Client Alert

August 2020

Your Estate Tax Exemption – Use It or Lose It

Introduction

As part of The Tax Cuts and Jobs Act of 2017 (the "TCJA") the Republican Congress raised the federal estate tax, generation-skipping transfer tax and gift tax exemptions to the point that in 2020 such exemptions are $11.58 million for individuals and $23.16 million for married couples. With former vice president Joe Biden leading in the presidential election polls and the possibility that the Democrats could win majorities in both chambers of Congress in the upcoming election, it is very possible that this exemption may be greatly reduced starting in 2021. Moreover, the exemption is an easy target and simple way to recoup some of the revenue that the government has lost due to the COVID-19 pandemic. Therefore, we strongly recommend that clients who have not used their full exemptions consider planning strategies for 2020 or risk the prospect of a much lower exemption next year and corresponding tax increases.

Possible Changes to Income Tax

The TCJA also made two major changes to the federal income tax rates: lowering the top marginal personal income tax rate to 37% and the top marginal corporate income tax rate to 21%. As a significant issue in the upcoming elections, Mr. Biden's platform calls for the raising of the individual income tax rate from the top marginal rate of 37% to 39.6% but more importantly increasing the tax rate on long-term capital gains from 20% to 39.6% for taxpayers with over $1 million in income (the same as for ordinary income).

Planning Opportunities

Accordingly, clients should enact their transfer of wealth planning now to take advantage of the current exemption amount, particularly in light of the current low interest rates and generally depressed asset values. As explained more fully in an earlier client alert, we recommend individuals consider a number of different gifting strategies to successfully reduce future tax cost. These include gifting assets, selling assets for a promissory

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note bearing historically low interest rates, creating Dynasty Trusts that will last for future generations without incurring any further estate or generation skipping transfer taxes or creating Grantor Retained Annuity Trusts (GRATs), or Charitable Annuity Trusts.

Proper planning now is of the utmost importance. While it is impossible to predict the future, setting up a plan before the end of the calendar year allows one to take advantage of current law, even if the laws may change in the near future (and, in a worst-case scenario, even retroactively to January 1, 2021). And it may take time to value certain assets (i.e., generally non-marketable ones) and to set up a bespoke estate plan. Therefore, it is crucial to timely plan to ensure completion of all required steps before this year ends.

Conclusion

We encourage all clients to review what lifetime exemption may still be available to them this year and discuss strategies to best utilize any remaining exemption. Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss this client alert or have questions about its content.

Please feel free to contact any of the attorneys listed at left if you would like to discuss this matter.

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