such as was the case when President Bush's administration repealed the estate and generation-skipping taxes in 2001.

While these various tax changes may be on the horizon, and could be enacted in some form in 2017, retroactive to January 1, 2017, it is too soon to tell what kind of priority President-Elect Trump and his administration will place on making these changes and whether Congress will be willing to implement them. We will, of course, keep you posted as to any major developments in the federal tax laws which may affect your estate planning. If you have any concerns that a particular potential change may impact your estate plan, you should contact your Cummings & Lockwood attorney as soon as possible.

IRS Proposes Regulations to Restrict Estate and Gift Tax Valuation Discounts for Family-Owned Businesses and Entities

As reported in several prior annual updates, we have long been expecting the IRS to issue regulations restricting discounts for certain asset transfers to family members and/or trusts for their benefit. The proposed Regulations have now been issued. As posted in our website alert earlier this year, on August 2, 2016, the IRS proposed major changes to the Regulations under Section 2704 of the Internal Revenue Code affecting how interests in family-held entities are to be valued when transferred among family members. If made final, the proposed Regulations would dramatically impact the discounts customarily applied by appraisers to value these interests for gift, estate and generation-skipping transfer tax purposes. Although some of the changes could go into effect as early as December of this year after a public hearing is held on December 1, 2016, it is more likely that they would become effective no earlier than January 1, 2017. If the process is delayed beyond January 20, 2017, when President-Elect Trump takes office, it is not clear if the proposed Regulations would be implemented by the new Administration at all in light of the Trump Tax Plan calling for the elimination of the estate tax and presumably the gift tax as well.

The Internal Revenue Code generally requires property subject to gift, estate and generation-skipping transfer tax to be valued at the price a "willing buyer" would pay for the property. Such hypothetical buyer would not be willing to pay a price equal to the proportionate share of the liquidation value of a family entity if the buyer would not have the power to liquidate his or her interest. Consequently, appraisers traditionally have applied discounts, including discounts for lack of control and lack of marketability, to value interests in family owned entities to reflect the restrictions and delays that a willing buyer of the interest would have in trying to effectuate a conversion of the interest to cash.

The proposed changes to the regulations would require that certain restrictions typically included in normal business organizational documents be disregarded for family-owned entities for purposes of gift and estate tax computations. Essentially, the proposed regulations would require that fair market value be determined without regard to these important factors if the transfer occurs between family members (or trusts for their benefit). Rather, the IRS is proposing that for intra-family transfers, liquidation value should be the value for estate and gift taxes rather than fair market value. The use of the traditional method for determining fair market value would still be acceptable for transfers between non-family members in most circumstances.

Discounts can dramatically reduce the amount of estate tax payable at death and/or the gift tax consequence of gifts or sales to family members or transfers to grantor retained annuity trusts, techniques commonly employed by estate planners to achieve substantial transfer tax savings. The transfer of a minority interest in a family entity allows a taxpayer to take advantage of the market forces which drive down the fair market value of minority interest gifts or sales to family members, facilitating the transfer of wealth to future generations tax-efficiently.

If you are contemplating or are in the process of transferring interests in a family-held entity (corporation, limited liability company, partnership or other business entity) to family members or trusts for family members and the use of minority interest discounts to determine fair market value would be applied by your appraiser, you should assume that such discounts may no longer be available as early as January of this year, but it's possible that the trump Administration will reverse the issuance of these regulations. .

Estate, Gift and GST Tax Exemptions and Exclusions in 2016 and Beyond

The amount exempt from estate and gift taxes is \$5,000,000 indexed for inflation (increased to \$5,490,000 for 2017) and the taxes remain unified so that the entire exemption can be used during lifetime, or, if unused during lifetime, at death. The GST tax exemption also is now \$5,000,000 indexed for inflation (increased to \$5,490,000 for 2017).

Despite inflation increases, the annual exclusion from gift tax, i.e. the amount that an individual can give to any number of people each year without using lifetime gift exemption or incurring a gift tax, remains at \$14,000 per donee and is scheduled to remain at \$14,000 in 2017. The amount an individual can give to his or her non-US citizen spouse per calendar year is \$149,000 in 2017.

IRA Distributions to Charity

In December 2015, Congress and the President made permanent the ability of certain taxpayers to transfer up to \$100,000 annually from their IRA account directly to charitable organizations without first having to recognize the distribution as taxable income. Although this has been permissible in years past, prior to 2015 Congress continually renewed or extended the law to allow these tax-free distributions. It is important to note that such tax-free charitable distributions can only be made by those age 70 ½ or older, cannot exceed an aggregate of \$100,000 in a calendar year, and cannot be made to donor-advised funds, supporting organizations, or private foundations.

Trusts and Estates Services

McSwiney, Semple, Hankin-Birke & Wood PC's estate attorneys provide innovative strategies and solutions to preserve, enhance and transition our clients' wealth. Our services include estate planning, estate settlement, trust administration, elder law legal issues, charitable giving, and business succession planning, as well as the representation of beneficiaries and fiduciaries.

Residential & Commercial Real Estate Services

McSwiney, Semple Hankin-Birke & Wood PC's real estate attorneys provide a variety of services in connection with owner-occupied residences, vacation homes and family compounds, and commercial real estate holdings, including residential and commercial property acquisitions and sales, 1031 exchanges, construction projects, environmental and land use matters, commercial and retail leasing, real estate developments, zoning and real estate tax appeals.

Corporate and LLC Services

McSwiney, Semple Hankin-Birke & Wood PC's corporate and business attorneys provide experienced advocacy in myriad business transactions and engagements, ranging from straight-forward to complex. Our services include advice and structuring of mergers and acquisitions, formation of business entities and joint ventures and advice on corporate governance and taxation.

Litigation and Dispute Resolution Services

Our litigation attorneys routinely assist our clients with litigation and dispute resolution matters on a variety of subject matters and claims, including fiduciary and probate litigation, tax disputes, business and corporate entity litigation, real estate litigation and employment law.

In Closing

In closing, with a new President and Congress, we know there is a significant possibility of federal tax law changes. We also remain cognizant that changes in state laws, taxes and fees can have as much or more of an effect on our clients, their estate plans and their families than federal tax laws and policies. We will, as always, endeavor to keep you informed of any major developments in future updates. Don't forget to check our website: www.msbnl.com.

Regards,

Michael L. Wood