

## **Estate Planning after the 2020 election results: 1-28-21**

Now that we know that Democrats have control of the Presidency and both Houses of Congress (with Vice President Kamala Harris having the tiebreaking vote in the 50-50 Senate), it is time to make planning decisions ahead of what legislation is expected.

Under current law, there is currently an \$11.7 million estate tax exemption per person. This amount is indexed to inflation so increases slightly each year without further enactments. This is the highest exemption amount ever. By virtue of the fact that this increase was effected as part of a budget reconciliation in the Tax Cuts and Jobs Act of 2017 (TCJA) (which doubled the exclusion amount), it sunsets and goes back down by half in the year 2026. (There is a ten-year limit on how long such a law may be effective.)

President Joe Biden has indicated that he prefers reducing the estate tax exemption to \$3.5 million and eliminating the stepped-up basis adjustment at death. There has never been a reduction in the exemption amount so the effect of same cannot be known. The biggest question is what can be done now that will be grandfathered. The current estate tax exemption should be considered “use-it-or-lose-it.” Since it is presumed that the exemption will be at a minimum cut in half based in 2026 or reduced to \$3.5 million, wealthy net worth clients should consider making gifts utilizing their current high exclusion amount that will likely disappear in the not too distant future. Most tax and estate practitioners believe that it is not anticipated that there will be any type of recapture or clawback at death of any gift amount used now that exceeds the amount that will be available on death.

First, as always, an estate plan should include use of annual exclusion gifts which are currently limited to \$15,000 per donee per donor.

SLATs - Since donors are unlikely to want to give their assets to their kids without retaining control – one option in order to retain access to gifted assets, spousal limited access trusts (SLATs) should be considered. In a SLAT, the spouse has indirect access to the assets.

GRATs - A grantor retained annuity trust (GRAT) allows the growth of an asset in excess of the current rate which in January 2021 is 0.6% to escape estate and gift taxation.

Defective Trusts - Another potential plan to effectuate similar results to a GRAT is to sell assets to an intentionally defective grantor trust.

Family Limited Partnerships - Valuation discounts are still generally available for family limited partnerships and should be considered.

Conclusion: Estate planning in this time of uncertainty requires unique planning for each client. Please reach out for details as these are all highly complex transaction.