Estate Planning Update

May/June 2018

TCJA 2.0?

House Ways and Means Committee Chair Kevin Brady (R-Texas) told reporters on May 21 that high-level discussions have been held with White House staffers about a “phase two” tax bill. Earlier in the month, Brady told reporters that one element of any new tax bill will be simplifying the 14 diffe rent tax provisions affecting education savings. Retirement savings is another area of concern, though what that means remains vague. More concrete, there may be an attempt to make permanent the individual tax cuts of the Tax Cuts and Jobs Act of 2017. Brady is pushing for a vote before the midterm elections.

Correction to TCJA is pushed.

Toward the end of the legislative journey of the Tax Cuts and Jobs Act, Senator Robert Menendez (D-N.J.) offered an amendment that would bar any corporate tax deductions for settlement payments for sexual harassment lawsuits if the settlement were subject to a nondisclosure agreement. The amendment was accepted, but unfortunately the final wording was not quite what the Senator wanted. Because of overly broad language, the new provision might prove applicable to victims as well, disallowing any deduction for attorney fees, for example.

Senator Menendez has now introduced the “Repeal the Trump Tax Hike on Victims of Sexual Harassment Act of 2018” to correct the problem.

Estate tax repeal?

Although the estate planning community still is adjusting to the temporary doubling of the amount exempt from the federal estate tax, a new bill has been introduced to repeal the estate and generation-skipping transfer tax entirely. H.R. 5422, the “Death Tax Repeal Act,” was introduced by House Ways and Means Committee member Jason Smith (R-Mo.) with two co-sponsors, Sanford Bishop (D-Ga.) and Kristi Noem (R-S.D.). The federal gift tax would be retained, apparently as a check upon income-shifting within families.

A strong letter of support for the measure was sent to the three legislators, signed by 150 different organizations, ranging from Americans for Tax Reform and the National Small Business Association to the Log Cabin Republicans and the Hispanic Leadership Fund. The groups pointed to four reasons for complete repeal of death taxes:

• **Repealing the death tax would spur job creation and grow the economy.** Last year the Tax Foundation found that the U.S. could create over 150,000 jobs by repealing the estate tax. A 2012 study by the House Joint Economic Committee found that the death tax has destroyed over $1.1 trillion of capital in the US economy—loss of small business capital means fewer jobs and lower wages.

• **The death tax contributes a very small portion of federal revenues.** In fact, eliminating the death tax actually might increase income tax revenue.

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• **A super-majority of likely voters supports eliminating the death tax.** Recent polls show that two-thirds of voters support permanent repeal.

• **The death tax is unfair.** Too often family farms and businesses have to be sold to pay the tax, or payrolls have to be slashed and jobs eliminated.

Nevertheless, estate tax repeal is not expected any time soon.

Deregulation Update

One of the early actions taken by President Trump was the issuance of Executive Order 13777, "Enforcing the Regulatory Reform Agenda," on February 24, 2017, with the purpose of reviewing and reducing the federal regulatory burden on the economy. In April the Treasury Department reported on the successes that it has had to date in complying with this order:

• 305 Treasury Regulations have been eliminated or proposed to be eliminated or modified;

• 94 net reduction in regulations on Treasury's regulatory agenda; and

• more than 250 specific recommendations for reform and burden reduction.

For the estate planning community, the most significant action under this program was the revocation of proposed regulations under IRC §2704, concerning the valuation effects of certain restrictions on interests in family businesses. The proposal was strongly criticized in a December 2016 hearing, and it was revoked on October 20, 2017.

The Service is combing through the regulations for deadwood, regulations for statutory provisions also that have been repealed or substantially altered. To date some 298 regulations have been identified as obsolete under this initiative.

Best month ever for IRS

The federal government had its best month in history in April, fiscally speaking, according to the Congressional Budget Office. The federal government took in $515 billion of revenue, and it spent $297 billion, leaving a surplus of $218 billion. The previous record surplus was $190 billion, set in 2001.

Typically, April is a good month for the U.S. Treasury, but collections came in $40 billion above projections, 13% higher than April of last year. The CBO said the underlying dynamics were not yet clear. "The reasons for the added revenues will be better understood as more detailed information becomes available later this year."

IRS promises alimony trust guidance

The IRS has announced that guidance is on the way for alimony trusts, and it is seeking comments on the issue [Notice 2018-37; 2018-18 IRB 521].

Beginning next year, as a result of the Tax Cuts and Jobs Act of 2017, alimony payments will no longer be deductible by the payor and taxable income to the payee, a rule intended to allow rough income splitting for divorced couples. Apparently, the Congress believed that the payors were claiming their deductions, but some significant fraction of payees was not reporting the income. To avoid the possibility of using a trust as a workaround of the new rule, IRC §682 governing alimony trusts was repealed.

The new guidance will grandfather alimony trusts created for the rest of this year. The Treasury Department and IRS are looking for comments on whether guidance also is needed regarding the grantor trust rules of §§672(e)(1)(A), 674(d), and 677 following a divorce or separation in light of the repeal of former §682.