

2014 Fiscal Year Budget Proposals

On April 10, 2013, with the release of the Obama Administration's 2014 fiscal year budget proposals, together with the "General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals," commonly referred to as the "Green Book," the permanency of the estate, gift and generation-skipping transfer tax law has again been called into question.

There were a few short months of calm following the January 2, 2013 enactment of the American Taxpayer Relief Act of 2012 ("ATRA"). Now, the Administration makes a number of proposals affecting estate, gift and generation-skipping transfer taxes, including:

- **Restoring the estate, gift and generation-skipping transfer tax rates and exclusion amounts to their 2009 levels beginning in 2018.** The top tax rate would increase to 45% (it is currently 40%). The federal estate and generation-skipping transfer tax exclusions, which are currently \$5.25 million (\$5 million indexed annually for inflation), would be reduced to \$3.5 million. The gift tax exclusion, which is currently \$5.25 million (\$5 million indexed annually for inflation) would be reduced to \$1 million. There would be no indexing of the exclusion for inflation in any case. Portability of the unused exclusion between spouses would remain.
- **Implementing a minimum term of ten (10) years for grantor retained annuity trusts ("GRATs").** Imposing a minimum GRAT term increases the risk of the Grantor failing to survive the term and the possibility of periods of depreciation offsetting periods of appreciation during the term. There would also be a maximum term equal to the life expectancy of the annuitant plus ten (10) years.
- **Eliminating the use of "zeroed-out" GRATs.** The GRAT remainder interest at the time of the initial transfer (the amount of the gift) would be required to have a value of greater than zero resulting in a taxable gift.
- **Coordinating the income tax and transfer tax rules applicable to grantor trusts.** This proposal would eliminate the traditional estate tax benefits associated with installment sales to grantor trusts. If the grantor engages in a sale, exchange or comparable transaction with a "grantor trust" then the portion of the trust attributable to the property received by the trust in that transaction (including all retained income therefrom, appreciation thereon and reinvestments thereof, net of the amount of the consideration received in that transaction) would be subject to estate tax at the grantor's death. Termination of grantor trust status and distributions from the trust would be subject to gift tax. Transactions occurring before enactment date would be grandfathered.
- **Limiting the duration of allocated generation-skipping transfer tax exemption to 90 years.** The generation-skipping transfer tax exclusion allocated to a trust would terminate on the 90th anniversary of the trust's creation. Currently, there is no such time limitation and trusts created in jurisdictions that have eliminated the rule against perpetuities can remain exempt from generation-skipping transfer tax indefinitely.

These proposals illustrate the need to monitor your estate plan. It may be prudent to engage in additional planning at this time in light of the possible changes discussed above. Please contact any of the attorneys in our group to discuss these opportunities further.

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