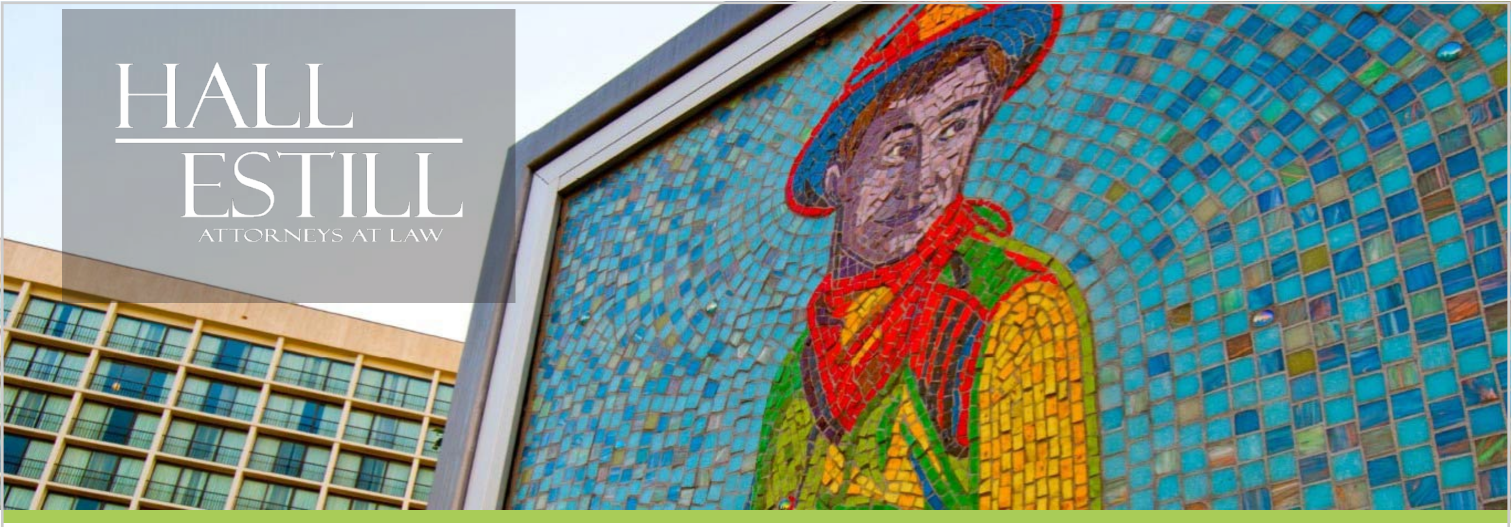

Transfer Tax Repeal: Could it be true?

December 26, 2016

By: Samantha Weyrauch Davis

The House Republican tax reform package is described in the Blueprint for Tax Reform which was published on June 24, 2016. The tax reform includes numerous changes to individual and business taxes in addition to the repeal of the estate and generation skipping tax.

The Trump/Pence website summarizes the Trump tax reform proposals relating to the the transfer tax which include "repeal the death tax, but capital gains held until death and valued over $10 million will be subject to tax to exempt small businesses and family farms. To prevent abuse, contributions appreciated assets into private charity established by the decedent or the decedents relatives will be disallowed."

There are several planning implications of a potential transfer tax repeal. Some of which include not making such large gifts that significant gift taxes will be due currently. With a Republican President, Senate and House, it is very likely that the IRC Section 2704 Regulations will not be implemented. The primary method of dealing with the extreme uncertainty in current estate planning for clients is to implement as much flexibility as possible which can include: (i) formula bequests based on whether an estate tax exists, (ii) using QTIP trusts, (iii) basis adjustment planning with using general powers of appointment to cause inclusion of beneficiaries' estates for basis step up, (iv) using limited powers of appointment to provide for flexibility, and (v) allowing broad discretionary distributions of trust assets by an independent trustee.

If the estate tax and gift tax is repealed, there is a window of opportunity for planning. It is certainly possible that future political regimes could reinstate the estate and gift tax. If a sunset applies, uncertainty will continue as to whether the repeal would be reinstated after the sunset.

Lastly, if the estate tax is repealed, planning will be busy with potentially undoing prior planning that was implemented to avoid the estate tax. Prior trusts and other planning may not be helpful (or may be undesirable).

It is also important to underscore that estate planning goes well beyond estate tax issues and includes accomplishing such goals as disposition of assets at death and upon disability, asset protection planning, business succession planning and many others.

Attorneys

- Samantha Weyrauch Davis