

Alert

Proposed Changes to Federal Transfer Taxes Introduced in Tax Cuts and Jobs Act

November 3, 2017

The Tax Cuts and Jobs Act, introduced by the House Committee on Ways and Means Chairman Kevin Brady on Nov. 2, 2017, proposes substantial changes to the federal gift, estate, and generation-skipping transfer taxes and the charitable income tax deduction limit imposed under existing law.

The proposed legislation has not yet been voted on by Congress. If the Tax Cuts and Jobs Act were to be enacted in its present form, transfer tax laws would change as follows:

- Beginning Jan. 1, 2018, the amount of each person's (i) exemption from federal gift and estate taxes and (ii) exemption from federal generation-skipping transfer tax would double. Such exemption amounts would rise from the \$5.6 million per person scheduled under existing law to \$11.2 million per person (indexed for inflation in the future).
- The federal estate tax would be eliminated with respect to the estate of any person who dies on or after Jan. 1, 2024. Until that date, federal estate tax would continue to be imposed on certain estates at a maximum rate of 40 percent.
- The federal gift tax would be retained, but beginning Jan. 1, 2024, the maximum rate of federal gift tax imposed on certain gifts would be reduced to 35 percent.
- No changes would be made to an existing provision of law that permits a so-called "stepped-up basis" in certain assets inherited by beneficiaries upon the death of a decedent. (The stepped-up basis operates to eliminate unrealized capital gains attributable to assets included in a decedent's estate.)

In addition, under existing law, a person may not deduct for income tax purposes the amount of her or his cash contributions to public charities and certain other charitable organizations to the extent such contributions exceed 50 percent of her or his adjusted gross income (without regard to net operating loss carrybacks). Under the proposed legislation, beginning Jan. 1, 2018, this limitation would increase from 50 percent to 60 percent, and the current five-year carryover period would be retained.

Please contact your attorney at Schulte Roth & Zabel at your earliest convenience if you wish to discuss the proposed legislation.

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