ALERTS

Estate Planning Considerations in Light of the House Ways and Means Committee's Proposed Tax Bill

Sep 29, 2021, 12:00 AM

On Sept. 13, 2021, the House Ways and Means Committee announced its government-funding proposal ("Tax Bill") which contains a number of amendments to the Internal Revenue Code that affect estate planning for individuals and eliminate several common estate planning techniques.[1]

Below, we briefly summarize the most significant changes in the Tax Bill that may affect our clients' estate planning, and the date on which these changes would become effective if the Tax Bill as currently proposed were to be enacted.

It is important to recognize that the Tax Bill is only proposed legislation at this time. It remains to be seen whether Congress will enact the Tax Bill in its current form or in some modified version.

Reduction of Lifetime Gift, Estate and GST Tax Exemption Amounts

The Tax Bill proposes to reduce the gift, estate and generation-skipping transfer tax exemption amounts from $11.7 million to $5 million, adjusted for inflation, effective Jan. 1, 2022 (which would mean an exemption of approximately $6 million). Clients who wish to maximize the use of their exemptions should consider making gifts as soon as possible (particularly to so-called "grantor" trusts), as it is possible that the effective date could be moved up or the exemption could go down further.

Copyright © 2024 Schulte Roth & Zabel LLP

Attorney Advertising

Changes to the Grantor Trust Rules

Estate Tax Inclusion of Irrevocable Grantor Trusts

The following proposed amendments apply to (i) grantor trusts created on or after the legislation is enacted or (ii) the portion of pre-existing grantor trusts attributable to contributions made on or after the legislation is enacted.

- The value of the assets held in a grantor trust would be included in the grantor's estate for federal estate tax purposes.
- During the grantor's lifetime, distributions from a grantor trust (other than to the grantor or the grantor's spouse) would be treated as taxable gifts.
- If the trust's grantor trust status terminates during the grantor's lifetime, there would be a deemed gift of the value of the assets held by the trust at that time.

Frequently used grantor trusts, such as spousal lifetime access trusts (SLATs), grantor retained annuity trusts (GRATs), qualified personal residence trusts (QPRTs) and irrevocable life insurance trusts (ILITs), would no longer be viable estate planning techniques. While it is expected that the insurance lobby will seek an exception to this proposed amendment, it is unknown whether ILITs will be carved out of the final legislation. Clients wishing to make gifts to grantor trusts (including to pre-fund future premium payments for life insurance held in an ILIT) should consider doing so as soon as possible.

Effective Date. As stated above, these changes would apply to (i) trusts created on or after the date of enactment of the Tax Bill and (ii) any contribution made after the date of enactment to a trust created prior to enactment.

Gains Recognized on Sales to Grantor Trusts

Sales or other transfers between a grantor and a grantor trust would no longer be disregarded for income tax purposes. This would eliminate the benefits of the future sale (or substitution) of appreciated assets to or from an irrevocable grantor trust. Clients wishing to engage in sales to irrevocable trusts with grantor trust powers should consider doing so as soon as possible.

Copyright © 2024 Schulte Roth & Zabel LLP

Effective Date. These changes would apply to (i) trusts created on or after the date of enactment of the Tax Bill and (ii) any contribution made after the date of enactment to a trust created prior to the date of enactment. However, this effective date could be modified in subsequent versions of the legislation to apply to grantor trusts created prior to the date of enactment.

Elimination of Valuation Discounts for Transfers of Non-Business Assets

The Tax Bill would eliminate discounts for entities holding non-business assets. A taxpayer would no longer be able to contribute non-business assets (i.e., assets not actively used in a trade or business in which the taxpayer is actively involved) to an entity and then apply discounts for lack of marketability or lack of control to a transfer of an interest in that entity (during lifetime or upon death). The proposed amendment applies to entity interests, so discounts may continue to be available to transfers of partial interests in real property. Clients wishing to make gifts at a discounted valuation of family investment vehicles or of interests in a family business in which the client is not actively engaged should consider doing so as soon as possible.

Effective Date. This change would apply to transfers of non-business assets that occur after the date of enactment.

Maintains Basis Step-Up at Death

The Tax Bill, as proposed, does not eliminate the so-called "step-up" in basis at a decedent's death on assets in his or her estate. To the extent possible, clients should continue to hold appreciated assets until death and should consider substituting low-basis assets held in grantor trusts with cash (or other high-basis assets) prior to enactment of any tax legislation.

While the Tax Bill's proposed amendments could be significantly revised or modified by the time Congress enacts new legislation in its final form, it is likely that the final legislation will contain targeted tax increases for high-income taxpayers, including on at least the estate planning areas described above.

Copyright © 2024 Schulte Roth & Zabel LLP
Attorney Advertising

If you have any questions or would like to discuss your personal situation in light of this, please contact your SRZ attorneys.

---

[1] Full text of the Tax Bill is available here.

This communication is issued by Schulte Roth & Zabel LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. In some jurisdictions, this publication may be considered attorney advertising. ©2021 Schulte Roth & Zabel LLP.

All rights reserved. SCHULTE ROTH & ZABEL is the registered trademark of Schulte Roth & Zabel LLP.

Practices

INDIVIDUAL CLIENT SERVICES

Attachments

Download Alert