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President Obama's 2014 Budget Estate & Gift Tax Provisions

by Ted Simpson

On April 10, 2013, the President released his federal budget proposals for fiscal year 2014. The Treasury Department's "General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals" (the so-called "Green Book") was released later that day. Among other things, the revenue proposals include proposed tax changes for businesses and individuals.

In his budget, the President called on Congress "to immediately begin work on corporate tax reform that will close loopholes, lower the corporate tax rate, encourage investment here at home, and not add a dime to the deficit." However, he also introduced a number of specific measures in the budget proposals "as a starting point for comprehensive reform," including estate and gift tax proposals that would:

- Beginning in 2018, return the estate, generation-skipping transfer (GST), and gift tax exemption and rates to 2009 levels. Thus, the top tax rate would be 45%, and the exclusion amount would be $3.5 million for estate and GST taxes, and $1 million for gift taxes;
- Require that the basis of property in the hands of the recipient could be no greater than the value of that property as determined for estate or gift tax purposes (subject to subsequent adjustments). A reporting requirement would be imposed on executors and donors to provide the necessary valuation and

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basis information to both the recipient and IRS. These rules would apply for transfers on or after the enactment date;

- Require a GRAT to have a minimum term of ten years and a maximum term of the life expectancy of the annuitant plus ten years. Also, the remainder interest would have to have a value greater than zero at the time the interest is created, and any decrease in the annuity during the GRAT term would be prohibited. These rules would apply to trusts created after the enactment date;
- Limit the duration of GST tax exemption by, on the 90th anniversary of the creation of a trust, providing that the GST exclusion allocated to the trust would terminate. This rule would apply to trusts created after the enactment date, and to the portion of a preexisting trust attributable to additions to such a trust made after that date;
- Coordinate income and transfer tax rules applicable to grantor trusts;
- Extend an estate tax lien under Code Sec. 6324(a)(1) to apply throughout the Code Sec. 6166 deferral period, effective for estates of decedents dying on or after the effective date and for estates of decedents dying before the enactment date as to which the current law Code Sec. 6324(a)(1) lien period had not expired on the effective date; and
- Clarify that the exclusion from the definition of a GST under Code Sec. 2611(b)(1) applies only to a payment by a donor directly to the provider of medical care or to the school in payment of tuition and not to trust distributions, even if for those same purposes. The proposal would apply to trusts created after the introduction of the bill proposing this change, and to transfers after that date made to pre-existing trusts.

Since many of these provisions (if passed by Congress) would not apply retroactively, (i.e., short-term GRATs and Dynasty Trusts), you may want to consider creating these trusts very soon. Further, you may want to consider your estate planning in light of the changes the President proposes for 2018.

Please call Ted if you would like to discuss how these proposals would affect your estate and gift taxes.

As always, if you have any questions about income or estate planning, or any other issue relating to your closely-held business, feel free to contact **Ted Simpson**, **Randy Duncan***, or another member of our Closely-Held Business Team at 503-242-0000.*