

**Washington, DC Estate Planning Council**

# **Estate Planning Without an Estate Tax**



**Presented by:**

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# Events that were forecast to happen before the Estate Tax would be repealed

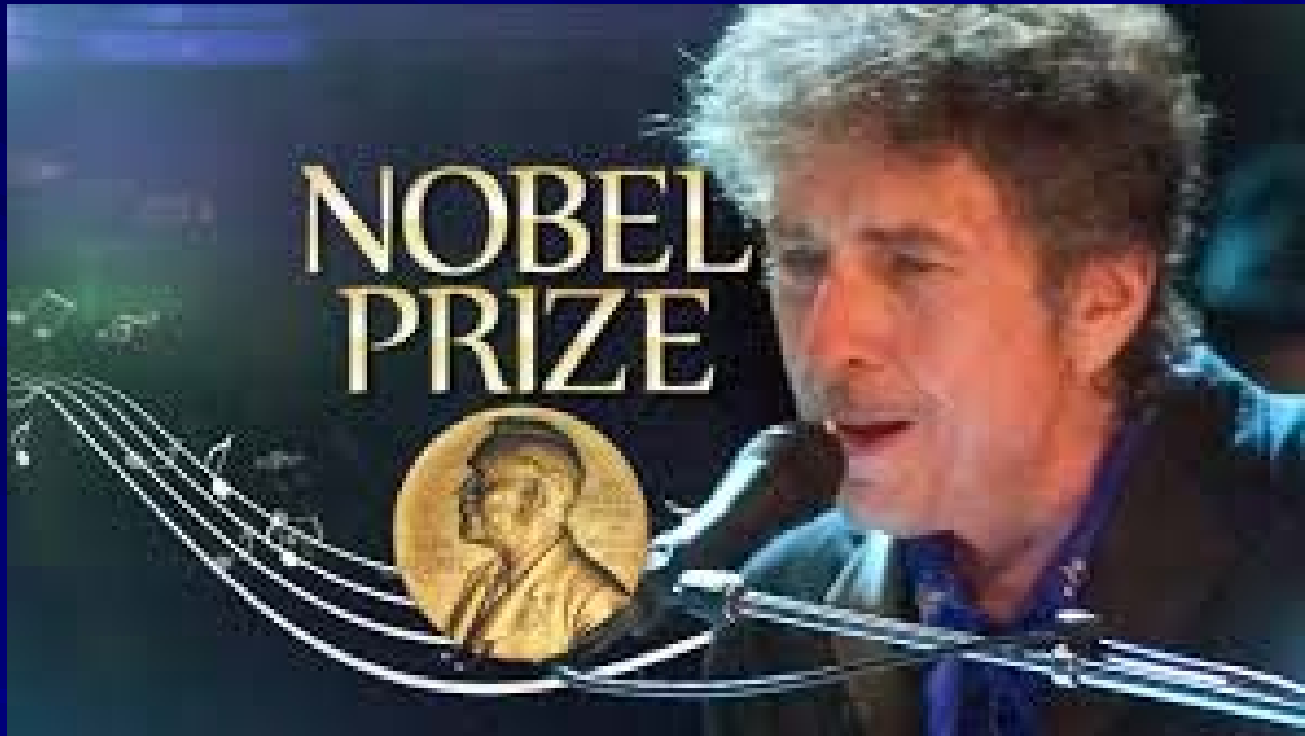
- Pigs would fly



# ■ Chicago Cubs would win the World Series



- Bob Dylan would win the Nobel Prize





# PRICKLY CITY

By Scott Stantis

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THE CUBS ARE  
WORLD CHAMPS.  
DONALD TRUMP IS  
ABOUT TO BE  
SWORN IN, AND  
YOU'RE TELLING  
ME THIS IS AN  
IMPOSSIBLE  
DREAM?



# **Impact of Possible Repeal of the Federal Estate Tax on Estate Planning**

# What is Estate Planning?

## Definition of Estate Planning

- Estate planning is the act of preparing for the transfer of a person's wealth and assets after his or her death. Assets, life insurance, pensions, real estate, cars, personal belongings, and debts are all part of one's estate.



# Impact of 2016 Federal Election

- Complete control by Republicans of Executive and Legislative Branches



# History of the Estate Tax

- The Stamp Act of 1797
- Tax Act of 1862
- The War Revenue Act of 1898
- The Modern Estate Tax of 1916

# The Estate Tax was 100 years old in 2016



Will the Estate Tax Survive until its:

101<sup>st</sup> birthday

102<sup>nd</sup> birthday



# Current Estate Tax Laws

- Estate Tax
- Gift Tax
- Generation-Skipping Tax

# The Possibility of Changes in the Estate Tax





## Trump's Plan from Website

“The Trump Plan will repeal the death tax, but capital gains held until death and valued over \$10 million will be subject to tax to exempt small business and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed.”

September 2016, Candidate Trump said:

“It ends the death tax. It’s a double taxation, a lot of families go through hell over the death tax.”

# Questions on Possible Repeal as Proposed by Candidate Trump

- Will all three taxes be repealed?
- Will the gift tax be retained?
- Will there be a step up in basis for assets passing at a decedent's death?
- Will a capital gains tax be imposed at death?
- Will there be a carry-over basis for appreciated assets at death?
- What are the charitable abuses?

# Republican Blueprint (June 23, 2016)



- Consolidates current seven (7) individual income tax brackets to three (3) brackets and lowers to top individual tax rate to 33%

- Basic rates of 6%, 12.5% and 16% on investment income
- Repeals estate and generation-skipping taxes

# Statements on Possible Repeal

“It will be a heavy lift but not insurmountable as has been with Obama in office.”

Palmer Schoening, President of Family Business Council



## Statements on Possible Repeal cont.

“I look forward to working President Elect Trump on legislation to permanently bury the death tax once and for all.”

Kevin Brady, Chair of the House Ways and Means Committee



## **Statements on Possible Repeal cont.**

“The death tax on family farms, small businesses, ranches and estates has crippled hard working families for far too long. It ought to be repealed, plan and simple.”

Orrin Hatch, Chair of the Senate Finance Committee



# Legislative Framework

- Need for 60 votes in the Senate to overcome filibuster
- Budget reconciliation (only 51 votes needed in Senate)
  - Limited in Duration
  - Will any Estate Tax Repeal be Permanent?

# Possibility of Repeal

- Some believe that the Estate Tax is already dead
- Others believe that the Estate Tax will survive
  - Complicated technical paths to permanent repeal
  - Middle class voters may not be excited about the Estate Tax

- Attractiveness of repeal may be blemished by keeping the gift tax or dealing with a new capital gains or basis regime
- Having it all with individual and corporate income tax will cost more
- May require political capital that the Congressional leadership and the Administration may decide to spend elsewhere





# Need for Estate Planning After Repeal

- Necessary to permit an individual to pass assets to his or her beneficiaries in the form that he or she would like
- Still need the basis documents: Will, Revocable Trust, Durable Power of Attorney and Health Care Power of Attorney

# Continued Use of Trusts – Non-Tax Benefits

- Spendthrift creditor protection
- Retention of control over the trust
- Protection against misuse of property and provide incentives to beneficiaries
- Limited partnerships and limited liability companies
- Placing property in trust may grandfather trust assets from future estate tax

# Protection of Settlers from Creditors

Domestic Asset Protection Trusts

Offshore Protection Trusts



# Lifetime Tax Planning will Continue if the Gift Tax is Not Repealed

- Irrevocable life insurance trusts
- Family limited partnerships and limited liability companies
- Split interest techniques to avoid gift tax or leverage exemption
  - GRATS
  - Qualified Personal Residence Trusts

# Income Tax Planning

- Personal Income Tax
- Corporate Income Tax
- Federal Fiduciary Income Tax
- State Income Taxation for Individuals and Trusts and Estates

# Charitable Planning

- Generosity of Americans
- Complexity of income tax deduction for charitable contributions
  - Percentage Limitations
  - Valuation Limitations
- Substantiation requirements



# Retirement Benefits

**Family Planning**

**Premarital Agreements**

**Elder Law Planning**

**Protection of Elderly  
Medicare and Medicaid Planning**

# Business Planning

- Advice on non-tax issues with respect to business succession planning

# Continuing Tax Issues

- Buy-sell agreements
- Redemptions of stock
- S Corporation advice
- Types of shareholders
- Types of trust that can hold S Corporation stock

# Trust Administration

# Changes to Trusts

- Uniform Trust Code
- Non-Judicial Settlement Agreements
- Decanting
- Reforms

# **Mediation or Arbitration to Resolve Fiduciary Issues**

# State Death Taxes

- Eighteen (18) states plus the District of Columbia have some form of state death tax
- New Jersey's tax expires in 2018
- Planning will have to be done in the states and the District with respect to the state death tax



# What to do Now?

# The Future

- Much more work will remain for estate planners no matter what happens in Congress
- If repeals occurs, the number of trusts and the value of assets in trusts will likely increase since gift and estate taxes do not have to be paid

# Repeal of the Estate Tax

Work to revise plans for several years

- Work dealing with possible capital gains tax at death
- Work dealing with possibly carry-over basis
- Planning will continue in those states with the state death tax



- Insurance will still be used for:
  - Income replacement
  - Ensuring that beneficiaries receive a minimum amount at the death of one or more insureds
  - Funding business strategies such as buy-sell agreements
  - Investment
  - Possible payment of Capital Gains Tax at Death

## Advice and counsel will still be needed in areas such as:

- Creditor protection
- Asset protection
- Business planning
- Income tax planning
- Elder law issues
- Retirement benefits
- Charitable planning

# The Future is Bright



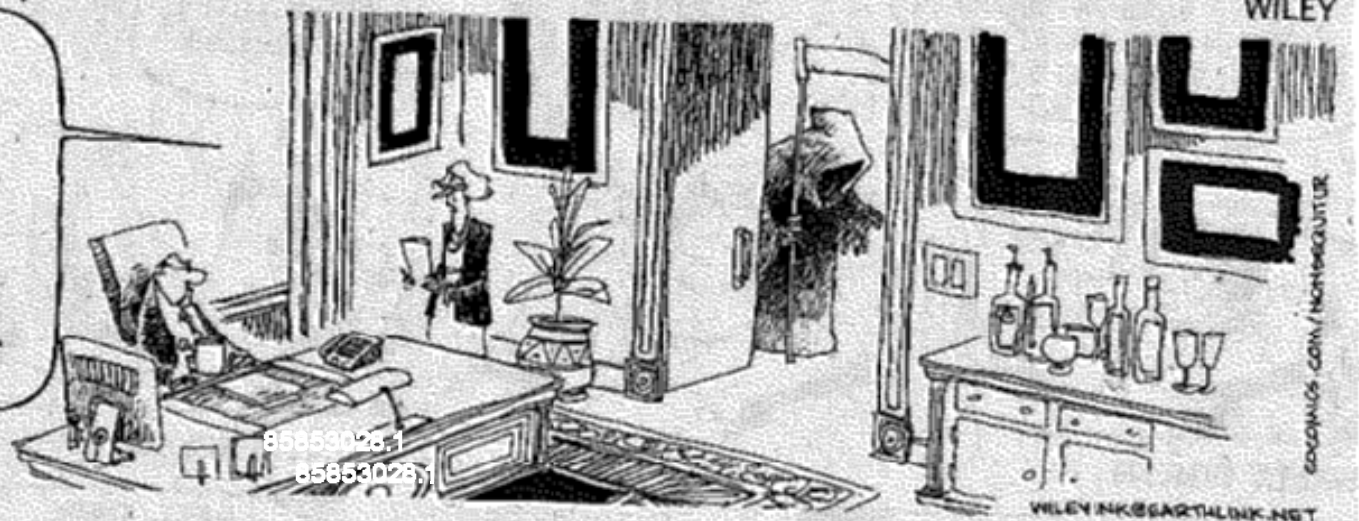
# NON SEQUITUR

FIRST, THE  
GOOD NEWS  
IS, YOUR  
ACCOUNTANT  
SAYS YOU  
STILL WON'T  
HAVE TO PAY  
ANY TAXES...

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