GODDARD HAWKINS

Estate Planning News

FALL 2021

Guide to Proposed Tax Law Changes and the Impact on Estate and Gift Taxes

The House Ways and Means Committee recently approved a plan to pay for the Build Back Better Act, the $3.5 trillion infrastructure bill currently being negotiated in Congress.

The tax plan is now working its way through the House before ultimately going to the Senate. While the Senate is expected to amend the proposal, we are getting a better picture of what the legislation could include and its impact on estate and gift tax planning. Although we cannot predict what the final legislation will look like, we now know that the current plan is not slated to be retroactive. Therefore, several estate planning techniques are worth considering before the end of the year.

I. Estate and Gift Tax Exemption

The proposed plan reduces the federal estate and gift tax exemption amount from the current $11,700,000 to $5,000,000 (inflation adjusted) effective January 1, 2022, rather than January 1, 2026. The inflation adjusted exemption amount would be approximately $6,020,000 per person ($12,040,000 for a married couple).

Because the reduced exemption amount is not effective until January 1, 2022, there is some time for tax planning in advance of the potential change. For example, if you have considered making gifts using your remaining gift tax exemption amount, but have worried about the potential for retroactivity, the proposed changes should provide the comfort to proceed with making those gifts. However, do keep in mind that you would need to make irrevocable gifts of more than $6,000,000 for this timing to matter or to be advantageous.

II. LLC Valuation Discounts

The proposed plan eliminates the strategy of creating family LLCs to hold passive assets (i.e., a portfolio of stocks, bonds, or mutual funds), and have the LLC valued for gift and estate tax purposes at a lesser value due to discounts for lack of marketability and minority interests. This change would be effective for transfers made after the effective date of the legislation, so it would be important to make discounted gifts of entities holding passive assets in the very near future. If the law is passed, discounts will likely not be available for year-end gifts of entities holding passive assets.

III. Grantor Trusts

Another provision of the proposed tax plan is the elimination of many of the benefits associated with grantor trusts. Grantor trusts are trusts that are deemed to be owned by the creator of the trust or another person (each referred to as a “grantor”) for federal income tax purposes. Examples include Grantor Retained Annuity Trusts (GRAT), Spousal Lifetime Access Trusts (SLAT), Intentionally Defective Grantor Trust (IDGT), Qualified Personal Residence Trusts (QPRT), and Irrevocable Life Insurance Trusts (ILIT). Currently, the assets of a grantor trust are deemed to be owned by the grantor

Clients with ILITs should consider making a lump sum gift to the trust now for future premium payments to negate the need for future transfers that may be complicated under the proposed rules.

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Goddard Hawkins partners with clients on estate planning, and trust and estate administration matters, including related issues in real estate, business and tax law, and charitable planning.

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for federal income tax purposes but not included in the grantor's taxable estate for federal estate tax purposes. The proposal would end this mismatch and treat all assets of any grantor trust as includible in the grantor's gross estate for estate tax purposes and would be subject to estate tax on the grantor's death. The new legislation would apply to all post-enactment transfers to a grantor trust, including grantor trusts created prior to enactment, and would apply to all grantor trusts created after enactment.

To be clear: The above three changes are only in proposed legislation. It is far from certain that the bill will pass in its current form. However, we want to ensure that our clients are aware of the issues and available options.

FIRM NEWS

Goddard Hawkins was recognized as a 2021 Best Law Firm by U.S. News & World Report.

Miranda K. Hawkins was selected by her peers to the list of 2021 Colorado Super Lawyers and received the 2021 Five Star Investment Professional Award. Miranda is also honored to serve on The Denver Foundation Professional Advisors Council.

Goddard Hawkins continues to serve new and existing clients for all of their estate planning needs.