

May 5, 2020

ESTATE CREDIT REPEAL

Given the current economic shock and potential for Democrats to gain control of the government in November, High Net Worth Individuals (particularly those with unused Estate and Gift Tax Credit) may want to consider Estate Planning now. Reasons include:

- Potential reduction of Estate and Gift Tax Credit
 - o Additional revenue (taxes) will be needed to service the increasing \$23.7 Trillion U.S. fiscal debt
 - o The current \$11.58 Million Estate and Gift Tax Credits are a potential (likely) target
 - o Current Credit increase is set to expire after 2025 due to Reconciliation process originally used in 2017:
 - Senate allows unlimited discussion (filibuster) for new bills
 - Opposition can indefinitely delay a new bill
 - 60 votes can end a filibuster (Cloture)
 - In 2017, Republicans did not have 60 votes to invoke cloture on Tax Bill
 - Used Reconciliation which allowed passage with a simple majority if the item does not increase federal deficit after 10 years
- Business Valuations are reduced due to economic circumstances allowing additional leverage
- Interest rates near zero for intra-family sales, loans and transactions
- Audit potential is lowered due to IRS Estate and Gift Tax Unit being understaffed
- Tax law changes are generally well-publicized in advance, with grandfather dates that may be passed with retroactive implementation dates

CURRENT LAW SUMMARY

Lifetime – Gifts

- Top Gift Tax Rate: 40%
- Annual gifts up to \$15,000 per non-spouse beneficiary not taxable and do not use Credit
- Spouses may combine to make annual gifts up to \$30,000 per recipient
- Individual annual gifts exceeding \$15K (or \$30K for spouses) are taxable and use Credit

- Lifetime taxable gifts to a non-spouse beneficiary of up to \$11.58 Million (reduced by prior taxable gifts) are tax free
- Spouses may “split gifts”, thereby expanding lifetime tax free gifts up to \$23.16 Million
- Gifts to or for benefit (in Trust) of beneficiaries more than a generation below the gift-giver may incur Generation Skipping Transfer (GST) Tax (40%) in addition to Gift Taxes
- GST Exemption of \$11.58 Mil. shields GST gifts from GST Tax; spouses can combine
- Gifts of appreciated property carry over gift giver’s cost basis
- Payments not subject to Gift or GST Tax, or included in \$15K annual exclusion: Certain Marital Gifts, Charitable Gifts, Tuition paid directly to educational institutions, and Medical Expenses paid directly to provider

Death – Estate Bequests

- Top Estate Tax Rate: 40%
- Tax-free transfer of up to \$11.58 Million (reduced by lifetime taxable gifts) to non-spouse beneficiaries
- Spouse may use deceased spouse’s unused Estate Tax Credit (portable)
- \$11.58 Million Exemption from GST Tax for transfer to or for the benefit of beneficiary more than one generation below decedent
- Deceased spouse’s unused GST Exemption may not be used by a surviving spouse (not portable)
- Transferred property receives stepped-up basis to fair market value as of date of death
- Unlimited Deduction against Estate Tax for Charitable Gifts and certain Marital Transfers

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