FEDERAL TAX AND ESTATE PLANNING LEGISLATIVE UPDATE

TAX AND ESTATE PLANNING COUNCIL OF AKRON

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OVERVIEW / ROADMAP

- CARES ACT (CORONAVIRUS TAX PROVISIONS)
- SECURE ACT
- EXECUTIVE ORDERS (8/8/20)
- 2020 YEAR-END: PLANNING
- 2021-FWD: PROSPECTS

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CORONAVIRUS TAX CHANGES

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BUSINESS (1)

- Loss carrybacks allowed for losses arising during CYs 2018-2020
- NOLs – use limited to 80% of taxable income
  - Limit removed for TYs beginning before 1/1/2021
  - Pre-CARES Act, limit applied to TYs beginning post-12/31/2017
- IRC § 172(b) amended to allow carryback of losses arising between January 1, 2018 and December 31, 2020 and remove 80% limitation on NOLs.

BUSINESS (2) - PPP LOANS

- Paycheck Protection Program (PPP) Loans -- Overview
  - Designed to provide a direct incentive for small businesses to keep their workers on the payroll
  - Low interest rate, 2-5 year term
  - Forgiveness possible (turning loan into grant)
    - Small Business Administration (SBA) will forgive loans if all employee retention criteria are met, and the funds are used for eligible expenses
    - Requirements lessened – Paycheck Protection Flexibility Act (June 2020)
  - Details see
    - https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program
    - https://www.frantzward.com/news-blog/june-2020/ppp-roundup-as-of-june-16-2020

BUSINESS (2) - PPP LOANS

- Federal Income Tax Consequences of PPP Loan Forgiveness
  - "Shall be excluded from gross income." CARES Act §1106(i)
  - Deductibility of expenses paid from PPP loan proceeds
    - IRS Notice 2020-32: no deduction to prevent "double dipping," cites §265(a)(1) (no deduction for expenses allocable to income exempt from tax)
    - IRS is arguably <u>wrong</u> – the proceeds aren't income (see above), so expenses aren't allocable to "income" exempt from tax.
    - However, expect chilling effect on risk-adverse taxpayers; special disclosure may be required if deducting
  - Further Congressional action possible
    - Small Business Expense Protection Act (S.3612 – sponsored by John Cornyn, R-TX); Fixing Income Ramifications for Small Biz (HR 6884)
    - Vocal support in Senate Finance (both Chair Grassley and Ranking Member Wyden); HWM (ranking member Brady) "willing to explore"
    - Included in House-passed HEROES Act (H.R. 6800) but not included in Senate-passed HEALS act
    - Possible inclusion in Omnibus spending act
- State Income Taxes -- might states tax PPP loan forgiveness?
  - Rolling conformity states (21 total; e.g., NY, IL, CO) [automatically conform to IRC]
  - Static conformity states (19 total; e.g., OH, FL, IN, CA)
    - State legislature must vote on when/whether/how much to conform state to federal tax law
    - California has already announced plans to tax PPP loan forgiveness
  - Selective conformity states (e.g., NJ, PA (corporate only))
  - See https://advocacy.sba.gov/2020/08/31/some-states-may-tax-forgiven-ppp-loan-proceeds/

BUSINESS (3) - BUSINESS INTEREST LIMITATION

- Added flexibility for tax years beginning in 2019 & 2020
- Corporations
  - Adjusted taxable income (ATI) component increased to 50% of ATI (from 30%)
  - Election to calculate using 2019 ATI (since many will have low 2020 ATI)
- Partnerships
  - ATI component increase applies only to tax years beginning in 2020; election made at partnership level
  - Partnership also allowed to elect to calculate using 2019 ATI
  - Partners – can elect to treat 50% of any excess business interest expense in tax years beginning in 2019 as paid or accrued in the partner's first tax year beginning in 2020, with the remaining 50% subject to the default limitation based on allocated excess taxable income
- See Rev. Proc. 2020-22 for additional rules

BUSINESS (4) EXCESS BUSINESS LOSSES (CODE §461(l))

- Deduction limit removed for non-corporate taxpayers for TYs beginning after 12/31/2017 and before 1/1/2021
- See Act for other technical corrections

INDIVIDUALS

- Tax credit
  - For eligible individuals:
    - Tax credit of $1,200 ($2,400 for joint filers)
      - plus $500 for each eligible child.
    - Phased out; zero at or income above $99k ($198 for joint filers)
- Eligible individual not required to file
  - Can instead receive an economic impact payment
  - See Rev. Proc. 2020-28

CHARITABLE CONTRIBUTIONS (1) - INDIVIDUALS

- Charitable contribution AGI deductions limitation removed for individuals - 2020 only, and applies only to cash contributions
    - Non-cash contributions remain subject to AGI limitations
- Employees may choose to decline vacation, sick, or personal leave in exchange for cash to be donated to IRC § 170(c) charitable organization.
  – Effects of employee election:
    - Donations not treated as wages
    - But no charitable contribution deduction (i.e., no double-dip)
  – Employer can deduct the cash payment under §170 or §162 (subject to the regular requirements of those sections)

CHARITABLE CONTRIBUTIONS (2) - CORPORATIONS

- General charitable contribution deduction limit
  - Increased to 25% of taxable income
  - (was 10%)
- Contribution of food inventory limit
  - Increased to 25%
  - (was 15%)

COMPLIANCE

- Many due dates were postponed to July 15, 2020
  - Tax return filing and tax payment (many)
    - See Notice 2020-35
  - U.S. Tax Court petitions
  - Refund claim or suits
- E-Signatures and electronic document submission to IRS expanded possible until July 15, 2020

HEALTH CARE

- Allowed without affecting HSA qualification:
  - Covid-19 testing and benefits by high deductible health plan (HDHP)
  - Telehealth services will not disqualify an individual from contributing to HSA accounts (even if it no deductible for remote care services)
- Covid-19 testing
  - Insurance issuers required to cover (Families First Coronavirus Response Act)
  - Reimbursement rules – see CARES Act

INTERNATIONAL

- “Substantial Presence” waiver available
  - For eligible individual did not anticipate meeting the §7701(b)(3) substantial presence test (and thus becoming a U.S. resident) during 2020 (also applies for treaty benefits)
  - Election allows exclusion of up to 60 calendar days in U.S.

RETIREMENT

- No 10% excise tax on early distributions made in 2020 for "Covid-19 related distributions" from eligible retirement plans
  - "Qualified Individuals" are also eligible for loans
  - See Notice 2020-50
- Minimum required distributions (MRDs)
  - Waived for 2020 for IRAs and certain defined contribution plans.
  - See Notice 2020-51
- Loans from qualified employer plans
  - 3/27-9/22/20: limit increased to $100,000 (from $50,000)
  - 3/27-12/31/20: repayment date extended 1 year
- Safe harbor §401(k),(m) – can temp reduce or suspend some contributions
- Covid-19 related distribution: tax-free rollover of some/all over; 3-year period max

EXECUTIVE ORDERS (AUGUST 8, 2020)

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EXECUTIVE ORDERS - AUGUST 8, 2020 (1)

- **Payroll Tax Deferral**
  - Optional deferral of withholding, deposit and payment of payroll taxes for 4Q20 (Sept. 1 through Dec. 31, 2020)
  - Not mandatory
    - Most employers are choosing to avoid the risk and complexity involved
    - Exception – federal employees?*
- **Lost Wages Assistance (LWA) Program**
  - Designed to help after $600/wk FPUC payments expired
  - $300/week with states optionally adding $100/week
    - FEMA to use $44B of leftover Disaster Relief Funds (DRF)
    - Covers only 6 weeks from when State starts paying LWA (or until funds run out)
      - E.g., ends week of Sept. 5th for TX, IA, MT, TN and NH, NM**
      - Ohio started 9 days after TX…

* See: https://federalnewsnetwork.com/pay/2020/08/trump-aiming-for-late-september-launch-of-payroll-tax-deferral-for-federal-employees/
**See: https://www.washingtonpost.com/us-policy/2020/09/11/lost-wages-unemployment-assistance-expiring/

EXECUTIVE ORDERS - AUGUST 8, 2020 (2)

- **Eviction Moratorium Extension** (September 1 – further extended through December 31)
  - Renters earning less than $99k/year & living in multifamily homes with federally backed mortgages
  - Concerns
    - Tenants continue to accrue rent
      - Possible massive wave of evictions (right after election)
      - Late fees, interest on unpaid rent, etc..?
    - Landlords still have to make mortgage payments, etc.. (which domino stops the pattern?)
    - Imposed under federal quarantine law -- major (6-figure) penalties for landlords failing to comply
- **Student Loans**
  - Monthly payments and interest for student loan borrowers – pause extended until December 31, 2020
  - Collection on defaulted student loans
    - CARES Act -- stopped collection through September 30th
    - Trump has promised to extend this, but as of 9/3/20 had not done so

SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT (SECURE ACT) OF 2019

*** Special acknowledgment / credit / thanks to Paul Fidler of Schneider Smeltz Spieth Bell as primary co-author of this section of the materials*

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BUT WHY TAKE AWAY OUR STRETCH???

- Legislative policy behind retirement accounts
  - Reduces the burden of government
  - Otherwise elderly supported by social security, etc..
- Huge tax incentives
  - Employer gets current deduction
  - Employee not taxed until distribution (often a very long time) – "TVOM"
- Congress re-evaluated what distributions are worthy of further deferral
  - Worthy of (so allowed) further deferral:
    - Employee's own retirement (RMDs over participant's life expectancy)
    - Surviving spouse ("protect the widow")
  - Unworthy
    - Generally anyone else
    - [But with charitable "out"]
- *P.S. – and they wanted to raise a ton of revenue to pay for other tax cuts.*

MAJOR SECURE ACT CHANGES

Pre-2020

- RMDs
  - keyed to age 70.5
- QCDs
  - Qualified Charitable Distributions
  - Allowed at age 70.5+
- Stretch IRA distributions
  - Allowed for beneficiaries' lifetimes
  - But needed "designated beneficiary" (made trusts tricky)
- IRAs to charities = tax-advantaged

Post January 1, 2020

- RMDs
  - keyed to age 72
  - + can delay until retirement
- QCDs
  - Still begin at age 70.5 (age stays same)
- Stretch IRA distributions
  - ONLY for EBs (eligible beneficiaries)
  - others generally 10-yr max
- IRAs to charities
  - Still tax-advantaged
  - Maybe even more so now with fewer good alternatives

FOCUS ON QCD :WHAT REMAINS THE SAME POST 1/2020? (SPOILER ALERT – PRETTY MUCH EVERYTHING)

- Still counts towards the donor's RMD
  - But beware first year converting qualified plan (401k, etc..) into IRA
- Still <u>cannot</u> QCD to:
  - Donor advised fund (DAF)
  - Other deferred giving
  - Also beware certain supporting organizations
    - Use Cleveland Foundation as a resource before doing QCD
- Still <u>capped</u> at $100K/annually per individual (e.g., each spouse)
  - But (still) not limited to RMD (many miss this)
  - Technical point – SECURE creates a "running tab" for those making contributions to their IRA after age 72

– Note – CARES Act suspended RMDs for 2020

THE PRE-2020 LANDSCAPE

- Stretching was big and easy
  - Designated beneficiaries could generally stretch distributions over their life expectancies
  - TVOM leverage (often 30+ years), depending on the beneficiary's age
- Usual choices
  - Outright
    - Spouse (if any) as primary beneficiary
    - Children and descendants and/or charity as contingent
    - Best tax stretch, but no "spending control"
  - Gatekeeper (trust as beneficiary)
    - Often used for contingent (children, etc.)
    - Revocable living trust (RLT) – best control, but generally resulted in 5-year payout
    - Conduit trust
      - Gatekeeper (trustee) controls withdrawals
      - Preserved "Stretch"

THE LANDSCAPE – 2020-FORWARD

- Most beneficiaries (other than spouse) limited to 10-year distribution period after death of IRA owner
- Taxation to those beneficiaries likely much worse now
  - Short TVOM advantage (especially at low interest rates)
  - Beneficiaries are younger = higher marginal tax rate
  - See RMD calculator at www.securermd.com

THE LANDSCAPE – 2020-FORWARD

- RLTs don’t look as bad now
  - 5-year payout vs. 10-year payout – 5 years of TVOM is fairly small
  - Much better control
    - vs outright (and lingering conduit trusts)
    - Spray planning possible (advanced; goal = beneficiaries’ different tax rates)
  - Comports with overall estate plan
- Charities are even prettier 2020-fwd
  - 100% goes to charity
  - DAFs can give children quasi-control
  - Charitable Remainder Unitrusts (CRUTs) can offer other advantages

WHO’S ELIGIBLE AND WHO’S NOT?
ELIGIBLE BENEFICIARIES (EB)

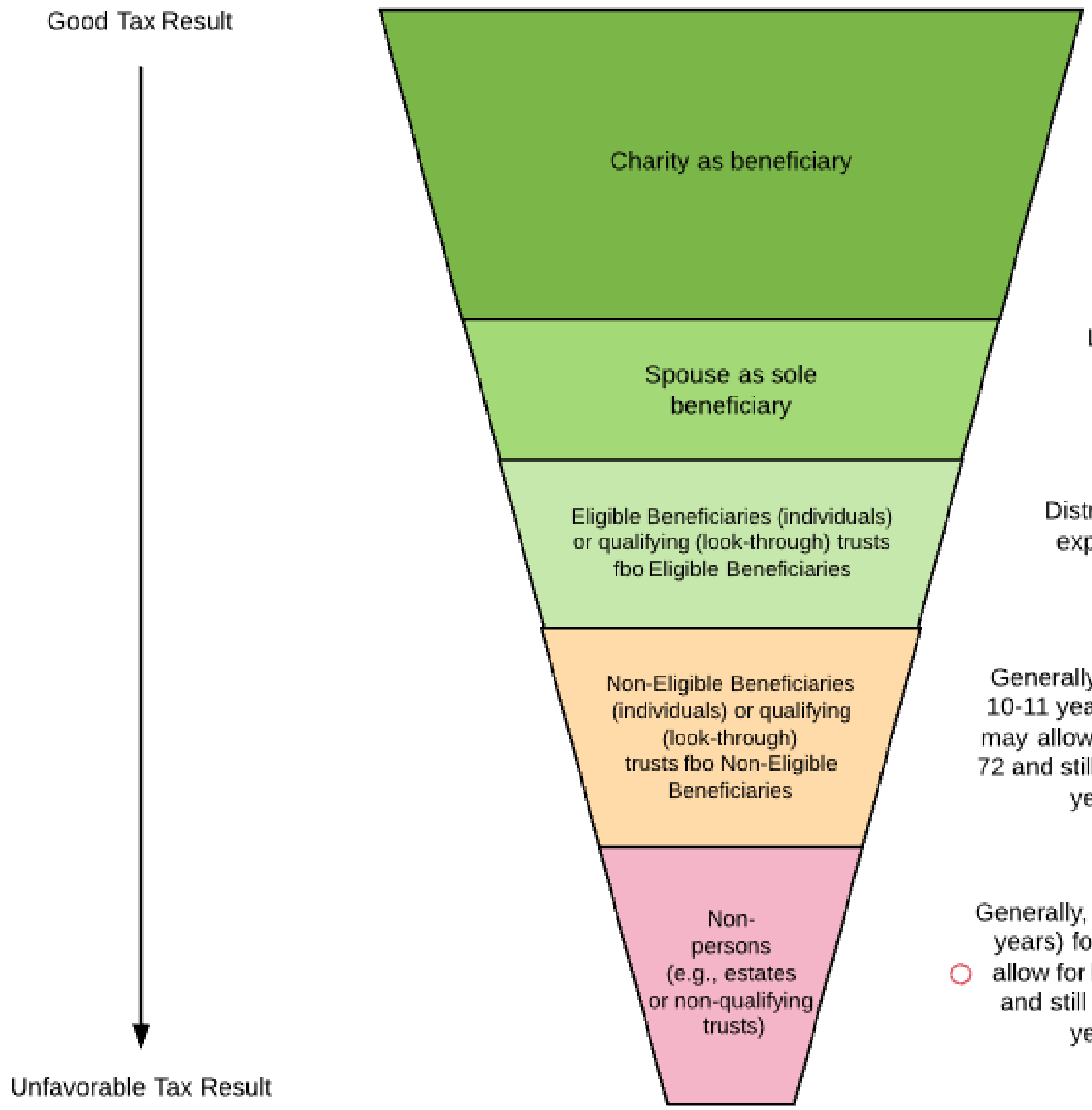
GENERALLY NOT

- Adults (other than spouse)
- Minors (other than children)
- Sibling, close friend /companion if ≥10 years younger than IRA owner
- Anyone or anything else
  - Example = trusts

GENERALLY ELIGIBLE

- Spouse
- (Minor child)
- (Disabled individual)
- (Chronically ill individual)
- (Individual not more than 10 years younger than owner)

Broad Summary of Tax Results



No income tax due. Distribution timeframe generally not important.

Lots of options. Generally the spouse will become the new owner, allowing for significant deferral.

Distributions over the Eligible Beneficiary's life expectancy, but lots of gotchas, details, and unknowns presently.

Generally, required distribution within 10 years (actually 10-11 years) following death of the owner. "Ghost Rule" may allow for longer distribution period if owner was over 72 and still had remaining life expectancy of more than 10 years (non-recalculated, single life table).

Generally, required distribution within 5 years (actually 5-6 years) following death of the owner. "Ghost Rule" may allow for longer distribution period if owner was over 72 and still had remaining life expectancy of more than 5 years (non-recalculated, single life table).

ORDER OF TAX-ADVANTAGED BENEFICIARIES

1. Charity
2. Spouse
3. Eligible Beneficiary; younger = better (but good luck really finding any non-spouse EBs)
4. Any other individual beneficiary (designated beneficiaries)
5. Beneficiary who is not a "designated beneficiary"

** Qualified trusts can "stand in" for any of the above; especially relevant where spouse is beneficiary

CHARITIES – INCREASED OPPORTUNITIES

- Fewer good tax “outs” make IRA-to-charity look even better than before
- Major approaches
  - **IRA First**
    - Indicated where donor has sufficient non-IRA funds to care for family
    - Allows maximum leverage of IRA funds by minimizing tax “leakage”
  - **IRA Second**
    - Spouse as primary beneficiary; charity as contingent
    - Advanced planning vehicles perfectly ok for this (cf. QCDs)

CHARITIES – INCREASED OPPORTUNITIES

- Major approaches (cont.)
  - **Dribble Out**
    - Maximize use of QCDs ($100k/year, watch for other technical requirements)
    - Analogous to "annual gifting" in estate planning
  - **Other Advanced Planning**
    - Charitable Remainder Trusts (CRUTs) - can mimic stretch distribution to beneficiaries that aren't EBs
    - CGAs can provide stretch characteristics as well, but there's no tax-free return of principal with this option
    - WARNING – beware "non-charitable Charitable Planning" techniques. Despite what some promoters say, if donor doesn't have charitable intent, fancy charitable techniques won't end up well.

DONOR INCREASES USE OF QCD

- 100 Cents/$1 to charities – tax free transfer
- Watch the technical requirements
- Accomplishes a present gift to charity

DONOR CREATES CRUT

- CRUT's receipt of IRA assets won't trigger immediate income tax
- CRUT achieves the stretch the donor originally intended
  - Can't avoid income tax but better than the condensed 10-year draw down
  - May offer opportunity to transmute the character of the distributions (e.g., capital gains rather than regular income)
- No CRUT administration until donor dies and assets distribute to trust
- Charity receives funds at the trust's termination (e.g. at the lifetime beneficiary's death)

COMPARISON: CRUT V. 10-YEAR DRAW DOWN

$1MM 5% CRUT

- Single beneficiary age 30
- Discount rate: 2%
- Charitable deduction: $115,180
- Average annual payout: $50,000
- Total rec'd in 10 years: ~$500,000
- Total after-tax payments of $1,733,200 received over 52 years (life expectancy)

$1MM inherited IRA

- Single beneficiary age 30
- Estimated rate of return: 3%
- Year 1 distribution: $100,000
- Year 10 distribution (to close out account): $130,000+
- Total received over 10 years: $1.146MM

ESTATE PLANNING
2020 YEAR-END

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ESTATE/GIFT TAX INTRODUCTION

- The “transfer tax toll bridge”
  - Date of transfer
  - Value of what is transferred
  - Recipient; exceptions
- Unified estate/gift tax credit
  - Unified = life + death (cumulative)
  - Historical rates (next slide)
  - Clawback? (no)

ESTATE TAX (1916-2007)

Estate Tax Exemptions and Tax Rates

Year	Exemption (dollars)	Initial rate (percent)	Top rate (percent)	Top bracket (dollars)
	(1)	(2)	(3)	(4)
1916	50,000	1.0	10.0	5,000,000
1917	50,000	2.0	25.0	10,000,000
1918-1923	50,000	1.0	25.0	10,000,000
1924-1925	50,000	1.0	40.0	10,000,000
1926-1931	100,000	1.0	20.0	10,000,000
1932-1933	50,000	1.0	45.0	10,000,000
1934	50,000	1.0	60.0	10,000,000
1935-1939	40,000	2.0	70.0	50,000,000
1940 [1]	40,000	2.0	70.0	50,000,000
1941	40,000	3.0	77.0	10,000,000
1942-1976	60,000	3.0	77.0	10,000,000
1977 [2]	120,000	18.0	70.0	5,000,000
1978	134,000	18.0	70.0	5,000,000
1979	147,000	18.0	70.0	5,000,000
1980	161,000	18.0	70.0	5,000,000
1981	175,000	18.0	70.0	5,000,000
1982	225,000	18.0	65.0	4,000,000
1983	275,000	18.0	60.0	3,500,000
1984	325,000	18.0	55.0	3,000,000
1985	400,000	18.0	55.0	3,000,000
1986	500,000	18.0	55.0	3,000,000
1987-1997 [3]	600,000	18.0	55.0	3,000,000
1998	625,000	18.0	55.0	3,000,000
1999	650,000	18.0	55.0	3,000,000
2000-2001	675,000	18.0	55.0	3,000,000
2002	1,000,000	18.0	50.0	2,500,000
2003	1,000,000	18.0	49.0	2,000,000
2004	1,500,000	18.0	48.0	2,000,000
2005	1,500,000	18.0	47.0	2,000,000
2006	2,000,000	18.0	46.0	2,000,000
2007	2,000,000	18.0	45.0	1,500,000

[1] 10-percent surtax was added.
[2] Unified credit replaces exemption.
[3] Graduated rates and unified credits phased out for estates greater than $10,000,000.

1935-1983:

- 60-70% top rate
- Unified credit plummeted

As recently as 2000:

- 55% top rate
- $750,000 unified credit

https://www.irs.gov/pub/irs-soi/ninetyestate.pdf

ESTATE TAX (2008-2020)

Year	Exemption equivalent	Initial rate	Top rate	Top bracket
2008	$ 2,000,000	18%	45%	$1,500,000
2009	$ 3,500,000	18%	45%	$1,500,000
2010*	$ 5,000,000	18%	35%	$ 500,000
2011	$ 5,000,000	18%	35%	$ 500,000
2012	$ 5,120,000	18%	35%	$ 500,000
2013	$ 5,250,000	18%	40%	$1,000,000
2014	$ 5,340,000	18%	40%	$1,000,000
2015	$ 5,430,000	18%	40%	$1,000,000
2016	$ 5,450,000	18%	40%	$1,000,000
2017	$ 5,490,000	18%	40%	$1,000,000
2018	$11,180,000	18%	40%	$1,000,000
2019	$11,400,000	18%	40%	$1,000,000
2020	$11,580,000	18%	40%	$1,000,000

Notes:

1. 2010 was elective year (special rules)
2. Gift tax was "de-unified" from 2004-2010. Gift tax credit equivalent (i.e., lifetime gifts) remained $1m for 2002-2010.

STORM CLOUDS ON THE HORIZON?

- Don't count on getting to "sunset" – several elections – (two presidential: 2020 and 2024) between now and scheduled "sunset" date (when unified credit would return to $5m + inflation adjustments)
- Biden estate/gift tax proposal
  - Eliminate basis step-up on death
    - SBCA strongly opposes = major "back door" tax increase on small biz owners
    - If passed would change timing/strategy on lifetime gifts
  - Reduce unified credit
    - Restore to "historical levels"
    - Means? One announcement* says to 2009 level = $3.5 million (not indexed) and 45% max rate
  - Exemption loss = $11.58m - $3.5m (or lower)
    - >$8m exemption loss
    - Married? * 2 = >$16m exemption loss
  - Additional estate tax (approx.)
    - At current 40% = $3.2m more estate tax ($6.4 if doubled)
    - At 55% = $4.4m ($8.8 if doubled)
  - Effective date?

* Source: https://joebiden.com/plans-to-support-women-duringcovid19/

ADDITIONAL FORECASTING ISSUES (1)

- Effective date (if there is 2021 legislation)?
  - Possibilities – effective for transfers after…
    - Date of enactment?
    - Date House or Senate first announces (or passes) bill?
    - January 1, 2021?
    - Or even earlier?
      - Congress *can* enact retroactive tax legislation
        - » See U.S. v. Carlson, 512 U.S. 26 (1994) (new Congress enacted change to estate tax retroactive to prior year);
        - » See also Quarty v. United States, 170 F.3d 961 (9th Cir. 1999) (retroactive change in estate and gift tax rates).
  - Planning issue
    - Straddle gifts (2020/2021)
    - Pros/cons/relative risks of gifts in early 2021

ADDITIONAL FORECASTING ISSUES (2)

- The Perfect Storm -- what if there's a major "Blue Wave?"
  - Biden is [currently] relatively moderate on estate taxes ($3.5m/45% max rate)
  - If major Blue Wave, House/Senate could pass and send him a more aggressive bill
    - Sanders/Gomez ($1m exemption; higher rates)
    - "Make Billionaires Pay Act" (Sanders/Markey/Gillibrand) – wealth tax
      - Tax 60% of ultra-wealthy ($1B+) net worth increase from March 18 through end of 2020
      - Claims it would raise $421.7 billion – enough to cover all Medicare expenses for that period
- Budget deficit – when (if ever) to raise funds spent for pandemic and new needs
  - CBO projects 2020 federal budget deficit of $3.3 trillion (>3x 2019; 16% of GDP – largest since 1945)
  - Regardless of winner (Biden or Trump) both likely to seek continued spending

- Cautionary Note: *Byrd* rule (60 votes in Senate) doesn't apply to tax ***increases***

OPPORTUNITY COST = OPPORTUNITY LOST? (1)

- Gifts now (before credit is reduced)
  - Can client manage without gifted assets?
  - No “claw back” if exemption is reduced below amount already gifted
  - Income tax basis differences of life vs. death transfers
- Potential non-reciprocal SLATs
  - What if one spouse doesn’t own much (step-transaction risks)?
  - Be very careful in design, communication, and administration
  - Flexibility / availability vs. §2036

OPPORTUNITY COST = OPPORTUNITY LOST? (2)

- Standard planning issues also apply
  - Control (outright vs. in further trust)
  - Valuation (discounts; effects of pandemic on profits/rents)
- Low/zero remaining exemption planning
  - Still viable, but generally not "panic button" affected by potential reduced exemption
  - Exception – dynasty trust planning (if major blue wave and GST planning is reduced/eliminated)

INCOME TAX PROPOSALS
TRUMP // BIDEN

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INTRODUCTION

- President can lead/inspire, but cannot initiate legislation – especially not tax legislation
  - "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. Constitution, Article I, Section 7, Clause 1 (Origination Clause a/k/a Revenue Clause)
  - Announcements of proposals
  - White House budget proposals
    - Also persuasive at best, since Congress passes budgets without any POTUS signoff)

INTRODUCTION

- Political environment will likely dictate process
  - If Rs keep control: expect status quo and evolution from there
  - If Ds take White House but not Senate: likely gridlock as Senate and Biden block each other unless/until compromise reached
  - If Ds take both White House and Senate (and retain House)
    - "Regular victory" = Biden likely leads policies; look to key Treasury appointments
    - "Huge blue wave" = Congress may surge left; query whether/how much Biden would block
- Bottom line – don't put too much faith in current proposals; it's just too early

BIDEN'S INCOME TAX PLAN (1)

- Individuals
  - Individual ordinary income tax rate – raise to 39.6% (pre-TCJA rate) (from 37% to sunset 2026)
  - Capital gains and dividends – tax at ordinary income rate once over $1m
  - Itemized deductions – cap to reduce value for taxpayers once above 28% bracket
  - Expand earned income tax credit
- Corporations
  - Corporate income tax rate – raise to 28% (from 21%)
  - Corporate AMT – 15% alternative minimum tax on corporations with ≥$100m of profits

BIDEN'S INCOME TAX PLAN (2)

- Other business-related
  - Phase out §199A deduction on taxable income over $400,000
  - Global Intangible Low Tax Income ("GILTI") (tax on income from foreign affiliates and foreign-held intangibles) raise to 21% (from 10%)
  - Expand Affordable Care Act (ACA) premium tax credit
  - Institute 12.4% Social Security payroll tax (split between Er and Ees) on income earned >$400,000
    - » Results in "donut hole" where wages between $137k (current cap) and $400k would not be taxed

TRUMP'S INCOME TAX PLAN (1)

- Individuals
  - Individual ordinary income tax rate
    - Keep at 37% and make permanent
    - Has mentioned rate reduction as "middle tax cut" but fiscally unlikely
  - Capital gains and dividends
    - Keep at 20% max and make permanent
    - Has mentioned possible reduction to 15%
  - Itemized deductions – make current law permanent, but reinstitute "Pease" limitation
  - Permanently extend TJCA non-corporate "sunset" provisions
    - §199A deduction
    - Estate/gift tax – increased exemption/lower rates
    - Increased standard deduction
    - Expanded child tax credit

TRUMP'S INCOME TAX PLAN (2)

- Corporations
  - Corporate income tax rate – keep current law (TJCA corporate provisions don't sunset)
  - Corporate AMT – keep as-is (no corporate AMT)
- Other business-related
  - Expand Qualified Opportunity Zones
  - Tax credit (unspecified) for companies bringing manufacturing back to U.S.
  - Global Intangible Low Tax Income ("GILTI") – no changes
  - Forgiveness of (any) payroll tax deferrals

KEY FEDERAL LEGISLATIVE DATES AND DEADLINES

Issue	Date/Deadline	Comments
FISA Expiration	5/12/2020	Expired (after initial 77 day extension)
House passed HEROES (CARES II) Act	5/15/2020	Compare with Senate's HEALS Act
Eviction deferral	7/24/2020	Expires for federally insured multifamily housing – delayed to 12/31/20
Expiration of $600/wk FUPC	7/31/2020	Federal unemployment ran out for @$30m jobless Americans; $116B paid in June alone
$300*/wk replacement	8/8/2020	Via August 8th Executive Order / 6 week limit / funds already running out
Student debt deferral	9/30/2020	Expiration would affect 43 million student loan borrowers; estd. $7 billion per month
Employees must keep jobs else airlines lose half of $50B bail-out	9/30/2020	Without major additional aid, furloughs announced American Airlines (19,000); Delta (2,000)
Appropriations (funding the Government)	9/30/2020	FY2021 begins 10/1/20. Congress must complete appropriations or pass continuing resolution (CR) before then. If neither appropriations nor CR, government shuts down. As of 9/18/20 CR until after election appears likely.
National Defense Authorization Act	9/30/2020	FYI 2021 – establishes top-line budgets for all branches of the military
National Flood Insurance Program - Reauthorize	9/30/2020	Enacted in 1968. Has required 15 short-term reauthorizations since the end of FY 2017
Congressional Recess	10/10 - 11/8/2020	Unless Congress extends (losing valuable campaigning time), must pass by October 9th. Note – there are only 15 legislative days in September. Otherwise post-election dynamics
ELECTION DAY	11/3/2020	
TANF & Related Programs - Reauthorize	11/30/2020	Temporary Assistance to Needy Families; Child Care Entitlement to States (funded through 11/03/20 in CARES Act)
ACA health insurance tax	12/31/2020	Tax takes effect 1/1/2021 unless further postponed. (Cadillac tax and medical device tax were repealed in 12/19/19 spending bill.
Tax extenders (20+)	12/31/2020	Various short-term extenders passed 12/20/2019

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