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April 2021

Estate & Gift Tax Update

MHH Trusts & Estates Practice Group

With the introduction of the "For the 99.5% Act" proposed by Senator Bernie Sanders, there is an increased likelihood for sweeping federal estate and gift tax reforms occurring during the latter part of 2021. The proposed changes, if enacted, would dramatically impact estate planning by significantly reducing the current federal estate tax and gift tax exemptions.

The current federal estate and gift tax exemption amounts in 2021 are $11.7 million per person and $23.4 million per married couple when passing assets down to the next generation. This means an individual can avail himself or herself of this $11.7 million exemption to (1) gift away up to $11.7 million during his or her life without triggering a gift tax, or (2) transfer up to $11.7 million upon his or her demise to his or her heirs free from the federal estate tax, or (3) split the $11.7 million exemption between gifts during his or her life and his or her heirs at death.

Changes the "For the 99.5% Act" has proposed include the following:

- Reducing the estate tax exemption to $3.5 million per person, $7 million in total for a married couple (down from the current $11.7 million per person and $23.4 per married couple in 2021) effective January 1, 2022;

- Reducing the gift tax exemption to $1 million dollars for any gift made after December 31, 2021;

- Increasing the progressive estate tax rates for estates that exceed the newly proposed $3.5 million exemption. Currently, estates in excess of $11.7 million are taxed at a forty (40%) percent flat rate on the excess amount. The proposed new rates would start at forty-five (45%) percent for any amount in excess of $6.5 million and incrementally increase to a maximum rate of sixty-five (65%) percent for the portion of an individual's estate in excess of $1 billion;

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- Grantor trusts (often referred to as "intentionally defective grantor trusts") will no longer be afforded many of the current benefits they provide. Importantly, the assets owned by a grantor trust will be considered to be owned by the grantor and included in the grantor's estate upon his or her death, potentially subjecting the assets owned by the grantor trust to an estate tax. The good news is that grantor trusts created prior to the enactment of this bill will be grandfathered. New additions to the existing trusts, however, will not be grandfathered; and distributions from non-grandfathered grantor trusts will be subject to gift tax;

- Annual exclusion gifting will be capped at thirty thousand dollars per donor in a given year with regard to certain transfers, including transfers to a trust and transfers of interest in family entities; and

- Valuation discounts for transfers of interest in entities that consist of "non- business assets" (such as stocks, bonds and cash not used in the active conduct of a trade or business) will be eliminated.

- The key takeaway from this alert, however, is that any existing trusts that are created and funded prior to enactment of these changes would be grandfathered and should not be clawed back by the new changes.

We encourage you to reach out to us promptly to discuss your estate planning options in light of these potential planning limitations being considered by Congress.

If you have any questions regarding this alert or any other estate planning concerns, please do not hesitate to contact any of the attorneys in our trusts and estates department, as set forth below:

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