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UPDATE

PROPOSED ESTATE AND TAX LAW CHANGES

Subsequent to our previous update on the possible effects of the Biden administration on estate planning, several proposed changes to the federal estate, gift, generation-skipping transfer, and income tax laws have been formally submitted to Congress. Now that we have more information, we wanted to give you a summary of the specific proposed changes. This list is by no means exhaustive, but serves as a guide to help you decide whether you need to make any changes to your estate plan.

- **Drastic reduction of the federal estate and gift tax exemption amounts**, both of which currently stand at $11,700,000 per individual. The proposals reduce these amounts to $3,500,000 and $1,000,000, respectively. In addition, the current 40% estate tax rate would be increased to a starting rate of 45%, moving up to as high as 65% based on the size of the estate.
- **Elimination of the step-up in basis upon death**. Under current law, inherited assets are assigned a basis equal to the fair market value at the time of death allowing heirs to avoid capital gains tax. One legislative proposal would eliminate this step-up in basis for any gains above the first $1,000,000.
- **Limiting dynasty trust planning**. The proposals would apply the generation-skipping transfer tax to any trust lasting more than 50 years (Florida currently has a 360-year rule).
- **Reduced effectiveness of Grantor Retained Annuity Trusts (GRATs)**. Use of GRATs will be significantly curtailed under the proposals, as the minimum term will be set at 10 years, and there will be mandatory rules requiring certain minimum distributions at the end of the term.
- **"Grantor" trusts will be included in taxable estate**. Perhaps one of the more worrisome aspects of the proposals, any trust treated as a "Grantor" trust will be included in the grantor's taxable estate. This would virtually eliminate the use of certain irrevocable trusts (such as Spousal Lifetime Access Trusts, or "SLATs") which have been the backbone of estate tax planning for years.
- **Limiting annual exclusion gifts to trusts**. Annual exclusion gifts would be limited to twice the annual exclusion limit per donor when made to a trust, severely limiting the effectiveness of annual exclusion gifts to irrevocable trusts.
- **Certain valuation discounts will no longer be allowed**. Discounts for minority interests, lack of control, and lack of marketability will be curtailed, reducing the effectiveness of gifting certain business interests.
- **Effective dates to be determined**. Some of these changes will be effective next year, and some will be effective as of the date of enactment of the specific law.

There may still be time to implement one or more of the numerous techniques designed to take advantage of current estate and tax law. **Consult with your estate planning attorney to ensure that your plan is up to date**.