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Ways and Means Committee Approves Tax Plan that Poses Significant Effects for Future Wealth Transfers

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A new tax plan released two weeks ago by the House Ways & Means Committee proposes legislative changes that, if enacted, could significantly affect future wealth transfers as early as the date of enactment of any resulting legislation.

A brief summary of the more relevant changes, as proposed, is below:

- **Reduction of Estate, Gift and Generation-Skipping Transfer Tax Exemptions.** Reduction in available gift, estate and generation-skipping transfer tax exemptions from the current \$11,700,000 to a \$5,000,000, inflation adjusted amount (approximately \$6,000,000). This reduction would apply to post-December 31, 2021 transfers.
- **Treatment of Grantor Trusts.**

First, the proposed new Section 2901 introduces three changes:

- Assets in “grantor trusts” would be included in the grantor’s estate at death.
- Distributions from grantor trusts during the grantor’s lifetime are treated as a taxable gift (subject to adjustments for prior gifts).
- Conversion of a grantor trust to a non-grantor trust during the grantor’s lifetime is treated as a taxable gift (subject to adjustments for prior gifts).

Second, proposed new Section 1062 treats a sale between a grantor and his grantor trust as a taxable sale. This eliminates the possibility for income tax free sales.

The proposal from the Ways and Means Committee says these new provisions would only apply to trusts created on or after the date of enactment and any portion of a

“pre-enactment” trust attributable to a contribution on or after the date of enactment. However, we have been told that they are revising the new Section 1062 so that it would apply to pre-enactment trusts as well.

- **Entity Level Valuation Discounts Disallowed.** Entity level valuation discounts would be disallowed for “nonbusiness assets.” These provisions would apply to transfers after the date of enactment.

The legislation is under markup, and much could change before enactment, if anything actually is passed into law. However, given the effective date of certain of these provisions, there is a premium for clients who are able and willing to act now to do so before enactment.

Clients may wish to consider at least the following five actions in advance of any enactment of legislation over the next weeks:

1. **Use remaining gift tax exemptions.** Make gifts to new or existing grantor trusts before the exemptions are lowered, and before the treatment of gifts to grantor trusts is changed.
2. **Fund existing life insurance trusts.** If not otherwise sufficiently capitalized, make gifts to existing life insurance trust to fund all future premium payments.
3. **Gift/Sell assets to a grantor trust that still qualify (under current law) for valuation discounts, e.g., interests in family partnership and LLCs.**
4. **Swap low basis assets currently held in certain existing trusts for high basis assets,** especially in the case of late term grantor retained annuity trusts, or GRATs.
5. **Pre-paying promissory notes** owed by existing trusts.

Under current law, any of the trusts described in (1) through (3) could include the client’s spouse as a permitted beneficiary. Planning with new trusts that include the spouse as a permitted beneficiary after the date of enactment may be more challenging if the proposed legislation is enacted in its current form. Therefore, clients wishing to complete planning that includes a spouse as a beneficiary should consider acting in advance of enactment of any legislation.

If you wish to discuss taking any of these steps (or others) in light of the proposed legislation, please contact us.

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Suggested Reading

- 14 September 2021 Speaking Engagement Webinar: Tax Law Changes that will Likely Effect Estate Plans in a Major Way
- 23 July 2021 Award Chambers High Net Worth 2021
- 18 March 2021 Sponsored Event Family Finance Virtual Event: Create Your Legacy

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