New Estate and Gift Taxes on the Way?

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In recent years, only the wealthiest families in the United States have paid federal estate tax. Currently, the tax is levied only on the portion of an estate's value that exceeds $11.7 million ($23.4 million for a married couple).

The "For the 99.5% Act" proposed March 25, 2021 by Senator Bernie Sanders could change this – with significant consequences for estates valued at **more than $3.5 million**.

The Sensible Taxation and Equity Promotion (STEP) Act announced March 29, 2021 by Senator Chris Von Hollen could treat death as a tax realization event - capital gains tax would be due on inherited assets with **unrealized gains of over $1 million**.

While this is just a kick-off for conversations in Congress it does start the clock on planning before year-end to take advantage of the current law before it changes.

We strongly recommend that you contact your Porzio attorney to review your current estate plan – and strategies to minimize taxes – before any changes to the estate and gift tax are enacted.

Summary of Proposed Changes

The proposed legislation:

- **Exempts the first $3.5 million of an individual's estate from the estate tax.** Under the legislation the federal estate tax would affect estates of more than $3.5 million ($7 million for married couples).
- **Establishes a new estate tax rate structure as follows:**
  - 45 percent of the value of an estate between $3.5 million and $10 million
  - 50 percent of the value of an estate between $10 million and $50 million
  - 55 percent of the value of an estate between $50 million and $1 billion
  - 65 percent of the value of an estate in excess of $1 billion
- **Limits lifetime gifting.** There would be a $1 million cap on lifetime gifts and a limit per donor of annual exemption gifts to trusts to be $30,000.
- **Makes death or a gift a capital gains event.** Capital gains taxes would be due upon death or a gift of assets with appreciation in excess of $1 million.

- **Includes "Grantor Trusts" in a grantor's taxable estate.** For any trusts where the grantor is the income taxpayer, those trusts would be included in the grantor's taxable estate.

- **Ends tax breaks for dynasty trusts.** The new legislation would strengthen the "generation-skipping tax," by terminating "Dynasty Trusts" after 50 years.

- **Makes grantor-retained-annuity trusts (GRATs) less effective.** The legislation proposes to prohibit grantor-retained-annuity trusts (GRATs) for a term under 10 years and mandates a minimum gift of 25%.

- **Eliminates Valuation Discounts.** If a person owns a partial interest in a business no valuation discounts could be used for passive assets or when the family owns the balance of the business.

The good news:

- These are proposed changes for debate, not law.
- Changes are proposed to be effective January 1, 2022 and most current planning will be grandfathered.
- There is an opportunity to act now before any changes are made to maximize the wealth passing to your family and align prior planning with any new laws.

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