

**ESTATE PLANNING DURING THE TRUMP PRESIDENCY:
BONANZA OR BOONDOGGLE ?**

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**By: PATRICK J. SACCOGNA, J.D., LL.M., CPA (inactive), AEP®
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291
Phone: (216) 566-5761
Fax: (216) 566-5800
E-mail: Patrick.Saccogna@ThompsonHine.com**

I. INTRODUCTION

- A. Where we stand today and how we got here.**
- B. Key elements of the Trump and the House Republican tax proposals.**
- C. Key legislative factors involved in the process for tax reform.**
- D. Legislative process for tax reform.**
- E. Post-election tax developments on Capitol Hill.**
- F. Estate planning in today's uncertain environment.**

II. WHERE WE STAND TODAY AND HOW WE GOT HERE

- A. The November 2016 Election Results**
 - 1. Trump wins!**
 - 2. And...The Republicans control Congress.**
 - 3. The perfect storm for change or a formula for chaotic mess?**

B. Is Estate Tax Repeal Likely? The Current Political Climate and the Trump and House Republican Proposals Present Great Uncertainty in Estate Planning

1. The current political sentiment points towards repeal.
2. But the current economics do NOT point towards repeal.
3. And the “pundits” are unsure.
4. Great prospects for significant change.
5. Even if estate tax repeal occurs, could we later see its reinstatement?
6. The question we all need to address NOW.

III. SUMMARY OF THE TRUMP/HOUSE REPUBLICAN TAX PROPOSALS

A. Trump Proposals

1. Individual income taxes.
2. Corporate income taxes.
3. “Death” taxes.

B. House Republican “Blueprint for Tax Reform” Proposals

1. Individual income taxes.
2. Corporate income taxes.
3. Transfer taxes.

IV. ESTATE TAX REPEAL OR NO? THE LEGISLATIVE FACTORS

A. Competing Priorities

1. Repeal and replace “Obamacare”.
2. Reform immigration laws.
3. Increase spending on infrastructure.
4. Cease sequestration and provide for military buildup.

B. The “Politics” of Dancing, ..., Er, Repealing

1. The “art” of prioritizing major incentives and spending “political capital”.
 2. “Feathering his own nest?”
- C. What About the “Budget Hawks”?
- D. Timing, Timing, Timing
1. Timing of tax legislation.
 2. Timing of tax breaks.
 3. Reinstatement (or, the repeal of the repeal).
- E. Potentially Unprecedented Tax Code Concepts
1. The old adage, “The devil is in the details” applies.
 2. A brand new system of capital gains taxation is possible.

V. **ESTATE TAX REPEAL OR NO? THE LEGISLATIVE PROCESS**

A. In General

B. The Budget Reconciliation Bill Option

1. The “budget resolution” and what it means.
2. The “budget reconciliation bill”.
3. The “Byrd Rule”.

VI. **ESTATE PLANNING IN TODAY’S UNCERTAIN ENVIRONMENT**

A. **Uncertainty is the New Reality: What Will the New Tax Law Look Like? Here Are Some of the Primary Tax Options**

1. *Immediate* permanent repeal of the federal estate, gift, and GST taxes.
2. Repeal of the federal estate, gift, and GST taxes *over a period of time and with a sunset* (say, 10 years, like in 2001), *or possible reenactment*.
3. Repeal of the federal estate and GST taxes, *with retention of the federal gift tax* as a backstop to the federal income tax.

4. Repeal of the federal estate and GST taxes (with or without a repeal of the federal gift tax), *with a new “mark to market” capital gains tax at death.*
 5. Repeal of the federal estate and GST taxes (with or without a repeal of the federal gift tax), *with a new carryover basis regime.*
 6. Repeal of the federal estate and GST taxes (with or without a repeal of the federal gift tax), *with retention of the fair market value basis step-up at death.*
 7. *No repeal of the federal estate, gift, or GST taxes, but higher exemption amounts and/or lower tax rates (with or without changes in the income tax basis rules, e.g., “mark-to-market” capital gains tax at death, carryover basis regime, retention of fair market value basis step-up at death).*
 8. Of course, it is possible, that *nothing substantive changes*, although that seems remote.
- B. Immediate Permanent Repeal of the Federal Estate, Gift, and GST Taxes: An Estate Planning and Tax Bonanza!**
1. Potential to remove wealth from the federal transfer tax system “forever” while achieving asset protection.
 2. Income tax shifting/planning “shopping spree!?”
 3. Freedom in business succession planning and other non-tax planning endeavors.
 4. Ease in gift planning details.
- C. Repeal of the Federal Estate, Gift, and GST Taxes Over a Period of Time and With a Sunset (say, 10 years, like in 2001), or Possible Reenactment**
- D. Repeal of the Federal Estate and GST taxes, with Retention of the Federal Gift Tax as a Backstop to the Federal Income Tax**
- E. For Starters: Review the Existing Estate Plan Documents of Just About Everyone**
1. Pay particulate attention to “formula clauses”.
 2. Confirm the client’s intent.
 3. Consider “If....then” scenarios and alternate plans within the plan.
- F. Flexibility in Planning Is of the Utmost Importance**
1. Formula dispositive plans.
 2. Broad limited powers of appointment.

3. **“Trust Protectors”.**
 4. **Broad discretionary distribution powers.**
 5. **Trust decanting power and trust merger power.**
 6. **Swap and inverted swap powers.**
 7. **Income tax basis step-up planning.**
 8. **Trust termination, trust amendment, and change of situs provisions.**
 9. **Miscellaneous other flexibility devices.**
- G. Planning Right Now on the Eve of Potential Estate/Gift Tax Repeal: “Low Risk” is the Catchphrase**
- H. IRC Section 2704 Proposed Regulations: Unwanted Dead or Alive**
- I. Income Tax Changes: A Multitude of Possibilities**
1. **The Status Quo: FMV Income Tax Basis Step-Up (or Step-Down) at Death.**
 2. **Carryover Basis.**
 3. **“Mark-to-Market” Capital Gains Realization at Death.**
- J. Charitable Giving**
1. **Estate tax repeal would diminish charitable giving tax incentive.**
 2. **Cap on charitable income tax deduction and lower income tax rates would also diminish motivation for charitable gifting.**
- K. Undoing Prior Planning**
1. **“Traditional” A-B or Bypass Trusts.**
 2. **Irrevocable Life Insurance Trusts.**
 3. **FLPs/FLLCs.**
 4. **Turning off the grantor trust status of grantor trusts.**
 5. **Estate plans that cause inclusion of assets in a beneficiary’s (or other third-party’s) estate.**
 6. **Portability planning.**

L. Non-Tax Estate Planning Issues Will Remain Important No Matter What!

VII. CONCLUSION/QUESTION AND ANSWER SESSION

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