

## **PRESIDENT'S FY 2017 BUDGET CONTAINS ESTATE AND GIFT-RELATED TAX PROVISIONS**

On February 9, 2016, President Obama released his federal budget proposals for fiscal year 2017. The Treasury Department also released its “General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals” (the so-called “Green Book”). Although many of the proposals are unlikely to become law, the budget nonetheless is a strong policy statement that may well influence the tone and direction of the coming tax debate in the presidential election, both in respect to politicians who generally align themselves with the President's objectives and those who vehemently disagree with them. (Fiscal Year 2017 Budget of the U.S. Government; General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals).

The process for passing a budget generally begins with the President submitting a comprehensive detailed budget request to Congress. Then, House and Senate Budget Committees typically hold hearings on the President's budget request, inviting White House officials to testify (which the chairman of the respective Committees have decided not to do this year), then pass their own respective budgets, which are in turn negotiated by the full House and Senate before passage of a single congressional budget resolution. The budget resolution is then the basis of annual appropriation bills.

For the 2017 fiscal year (i.e., starting October 1, 2016), spending levels have already been set by the Bipartisan Budget Act of 2015. The President's budget is essentially a suggested method of allocating the agreed-upon funds.

### **The estate and gift-related proposals in the budget would:**

- A. Generally treat transfers of appreciated property as a sale of the property, such that the donor or deceased owner of an appreciated asset would realize a capital gain (FMV over basis) at the time the asset is given or bequeathed to another that would be taxable income to the donor in the year the transfer was made (in effect, ending stepped up basis). Unlimited use of capital losses and carry-forwards would be allowed against ordinary income on the decedent's final income tax return, and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any). The proposal would also: exempt any gain on all tangible personal property such as household furnishings and personal effects (excluding collectibles); allow a \$100,000 per-person exclusion of other capital gains recognized by reason of death (indexed for inflation after 2017 and portable to the decedent's surviving spouse); and allow a \$250,000 per person exclusion for capital gain on all of the donor/decedent's residences, that also would be portable to the decedent's surviving spouse. Gifts or bequests to a spouse or to charity would carry the basis of the donor or decedent;
- B. Restore 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;

- C. Expand the requirement of consistency in value for transfer and income tax purposes to also include certain property qualifying for the estate tax marital deduction and certain property transferred by gift;
- D. Effective for trusts created after the enactment date, require a grantor retained annuity trust (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 25% of the value of the assets contributed to the GRAT or \$500,000, and any decrease in the annuity during the GRAT term and any tax-free exchange of any asset held in the trust would be prohibited;
- E. Effective for trusts created after the enactment date (and for the portion of a preexisting trust attributable to additions to such a trust made after that 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;
- F. Extend the estate tax lien under Code Sec. 6324(a)(1) to apply throughout the Code Sec. 6166 deferral period;
- G. Modify GST tax treatment of health and education exclusion trusts such that the Code Sec. 2611(b)(1) exclusion from the definition of a GST applies only to a payment by a donor directly to the provider of medical care or the school in payment of tuition, and not to trust distributions, even if for the same purposes;
- H. Simplify the gift tax exclusion for annual gifts by eliminating the present interest requirement in order for gifts to qualify for the gift tax annual exclusion. Instead, the budget proposal would define a new category of transfers and would impose an annual limit of \$50,000 per donor on the donor's transfers of property within this new category that will qualify for the gift tax annual exclusion (in addition to the \$14,000 per donor limit); and
- I. Expand the applicability of the definition of an "executor" to expressly make the Code's definition applicable for all tax purposes, and authorize such executor to do anything on behalf of the decedent in connection with the decedent's pre-death tax liabilities or obligations that the decedent could have done if still living.

All of this will doubtless be the topic of partisan discussions over the coming months.