

2016 Year-End Trusts & Estates Update

Dear clients and friends:

As 2016 comes to a close, we would like to share with you a number of recent developments affecting trust and estate planning that may be of interest:

Final regulations restricting valuation discounts unlikely to be released soon. In August 2016, we reported on proposed regulations that would prohibit the use of certain discounts customarily applied when valuing interests in family-controlled entities. On December 1, a public hearing was held regarding those proposed regulations. Due to a significant volume of comments received during the hearing process – and, possibly, the new political climate – IRS officials have since indicated that the regulations are not likely to be finalized soon. It is unclear whether the regulations will be substantially modified before they are finalized, or abandoned altogether.

Because key provisions of the proposed regulations are not effective until the regulations are finalized, we continue to rely on longstanding valuation principles to engage in estate planning transfers of interests in family-controlled entities notwithstanding the proposed rules.

Federal tax reform likely in 2017. With a new President and Congress taking office in 2017, new tax legislation may be proposed early in 2017. Both President-elect Trump and Congressional Republicans have called for repeal of the federal estate tax. Under President-elect Trump's plan, the existing income tax rule – which provides for a "step-up" in income tax basis upon an individual's death with respect to unrealized capital gains – would be modified to subject those unrealized gains, above a certain threshold, to tax.

Because of budgetary rules which may require a three-fifths vote of the Senate to authorize permanent repeal of the estate tax, any legislation is likely to contain a "sunset" provision by which the estate tax will later be reinstated.

We continue to recommend that clients engage in established estate planning techniques designed to transfer wealth to younger generations. With the potential for repeal, however, we are generally cautioning clients against making gifts that will cause a federal gift tax to be payable now.

President-elect Trump's income tax plan would reduce the top marginal income tax rate substantially and may disallow certain itemized deductions – including charitable deductions – above a certain level of income (e.g. \$200,000 for married couples and \$100,000 for single taxpayers). Clients may therefore wish to consider accelerating charitable gifts and other deductions into 2016 where possible.

New Jersey estate tax phased out by 2018. Governor Christie recently signed into law a bill that will eventually phase out the New Jersey estate tax. Estates of individuals who die in 2017 will have a New Jersey estate tax exemption of \$2,000,000 (up from \$675,000 under current law), and estates of individuals dying on or after January 1, 2018 will not be subject to New Jersey estate tax at all. New Jersey may continue to apply an inheritance tax to certain transfers at death to individuals other than certain close family members or charities, and that tax is also applicable to nonresidents who own real estate or tangible personal property in New Jersey. Clients who reside in New Jersey or who own property there may wish to contact us to review their estate plans in light of this new law.

2017 adjustments to certain federal tax exclusions have been announced. Certain federal tax exclusions are inflation-adjusted each year. As of January 1, 2017, the exclusion amount from federal gift and estate tax will increase by \$40,000 to \$5,490,000 per individual (allowing a married couple to transfer up to \$10,980,000 free of gift and estate tax). The generation-skipping transfer tax (GST) exemption will increase to the same level. The gift tax annual exclusion amount will remain at \$14,000 per donee (or \$28,000 for a married couple who makes a split gift). The annual exclusion amount for gifts to a spouse who is not a U.S. citizen will increase to \$149,000.

Many estate planning opportunities remain attractive. Present estate planning transfers continue to carry significant potential tax benefits, including the ability to shelter future appreciation from transfer taxes. GRATs, sales to grantor trusts and intra-family loans are especially attractive at historically-low interest rates that many believe will rise in the coming months.

If you have any questions about how these new developments may impact your family or your estate plan, or what planning opportunities may exist for you, please contact us.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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