SHERMAN WELLS
SYLVESTER & STAMELMAN LLP

TAX AND TRUSTS & ESTATES UPDATE

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The Election and Your Tax Planning – Stay Tuned

Some points to consider in light of the election – and with Republicans controlling both houses of Congress, it's reasonable to expect that some of these changes may actually be enacted:

- President-Elect Trump's estate tax plan would result in a drastic overhaul of the way inherited wealth is taxed in the United States. His plan would:
  - Eliminate the estate tax; and
  - Eliminate the "step-up" in income tax cost basis of non-cash assets of an estate valued in excess of $10 million.

- Meanwhile, while you are still alive, the President-Elect's tax plan would also impact your <u>income</u> taxes by:
  - Eliminating the seven current rate brackets (10%, 15%, 25%, 28%, 33%, 35%, 39.6%) and replacing them with three rate brackets (12%, 25%, and 33%), with the top rate bracket effective for married (joint) filers at $225,000 (rather than the present $466,960);
  - Eliminating the alternative minimum tax;
  - For capital gains, keeping the three current rate brackets (0%, 15% and 20%) in place, but eliminating the additional 3.8% surtax on net investment income; and
  - Eliminating personal exemptions while increasing the standard deduction from $12,600 for married (joint) filers and $6,300 for single filers to $30,000 for married (joint) filers and $15,000 for single filers and placing a cap on itemized deductions at $200,000 for married (joint) filers or $100,000 for single filers.

- Other important components of the tax plan include reducing the top corporate income tax rate of 35% to 15% and providing for the taxation of "carried interests" as ordinary income.

Here are some planning points to consider in 2016:

- Avoid making any gifts in 2016 that would generate gift tax.
- Consider accelerating deductions into 2016 and postponing income into 2017, in anticipation of possible lower tax rates in 2017.
- If you are considering a very large gift to charity in the near future such that it might cause you to exceed the itemized deduction limitation proposed by the President-Elect ($200,000 for married/joint filers or $100,000 for single filers), you may want to make that contribution this year rather than in a future year.

Please also see "The Nonprofit Forum" on page 3 regarding gifts at your death to your private foundation.

Obviously, these are all just policy statements and proposals at this point. We hope to be able to provide you with updates if and when these matters are considered or enacted.

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If You Want to Make Gifts to Charities or Others in 2016, Be Sure Those Gifts Are "Completed" This Year for Tax Purposes

As the year-end approaches, many of you may want to make charitable gifts that can be deducted this year, or gifts to family or friends to use the 2016 annual gift-giving exclusion ($14,000 per recipient).

If you're a "last minute" gift-giver, how can you ensure that your gift will conclusively be "made" in 2016?

In all events, you must unconditionally deliver the gift to the recipient (or an agent of the recipient) in 2016.

- A charge to a credit or debit card in favor of the recipient in 2016 is a completed gift.

- Delivery of an endorsed stock certificate to the recipient or an agent of the recipient in 2016 is a completed gift. Delivery of an endorsed stock certificate to anyone else (e.g., your stockbroker, or the corporation's transfer agent) is not good enough, unless the transfer is actually recorded on the corporate books in 2016.

- A check mailed to a charity in 2016 is good enough. But if you are making a gift to an individual, the check should be paid, certified or accepted by the bank for payment, or negotiated to a third party for value before the end of 2016. The IRS may (but don't rely on this when you make your 2016 gifts) view the gifts as consummated in 2016 if the check was unconditionally delivered in 2016 (and intended to be a gift), presented at the bank for payment within a reasonable period of time after delivery, and honored while the donor was alive (IRS Revenue Ruling 96-56).

Remember that just dating a check in 2016 will not in and of itself be enough under any circumstances.

And if you are considering gifts with any complications (e.g., through trusts, etc.), you need to get started immediately if you want to consummate those gifts by year-end.

Finally, in the aftermath of the recent election that saw Republicans take control of the White House and retain control over Congress, it is possible that some form of tax reform will take hold in the next legislative session, possibly resulting in lower marginal rates for many high-income taxpayers (as well as possibly limiting itemized deductions to $200,000 for married couples filing jointly and $100,000 for single filers) as soon as next year. If you had decided to make a sizeable charitable gift but were considering waiting until 2017, it may be a good idea to talk with your adviser and consider completing such a gift in 2016. In addition, in light of proposals by President-Elect Trump and congressional Republicans to repeal the federal estate and gift taxes, you may also want to discuss with your adviser whether it may be prudent to defer any taxable gifts you were planning to make prior to the end of 2016, in the event that significant changes are made to the estate and gift tax laws in 2017.

2017 Inflation Adjustments for Tax Items

With the new year will come new inflation adjustments for several tax-related items. Some of the more significant changes that will take effect on January 1, 2017 (and those items that have remained unchanged) are listed below.

ESTATE AND GIFT ADJUSTMENTS

Estate, Gift and Generation-Skipping Transfer (GST) Tax Exemption. The estates of decedents passing away in 2017, as well as gifts made in 2017 above the annual exclusion, will have an exemption of $5.49 million (up from $5.45 million in 2016).

Annual Gift Tax Exclusion. The annual gift tax exclusion for 2017 remains unchanged from 2016 at $14,000. The annual gift tax exclusion for gifts to a spouse who is not a United States citizen will be $149,000 (up from $148,000).

PERSONAL INCOME TAX ADJUSTMENTS

Application of the Highest Tax Rate. The tax rate of 39.6 percent affects single filers whose income exceeds $418,400 (up from $415,050) and $470,700 for married joint filers (up from $466,950).

Standard and Itemized Deductions. The 2017 standard deduction rises to $6,350 for single filers and $12,700 for married couples filing jointly (up from $6,300 and $12,600, respectively).

For itemized deductions, the deductions begin to phase out at the rate of 3% of the excess adjusted gross income over $261,500 for single filers (up from $259,400) and $313,300 for married joint filers (up from $311,300), with a cap of 80% maximum reduction in total value of deductions.

Personal and Dependent Exemption. The personal exemption for 2017 remains $4,050. It phases out at the rate of 2% for every $2,500 of adjusted gross income above $261,500 for single filers (up from $259,400) and $313,800 for married joint filers (up from $311,300). The personal exemption phases out completely at $384,000 for single filers (up from $381,900) and $436,300 for married joint filers (up from $433,800).

Alternative Minimum Tax. The Alternative Minimum Tax exemption amount for tax year 2017 is $54,300 for single filers (up from $53,900) and $84,500 for joint filers (up from $83,800).

RETIREMENT SAVING ADJUSTMENTS

Retirement Plan Contribution Limits. The 2017 contribution limit for 401(k), 403(b) and 457 plans remains $18,000, with the additional catch-up contribution limit for these plans for taxpayers who are age 50 or older remaining at $6,000. The maximum contribution to IRAs remains at $5,500, with the additional catch-up contribution limit for taxpayers who are age 50 or older remaining at $1,000.

Deduction for Traditional IRA Contributions. The deduction for a traditional IRA for single people and heads of household covered by a workplace retirement plan will phase out at adjusted gross income between $62,000 and $72,000 (up from between $61,000 and $62,000). For married couples filing jointly, the income phase-out will be between $99,000 and $119,000 when the IRA contributor is covered by a workplace retirement plan (up from between $98,000 and $118,000), and between $186,000 and $196,000 (up from $184,000 and $194,000) when the IRA contributor is not covered at work but is married to someone who is.

Maximum Roth IRA Contributions. For Roth IRAs, the income phase-out range is between $186,000 and $196,000 for married couples filing jointly (up from $184,000 and $194,000). For singles and heads of household, the income phase-out range is between $118,000 and $133,000 (up from $117,000 and $132,000). For a married individual filing a separate return who is covered by a workplace retirement plan, the income phase-out range remains between $0 to $10,000.

The Nonprofit Forum

This is another in a series of articles on nonprofit organizations and issues that we feature in our regular Updates. We have found this area to be one of ever-increasing interest to our clients and colleagues, and we hope you will find these articles helpful and insightful.

President-Elect Trump's Tax Proposals Affecting Private Foundation Donations

President-Elect Trump's website states under the heading "Death Tax" his position that "contributions of appreciated assets into a private charity controlled by the decedent or the decedent's relatives will be disallowed."

While this is just a statement of his position, if it were to be enacted into law, it would presumably deny the estate tax charitable deduction for contributions of appreciated property made to a decedent's private charitable foundation or a foundation created by someone in the decedent's family.

We would therefore encourage anyone who is contemplating giving appreciated assets at his or her death to such a foundation to keep a watch on legislation that is proposed by the new administration that may affect the tax benefits that presently are associated with such a contribution.

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