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Edward E. Wollman, JD, LL.M. | David Pash, JD, LL.M.
WOLLMAN, GEHRKE & SOLOMON, P.A.

TRUMPING YOUR ESTATE PLAN

Estate Tax Planning – No Estate Tax, No Estate Plan?

With the recent election of Donald Trump as the next President of the United States, the possibility of a “complete” repeal of the estate tax appears likely. However, whether the estate tax will be permanently repealed is another matter. Further, even if the law is “permanently” repealed, how permanent are any changes in the tax law.

How Soon Will the Estate Tax be Repealed? With the seismic changes in Washington likely to occur after President Trump is sworn in, there are significant changes to dozens of laws that President Trump and the new Congress would like to make. How quickly Congress will move to repeal the estate tax which affected fewer than 5,000 estates in 2015 will depend on how the proposal is put forth. Further, with any legislation there is likely to be significant negotiation and often changes to completely unrelated laws can be included. For example, the estate tax repeal could be included as part of a bill revising immigration or health care laws. Further, even if the estate tax is repealed during the first 100 days of President Trump’s administration the law could be implemented over a number of years such as in 2001 when the repeal was only effective in 1 year, 2010.

How Will the Estate Tax Repeal Affect other Taxes? While it appears that the estate tax is likely to be repealed, it is less clear what other taxes may remain or be added in its place. For example, while the estate tax covers transfers of property at death, the gift tax covers transfers of property during lifetime. If the estate tax is repealed will the gift tax remain or will it also be repealed? In addition, there are some proposals to replace the estate tax with a capital gains tax. Canada uses a tax such as this which treats you as selling all your assets at death and paying tax on the increase in the value of your assets. If the United States begins to impose a capital gains type of tax at death will there be any increase in basis available at your death?

How Will Repeal of Estate Tax Affect My Estate Planning? The expected changes in the estate tax law will not reduce the necessity for good, flexible estate

planning. Although many individuals did estate planning with a goal of minimizing the effect of the estate tax, there are numerous other reasons to have an estate plan. These reasons include various divorce and asset protection benefits as well as control over who will ultimately receive your estate. In addition, many residents of Southwest Florida continue to own property in states which continue to have death taxes and proper planning is still necessary for minimizing this and avoiding probate in a second or third state.

What should I Do Now? Of course one option is to wait and see what happens with estate tax repeal and other tax revisions. However, there are always risks with a wait and see approach. If you haven’t already begun your estate planning the easiest approach is to wait and see what happens. However, if there are non-tax motives for your estate planning this wait and see approach may be risky. If you are presently in the process of completing your estate planning you may want to complete your planning and include additional flexibility to allow for changes if the tax is repealed. If you recently completed your estate planning, it is probably too early to start modifying your documents. However, if the estate tax is repealed then all of your existing estate planning should be reviewed so that you can determine if changes are necessary or changes are recommended so that your estate plan fits into the new tax environment. In conclusion, while the potential repeal to the estate tax will affect how estate planning professionals draft estate planning documents and how you may decide to distribute your property, the change will not eliminate the need for effective flexible estate planning.

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Ed Wollman is a FL Bar board certified wills, trusts and estates attorney with 26 years experience practicing in the state of FL.

David R. Pash is a FL Bar board certified wills, trusts and estates attorney with over 15 years experience practicing in the state of FL.

2235 VENETIAN CT #5, NAPLES, FL 34109
(239) 435.1533 | (239) 435.1433 FAX