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Trusts & Estates Group Client Alert: Implications of Election Results; IRS Inflation-Adjusted Amounts for 2017; Status of Valuation Discount Regulations

TAX LEGISLATION IN NEXT CONGRESS

President-elect Trump and Republicans in Congress have both called for estate tax repeal. Repeal legislation is very likely to be proposed next year and may be enacted. It is unclear whether the gift tax – which some view as necessary to prevent income shifting during lifetime – will also be repealed. As a result of Congressional budget rules, any repeal is likely to be temporary, with the estate tax scheduled to be revived after 10 years. Even if the estate tax is permanently repealed, it could still be revived by a later Congress.

Trump has proposed replacing the estate tax with a tax on a decedent's capital gains exceeding \$10 million. It is unclear whether gains would be recognized at death under Trump's proposal or not until the decedent's appreciated property is sold.

Trump has also proposed tax cuts for individuals in the highest tax brackets. Because income tax rates could be lower in 2017, you should consult with your accountant to maximize your deductions, including charitable deductions, in 2016. Strategies to accelerate charitable deductions include donating to private foundations or donor-advised funds. With both of these strategies, your donation is made now and the deduction is taken on your 2016 tax return, yet you may effectively choose at a later time the ultimate charitable beneficiaries of the funds.

IRS INFLATION-ADJUSTED AMOUNTS FOR 2017

The IRS has issued its annual inflation-indexed amounts for 2017. These include:

- The annual gift tax exclusion will remain \$14,000 or \$28,000 for a married couple that elects to split gifts for the year.

- The lifetime gift and estate tax exclusion amount will increase to \$5,490,000, or \$10,980,000 for a married couple.
- The generation-skipping transfer tax exemption amount will also increase to \$5,490,000.
- For gifts to a spouse who is not a United States citizen, the gift tax annual exclusion will increase to \$149,000.
- Recipients of gifts from foreign persons who are corporations or partnerships must report such gifts if the aggregate value of the gifts received in 2017 exceeds \$15,797. The threshold for reporting gifts from a foreign person who is an individual remains at \$100,000.

PROPOSED REGULATIONS ON VALUATION DISCOUNTS

In August 2016, the IRS published proposed regulations designed to curtail or eliminate the use of valuation discounts in order to transfer interests in family controlled entities, such as corporations, partnerships, and limited liability companies, to family members at reduced gift and estate tax cost. After intense opposition, IRS officials have since disavowed any intent to make substantial changes to existing law governing the valuation of property for gift and estate tax purposes. On December 1, a public hearing on the proposed regulations was held. Final regulations could be issued as early as the first quarter of 2017. The proposed regulations could also be shelved indefinitely, substantially revised to mitigate their impact, or withdrawn in their entirety.

Please feel free to contact us if you have any questions regarding how these potential changes affect your current estate planning documents and possible planning opportunities for you.

**TRUSTS AND ESTATES
GROUP**

Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any of the members of our Trusts and Estates Group.

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