Montecito Bank & Trust®

estate planning BULLETIN

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In This Issue

How will estate planning change during the Trump administration?

The surprise success of President-elect Donald Trump has estate planners and their clients wondering about the future of the federal estate tax. Elimination of federal transfer taxes was an element of Trump's tax reform plan, a move that long has been advocated by many Congressional Republicans and some Democrats and is surprisingly popular with the general public.

Most importantly, what happens to stepped-up basis at death? Will we see the return of carryover basis, as we did in 2010, the year that the estate tax became optional? Or will the Canadian approach be tried, in which a capital gains tax applies to all unrealized gains at death? That is the tack taken by Trump. But will smaller estates be exempted from the rule? How large an exemption? What happens to formula funding clauses in existing instruments? How will spousal trusts be drafted when there is no longer a need to meet requirements for a marital deduction?

Our January *Estate Planning Study* will explore these questions in more detail.

If the federal estate tax is repealed, it seems likely that the minority of states that still impose death taxes will abandon this form of taxation.

New valuation Regs. prove unpopular

The IRS regulations under IRC §2704 proposed last August have provoked a furious backlash. The December 1 hearing on the new rules lasted six hours. Almost 29,000 comments were received on the proposed Regs. Most were in opposition to the changes, particularly the "deemed put" concept that many practitioners have found in the Regs. and the three-year lookback rule. Estate planner Ronald Aucutt urged that the proposal be withdrawn and begun anew.

The regulations would be vacated by new legislation, "Protect Family Farms and Businesses Act," S. 3436 and H.R. 6100 in the Senate and House respectively. However, if the federal estate tax is repealed as part of a Trump tax reform plan, and if that change is effective in 2017, the entire controversy becomes moot.

“That’s not what we meant,” says IRS

Catherine Hughes, attorney-adviser, Treasury Office of Tax Legislative Counsel, told the American Institute of CPAs’ Fall Tax Division meeting that there has been much misinformation about those unpopular estate tax regulations. Some commentators have referred to a regulatory “deemed put” that would effectively eliminate discounts for minority interests and illiquidity. Ms. Hughes stated that “deemed puts” do not appear anywhere in the proposed regulations.

But Leslie Finlow, IRS Office of Associate Chief Counsel, admitted in the same meeting that the regs. would “eliminate the techniques utilized in family estate planning which have undermined the application and intent of §2704.” As such, they could upend the existing estate plans of responsible business owners. Little wonder then that the pushback has been severe.

Cool reception

Soon after President-elect Trump persuaded Carrier to keep some of their manufacturing in Indiana, he tweeted a warning to other businesses considering off-shoring their manufacturing. They could face a 35% tariff or similar tax penalty after such a move.

The idea was not endorsed by Congressional Republicans, however. “I do not believe in a trade war; I do not think trade wars are healthy,” said House Majority Leader Kevin McCarthy (R-Calif.). Furthermore, it is unclear how such a policy could be targeted solely at those companies that close existing factories to shift to foreign manufacturing.

Congressional Republicans agree that the problem must be addressed, but they prefer to use corporate tax reform and regulatory changes to tariffs. Senate Finance Committee Chair Orrin G. Hatch (R-Utah) said that Trump had “sent out a warning shot” to business, to put them on notice. “I know exactly what to do to solve these business problems. Give it all a little bit of time, we’ll get that solved so that companies will never leave the U.S.,” Hatchw said.

Corporate tax integration

Senator Hatch is reportedly planning to move ahead with a reformation of corporate taxation that will include a deduction for dividends paid. That could largely eliminate the problem of double taxation of corporate income. Hatch said that the evaluation of his proposal from the Joint Committee on Taxation was positive, but he provided no details. His approach is quite different from the corporate tax reform proposals developed by the House GOP. Accordingly, achieving tax reform in 2017 may not be as quick and painless as some may hope.