Navigating Uncertainty in Estate Planning:

A Look at Potential Tax Policy Changes Under a Harris or Trump Presidency

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As estate planners face a landscape marked by heightened uncertainty going into a Presidential election, they find an unusually stark contrast between the candidates on critical issues. The next administration will have a profound impact on tax and wealth transfer policies, shaping the direction of estate planning for years to come. While the instinct to wait for certainty is understandable, delaying crucial decisions could be a costly mistake. Now, more than ever, attorneys should proactively help clients through the potential changes ahead, ensuring they are prepared for shifting tax laws and new opportunities—regardless of which administration takes office.

This article examines potential tax policy changes under two hypothetical scenarios: a second Trump presidency or a Harris administration. By exploring these possibilities, the goal is to help planners stay proactive and prepared for future developments.

Estate Tax Exemption: A Key Consideration Current Law

Under the 2017 Tax Cuts and Jobs Act (TCJA), signed into law by President Trump, the estate and gift tax exemption is at a historic high. As of 2024, individuals can transfer up to $13.61 million ($27.22 million for married couples) without incurring federal estate or gift taxes. This unprecedented exemption is set to expire in 2026, reverting to pre-TCJA levels—approximately $7 million per individual.

Former President Trump has not released a fully detailed tax plan; however, he has floated several tax policy ideas. If Donald Trump were to regain the presidency, one of his top priorities could be extending the TCJA provisions or even increasing estate and gift tax exemptions. Trump has consistently advocated for lowering tax burdens on high-net-worth individuals and businesses. Trump has expressed interest in making the TCJA's tax cuts permanent, or even push for the complete elimination of the estate tax—a longstanding goal within certain Republican circles.

For estate planners, this would represent a continuation of the current favorable environment for high-net-worth clients. Tools such as irrevocable trusts, gifts, and family limited partnerships (FLPs) would remain essential in helping clients transfer wealth with minimal tax liability. Additionally, planners would have more flexibility in designing strategies that take full advantage of the high exemption limits.

A Harris Presidency, on the other hand, could pursue a more progressive tax agenda. Harris' tax policy is silent on whether the federal estate exemption would be lowered below the pre-TCJA levels. While she is generally aligned with the broader Democratic platform, which has floated proposals to significantly reduce the estate tax exemption, she has not expressed support for these proposals. Similarly, the Biden administration has not taken any steps to lower the exemption nor raise the top estate tax rate.

In the case where the exemption returns to pre-TCJA levels, estate planners would return to focus on strategies to minimize estate tax exposure for clients. This will not be a concern for the average American. But it is relevant for clients with more that $7 million in assets, or double that for a married couple. For these high-net worth individuals, accelerating gifting plans, strategies such as accelerating gifting plans, restructuring estate plans, and leveraging charitable donations would likely become crucial components of future planning. Irrevocable trusts would remain important, but planners would need to be mindful of how new regulations may affect their use.

Any changes to estate tax policy would need Congressional approval. Therefore, the future direction of estate tax policy will likely depend on which party holds control of Congress in the coming years.

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Shifting Estate Planning Priorities

Estate planning techniques are shaped not only by tax policy, but also by our clients' personal fears and goals. Chief among them are concerns about rising healthcare and long-term care costs. The Brookings Institute cites that health insurance is the largest component of non-wage compensation at 26%, and health care is one of the largest categories of consumer spending at 8.1%.[1]

Vice President Kamala Harris has advocated for expanding healthcare programs and strengthening the Affordable Care Act. This investment aims to significantly impact how individuals approach planning for long-term care needs. She seeks to permanently adopt tax credits introduced by the Biden administration that lower the cost of premiums for health plans sold on the ACA insurance exchange, capping lifesaving prescriptions and a $2,000 cap on out-of-pocket drugs for all Americans.[2] Economists speculate that increases in healthcare funding and enhanced social programs may reduce the need for Americans to earmark substantial portions of their estates for future care or family support.[3] Estate planners might find a decreased need to draft trusts specifically designed to cover a beneficiary's medical expenses.

Trump in 2019 signed an executive order that shifted the Medicare program toward private plans.[4] This Order expanded private contractive between beneficiaries and providers and restricted senior's choice of providers in Medicare Advantage. Trump has also remained critical of the ACA and advocates for repealing or replacing it. The combination of these policies could result in higher out-of-pocket costs, particularly for those with pre-existing conditions.[5] As a result, more individuals may seek supplemental insurance or increase their personal savings to address coverage gaps and the rising costs of care. Rising healthcare costs may lead clients to re-evaluate their estate planning goals including assessing the need for asset protection and eligibility for Medicaid.

Capital Gains Taxes and the Step-Up in Basis Rule

Another critical aspect of estate planning is how capital gains taxes are handled, particularly the "step-up in basis" rule. This provision allows heirs to reset the basis of inherited assets to their fair market value at the time of the decedent's death, thus minimizing capital gains taxes when those assets are sold.

Under a second Trump administration, it is likely that the step-up in basis would remain intact. Trump has historically supported policies that reduce the tax burden on investments and wealth transfers. The step-up in basis is particularly advantageous for families with significant real estate holdings, closely held businesses, or large stock portfolios.

A second Trump term could also see the continuation of relatively low capital gains tax rates, which currently max out at 20% for high-income individuals. This favorable tax environment would provide estate planners with more flexibility in designing strategies to defer or reduce taxes on appreciated assets.

A Harris Presidency could see the elimination or significant reform of the step-up in basis rule. Harris supports a plan to tax gains on assets owned at the original owner's death, with exemptions, including for assets inherited by a surviving spouse. Her tax plan also aims to tax the wealthiest Americans' investment gains before they sell the assets or die. Specifically, people with more than $100 million in wealth would pay at least 25% on the combination of their income and their unrealized capital gains.[6]

The elimination of the step-up in basis would fundamentally change estate planning. Heirs may face substantial capital gains taxes on inherited assets, calculated based on the difference between the original purchase price and the market value at the time of inheritance. For families with illiquid assets, such as real estate or closely held businesses, heirs might be compelled to sell assets to cover tax liabilities. To navigate these challenges effectively, estate planners should explore new strategies, such as lifetime gifting or the establishment of specialized trusts. By proactively addressing these concerns, we can significantly mitigate the impact of capital gains taxes, preserving both the value of the assets and the family's financial well-being for future generations.

Conclusion: Flexibility is Key

As the election results unfold, estate planners face both challenges and significant opportunities. Regardless of who takes office in 2025, strategic foresight remains paramount. By capitalizing on the current favorable tax environment and preparing for changes—such as reductions in exemptions or alterations to capital gains taxes—you can provide invaluable guidance to your clients. Now is the time for estate planners to embrace a proactive approach, focusing on flexible, adaptable plans that can accommodate potential changes in tax policy.

By looking forward, you will ensure that your clients remain well-prepared, no matter what the future holds. ■

[1] Bureau of Labor Statistics [BLS] 1980–2019b

[2] Kamalaharris.com/issues

[3] https://www.brookings.edu/articles/a-dozen-facts-about-the-economics-of-the-u-s-health-care-system/

[4] Executive Order 13890, Protecting and Improving Medicare for Our Nation's Seniors, October 3, 2019.

[5] Center on Budget and Policy Priorities. "Republican Health Coverage Proposals Would Increase Number of Uninsured, Raise People's Costs." September 2, 2024

[6] https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-cuts-taxes-for-working-families-and-makes-big-corporations-and-the-wealthy-pay-their-fair-share/