The House Ways & Means Committee Tax Proposal – Let the Estate Planning Begin

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Type of Client Situations

- Sophisticated estate planning
- Business succession strategies
- Executive benefit plans for closely held businesses

What We Do – Process

- Consult with clients to determine their goals and objectives
- Create comprehensive estate plan
- Consult with client’s legal advisor
- Make modifications as necessary

House Ways and Means Bill (Build Back America) Released on September 12, 2021

- Transfer Tax Exemption scheduled for reduction in 2026 will be accelerated to January 1, 2022
- Expanded opportunity to utilize Special Use valuation of real estate held by farms and closely held businesses
- Making assets in grantor trusts includable in the estate after date of enactment
- Elimination of valuation discounts after date of enactment

Reduction of Transfer Tax Exemption

- The current transfer tax exemption is $11.7 M
- In 2026, the exemption is scheduled to return to $5.85 M
- The House Ways and Means proposal would accelerate the reduction to January 1, 2022
- Use or lose it—the excess exemption not used this year will be lost

TRANSFER
TAXES

Special Use valuation (2032A) changes

- Generally, assets are valued at their fair market value, at their highest and best use
- IRC 2032A allows family farms and closely-held businesses to value at their actual use, instead of their highest and best use
- But the reduction is limited to $750,000 as has been for many years
- The House proposal would increase the reduction to $11.7 M

New Grantor Trust Rules

- Typically, an irrevocable grantor trust is chosen, where the grantor is the deemed income taxpayer, but the trust assets are outside the estate for income tax purposes
- The proposal would make all grantor trusts subject to estate tax after date of enactment
- Currently-funded grantor trusts would not be subject to estate tax if no future gifts are made after enactment

GRANTOR TRUSTS

Sale to Intentionally Defective Grantor Trusts (IDGTS) and Grantor Retained Annuity Trusts (GRATs)

- Sales to IDGTS would **NOT** be recognized after date of enactment, even though the grantor and the IDGT are the same taxpayer
- Distribution from GRATS created after date of enactment would be taxable gifts
- These two provisions would effectively destroy GRATS and sales to defective trusts created after the date of enactment

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Elimination of Valuation Discounts

- All valuation discounts (except for active trade or businesses) would be eliminated on date of enactment
- This would have a very negative effect on the use of Family Limited Partnerships (FLP)
- For those considering FLP, all valuations, creation and implementation must be completed by the date of enactment, which could be very difficult

NO DISCOUNT

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Case Study on Planning Prior to Enactment

- Joe (age 68) and Martha (age 60) Wealthy have an estate worth $25 M, of which $18 M is composed of marketable securities

- Prior to enactment of the bill, they transfer the $18 M into an LLC where there is a 2% managing member interest and a 98% non-managing member interest

- Joe then funds a $11.7 M SLAT, a type of irrevocable trust where the spouse retains access to the trust assets.

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Case Study, Continued

- The type of irrevocable trust chosen would probably be a Spousal Lifetime Access Trust which would make Martha a discretionary beneficiary and since Joe and Martha are married, it would give Joe indirect access

- The remainder in the trust would pass as Martha directs in her will.

- The gift to the trust was covered by Joe's exclusion amount, which would be reduced the next year

- The amount transferred and all growth would be outside both Joe's and Martha's estates

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Case Study, Continued

- If Martha lives another 20 years and the trust assets double every 10 years, $60 M would be outside of both Joe’s and Martha’s estates
- The assets owned by Joe and Martha not gifted to the SLAT will be covered by the remaining estate tax exemption of Martha
- The SLAT strategy could not be done after date of enactment because grantor trusts would be subject to estate tax, and valuation discounts on non-business assets could not be used

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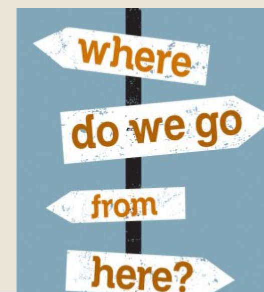
Where Do We Go From Here?

- Don't wait, as we don't know when enactment will occur
- Meet with advisors immediately to discuss goals and objectives
- Model planning strategies
- Meet with attorneys and valuation experts quickly to start the planning process
- Remember: They who hesitate may have a big partner called the IRS



Q&A

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Thank You

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