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Tax Reform in 2017
and its impact on estate planning

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"It's tough to make predictions, especially about the future."
Yogi Berra

"Tax reform is absolutely, totally, completely impossible, until 15 minutes before it happens."
Ron Wyden[1]

Here is a probable truth: Tax Reform is going to occur in 2017. We just don't know what the detailed provisions of Tax Reform are going to look like.

Donald Trump's campaign for the Presidency and his ultimate victory shocked most political professionals. It also caused many tax and estate planning professionals to finally examine the Republican proposals that they had largely ignored in the expectation that Donald Trump would lose the Presidential election and Democrats would gain control of the Senate.

There are two primary tax reform plans that have been advanced by the Republicans. First is Donald Trump's tax policy statement issued on September 15, 2016.[2] Second is "A Better Way" issued by Paul Ryan and the House Republican leadership on June 24, 2016.[3] Mr. Trump's proposed plan contains significant ambiguity. The House plan provides greater detail, but even that plan raises significant questions of what was intended.

The current expectation is that any major tax reform act will pass no later than Congress' recess in August 2017. This article will flesh out some of the possible tax changes that impact estate planning and provide what the author believes are certain truths that can be expected by taxpayers and their advisors.

The article will not significantly focus on the individual income tax or business tax impact of any ultimate tax reform. As with any major legislation, the initial proposals are not expected to fully reflect the final legislative product.

HISTORY[4]

The Estate Tax is Largely a Societal Tax, not a Federal Revenue Source.

It is helpful to have some sense of the history of federal transfer taxes.[5]

Federal taxes on legacies have been enacted five times in the history of the United States:

- From 1797 to 1802, a stamp tax on lega-

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cies was used to fund a naval buildup caused by a concern about French aggression toward the United States.

• From 1862 to 1870, a tax on legacies was used to fund the Civil War and the aftermath of the war.

• From 1894 to 1895, an income tax was imposed on gifts and inheritances, but the Supreme Court ruled that the tax was unconstitutional in 1895.[6]

• From 1898 to 1902, a tax on legacies was imposed to fund the Spanish-American War.

• The foundation of the present estate tax laws was enacted in 1916 to help fund World War I, but, as is true of many tax provisions, the estate tax was not repealed when its stated purpose was over.

As noted above, the tax on legacies had generally been justified as a temporary tax to fund military buildups or the cost of war. However, in the early 1900s arguments for the estate tax began to shift to a societal purpose as opposed to a revenue purpose. For example, in 1906 Theodore Roosevelt called for enactment of an estate tax as a *"progressive tax on all fortunes beyond a certain amount …. a tax so framed as to put it out of the power of the owner of one of these enormous fortunes to hand on more … to any one individual."*

The highest federal estate tax rate was 77% on estates exceeding $10.0 million from September 20, 1941, to January 1, 1977. The highest gift tax rate was 70% for lifetime gifts over $5.0 million made from 1977 to 1981.

Federal taxes have also been imposed on gifts, but, surprisingly, they have not always been adopted at the same time or at the same thresholds as federal taxes on legacies.[7] The adoptions include:

• From 1862 to 1870, federal taxes on gifts were used to fund the Civil War and its aftermath.

• From 1894 to 1895, an income tax was imposed on gifts until the law was ruled unconstitutional.

• From 1924 to 1926, the gift tax was imposed.

• From 1932 to the present time, the gift tax has been imposed. In 1932 the federal gift tax rate was set at 75% of the estate tax rate.

As a result of the significant imposition of estate and gift taxes, wealthy Americans started using tools such as generation-skipping trusts to minimize the imposition of transfer taxes as each generation passed away. The Tax Reform Act of 1976 adopted both a uniform estate and gift tax framework and a new generation-skipping transfer ("GST") tax. However, the GST tax imposed by the 1976 Act was so incomprehensible that there was a tacit agreement among lawyers, CPAs, and the IRS to ignore its provisions. In the Tax Reform Act of 1986, Congress retroactively repealed the 1976 GST rules and enacted new rules, which form the basis of the current GST tax. The retroactive appeal allowed anyone who paid a GST tax under the 1976 Act to seek a refund. Essentially, if taxpayers were crazy enough to have paid a GST tax under the complicated rules of the 1976 Act, they were permitted to ask for their money back.

CURRENT TRANSFER TAXES

Transfer Taxes Impact a Very Small Portion of Americans.

According to the Congressional Research Service, only 0.2% of all decedents are subject to a federal estate tax.[8] The annual revenue from transfer taxes has been approximately $17 to $19 billion in recent years. In 2015 this constituted 4,918 estates (out of approximately 2.5 million Americans who died that year), with 266 estates generating $7.4 billion. Today, transfer taxes raise less than one percent of the total federal revenue. The tax is often justified as a means of redistributing wealth and/or deterring the growth of successive generations of inherited wealth whose financial power could dominate the political and economic structure of the United States. But the estate tax has not achieved that goal. The U.S. retains the largest disparity in wealth of any major developed country.

One unexpected aspect of the significant increases in the transfer tax exemptions enacted by the American Taxpayer Relief Act of 2012 was that practitioners aggressively adopted techniques designed to increase the basis of assets—so the step-up in basis at the time of death provided greater income tax benefits to heirs. By having the larger value on capital assets, capital gain taxes on any sale were reduced and, by having a larger value on depreciable assets, the recipient heir had the ability to offset ordinary income by depreciation deductions.[9]

The IRS audit rates and recoveries are disproportionate to the small number of returns that are filed. The IRS reported that for the fiscal year ending September 30, 2012, the audit rate for an estate over $10 million dollars was 116%. For estates from $5 million to $10 million dollars, the audit rate was 58.6%. Every gift tax return and estate tax return is hand reviewed by IRS agents, most of whom are attorneys. In 2012 the IRS recommended $1.14 additional taxes from the audits, at an average assessment of $304,500 per return audited.

ESTATE TAX REPEAL

The Federal Estate Tax will be Repealed in 2017.

Both the House plan and the Trump plan provide for the elimination of estate taxes. It is not clear whether the elimination will be immediate or be phased in over time.

Given the expectation of an elimination of estate and GST taxes, a number of probable consequences will occur, including:

• In states that "piggyback" off the federal estate tax laws to compute their own state estate taxes, repeal of the federal laws would effectively eliminate the state's estate tax, unless the state's legislature adopts similar provisions.

• There will be a significant growth in dynastic, generation-skipping trusts designed to be grandfathered in the event of any re-adoption of the estate and GST tax.

• Most of the IRS lawyers working for the estate and gift tax division will be out of jobs in fairly short order. The author expects that many of these IRS personnel will transfer to the fiduciary income tax division—auditing the income taxation of trusts and estates. Fiduciary income taxation is the area that has received minimal review by the IRS. In the course of presentations that the author has done over the last three years, he has repeatedly asked audiences of tax professionals how many attendees had seen an income tax audit of an estate or trust. To date, one hand has been raised in a room.

• With the elimination of the federal estate tax, there will be a need to restructure estate-tax-driven techniques that no longer benefit the client or the client's family. However, clients need to be cognizant of the fact that reinstatement of the federal estate and GST taxes is a very real possibility.

• There may be a reduction in tax-driven charitable bequests (e.g., a reduction in bequests to charities of assets constituting income in respect of a decedent, which currently may be subject to both estate tax and income tax).

As noted below, the repeal of the federal estate tax has a cascading effect on other tax provisions.

REPEAL OF THE GST TAX

The GST Tax will be Repealed in 2017.

The GST tax largely exists as a backstop to the federal estate tax. Before 1976 GST trusts and direct transfers to younger generations were used to escape the estate tax. The repeal of the estate tax effectively makes the GST tax an unnecessary tax—if you assume that the repeal of the estate tax will be permanent. However, if estate tax elimination is a temporary act, retaining the GST tax might make sense to minimize the creation of grandfathered dynasty GST trusts created during the interim period. Such GST trusts may pass assets across successive generations without the imposition of any future estate tax. Republicans will be reluctant to admit that any estate tax repeal might be a temporary matter. As a consequence, the GST tax will probably be repealed.

THE IMPEDIMENTS TO PERMANENT TRANSFER TAX REFORM

The Elimination of the Federal Estate Tax and GST Tax will be Temporary.

There are a number of impediments to an adoption of "permanent" transfer tax reform, including:

First, a central issue on any enactment will be the budgetary impact of any legislation. The Trump plan is estimated to create a budget deficit of between $4.4 trillion and $5.9 trillion on a static basis over the following ten years.[10] The House Plan is estimated to have a deficit (based upon a static scoring model) of up to $2.4 trillion over the same period.[11] But as noted in *The Wall Street Journal* in November, "*Mr. Trump's plan exceeds $4 trillion over a decade and doesn't pay for itself, even under optimistic assumptions. Mr. Brady is aiming the smaller House plan to be deficit-neutral under dynamic scoring.*"[12] As a result, will the effective date of the bill be retroactive to January 1, 2017, or will it be phased in over a period of time in order to provide for less revenue loss?

Second, there is little question that Democrats will oppose the proposed Republican legislation and will filibuster the bill in the Senate. Such a filibuster could result in the Republicans adopting either a "nuclear option"[13] (i.e., eliminating the filibuster—perhaps limited to certain areas of legislation such as tax laws) or adoption of a reconciliation resolution to get around the filibuster and adopt legislation by a straight majority of votes. However, under the Byrd Rule, legislation that increases a federal deficit and which is adopted under reconciliation will have a limited life.

Third, ignoring any bipartisan fights, it will still be necessary for the Republican-controlled Congress and the President to come to agreement on the ultimate provisions of any tax reform bill. Those constituencies and businesses that will be adversely impacted by any proposed tax reform will be vigorously lobbying both Congress and the President to eliminate or reduce any adverse changes in the tax law (e.g., states with state income taxes will want to retain the itemized tax deduction for state income taxes for their residents). The resulting loss of revenue will create pressure on the timing, and the exceptions, limitations, and exclusions built into the provisions of any tax reform.

Last, ignoring any other issue, any elimination of a federal death tax will most likely be temporary because Democrats will vote some form of transfer taxes back into law when they gain control of the Presidency and Congress.

Two elements of the future re-imposition of an estate and GST tax should cause wealthy clients and their advisors to be actively planning in the interim:

- There is no assurance that Congress will reenact the current, high transfer tax exemptions (e.g., $5,490,000 per taxpayer in 2017).
- There is no assurance that any legislation will grandfather existing irrevocable estate planning documents (e.g., a dynasty GST trust created in 2018).

REPEAL OF THE GIFT TAX

The Federal Gift Tax will not be Repealed.

The expectation of the author is that the gift tax will not be eliminated. Neither the House plan nor the Trump plan mentions the gift tax. Maintaining the gift tax provides an easy method to avoid having high-income taxpayers make gifts of appreciated assets to donees in lower tax brackets, who then return the proceeds to the donor after the payment of a lower income tax. However, if the Congress retains the current high gift-tax exemption, this strategy will still work for many taxpayers. Moreover, the continued existence of a federal gift tax will make it harder for wealthy families to shelter their assets in GST trusts during the temporary elimination of the estate tax.

Other issues include:

- Whether the 2017 gift tax exemption of $5,490,000 (with an annual CPI increase) will be maintained; will the exemption be reduced to $1.0 million, or will the exemption be somewhere between those numbers?
- Will Congress retain, raise, or lower the 40% flat gift-tax rate?

REPEAL OF STEP-UP IN BASIS FOR INHERITED ASSETS

The Step-Up in Basis for Most Assets in a Decedent's Estate will be Repealed.

Given the expectation that the federal estate taxes will be eliminated, the related question that arises is whether or not the step-up in basis that occurs in death will be changed.[14] As the Congressional Research Service noted, "*the purpose of the step[-] up basis was to avoid double taxation*."[15] Arguably, if there is no federal estate tax, then there is no need for a step-up in basis to avoid double taxation.

Neither the House plan nor the Trump plan discusses the repeal of the step-up in basis rules. The Trump Plan provides that "*… capital gains held until death and valued over ten million dollars will be subject to tax to exempt small business and family farms.*" This ambiguous language raises at least two questions.

- Was it Trump's intent to impose a capital gain tax at the time of death, or is the capital gain tax imposed when an heir sells an inherited asset? The House Plan says, "*This Blueprint also will eliminate the estate tax and the generation-skipping transfer tax, so that the death of a family member or loved one no longer will be a taxable event*." The House plan would seem to indicate the House does not intend to make death a taxable event for income tax purposes, and, if the House's perspective triumphs, then heirs can manage the timing of any capital gains tax by when the asset is sold. However, it is possible that Congress will adopt a Canadian-like plan in which death is a capital gain taxable event.

• The second question is whether there will be at least a partial step-up in asset bases? Will there be a $10 million step-up to fair market value for all decedent estates, or would the step-up be limited to family farms and small businesses? The intent is not clear.

ADOPTION OF A REPLACEMENT TAX BASIS REGIME

Congress will Adopt Some Form of a Modified Carryover Basis for Inherited Assets, Probably Using Code Section 1022 as a Blueprint.

The Alternatives. If step-up in basis is repealed, what will replace it? There are at least four different possibilities with regard to how an heir could calculate the tax basis of an inherited asset:

• *The legislation could retain the rules that provide for a full step-up in basis on most inherited assets*. It is the author's expectation that there is very little likelihood of this occurring. Why? One of the unintended consequences of the higher transfer tax exemptions enacted in the American Taxpayer Relief Act of 2012 was the loss of income tax revenue created as a result of driving up the fair market value of inherited assets to obtain a higher post-death tax basis, reducing both income taxes and capital gain taxes on the heirs who inherited those assets.[16] By eliminating the step-up, tax revenues would increase, perhaps exceeding the loss of revenue of the estate tax repeal—all depending upon how the new tax basis rules are computed.

• *A step-up in basis could be permitted only for certain assets, such as family farms and small businesses*. The Trump plan alluded to such an idea in the above quote. Unfortunately, it is not clear what is being proposed by the Trump plan.

• *A carryover basis in which the recipient heir receives the exact basis that the decedent had in the asset*. In the author's view, this is also unlikely given past history of providing a higher basis adjustment for heirs, and the fact that the resulting higher tax would impact all heirs as opposed to only those who are affluent.

• *In the author's view, the more probable event is a modified carryover basis*. The modified carryover basis would probably provide for minimum floors to limit the impact on less wealthy families. For example, we might see a reinstatement of some version of Code Section 1022, which was adopted as part of the 2010 elimination of the federal estate tax.[17] That law provided a step-up in basis for up to $1.3 million dollars for non-spousal transfers and up to $3.0 million dollars for spousal transfers. There is also the possibility (given the Trump plan) that there would be other special exemptions (e.g., for family farms and businesses).

Issues with Modified Carryover Basis. There is a plethora of issues created by a modified carryover basis (the list will grow as details become apparent), including:

• To the extent the loses are allocable and some assets are not stepped-up up to their fair market value, conflict will arise among heirs over how the step-up in basis should be allocated among the heirs.

  • This potential conflict may result in the greater use of independent fiduciaries. Such decisions might be delegated to a special fiduciary whose role is to provide some tax basis fairness and equality among heirs.

  • Because of the inherent tax cost of an asset with a low carryover basis, estate planning documents may be drafted in a manner designed to try and equalize the net-after-tax value of assets passing to heirs (e.g., using cash to equalize the values). Such plans will be complicated and conflict laden.

• How is a bequeathed asset with an unrealized capital loss treated? Under Code Section 1015, the gift of an asset whose basis exceeds its fair market value results in the loss of the tax write-off to a non-spousal recipient. A similar provision was provided for in Code section 1022(a). This rule would encourage the sale of loss assets to heirs before the client's death or transfer of those assets to a surviving spouse before death.[18]

• What happens when clients who have negative basis property die? For example, assume an unmarried taxpayer passes away owning a single asset worth $1.0 million with a $100,000 tax basis and a secured debt of $800,000. The recognized gain on a sale would be $900,000, and assuming a federal effective tax rate of 20% and a 6% state tax rate, the tax cost on the sale would be $234,000 or $34,000 more than the property equity. Might this result in a cascading musical chairs game as each heir disclaims the asset to avoid going out of pocket to inherit the asset? Pity the poor first cousin who does not know why everyone else gave up the asset. This may be one of the reasons that Code section 1022(g) provides, "*In determining whether gain is recognized on the acquisition of property— (A) from a decedent by a decedent's estate or any beneficiary other than a tax-exempt beneficiary, and (B) from the decedent's estate by any beneficiary other than a tax-exempt beneficiary, <u>and in determining the adjusted basis of such property</u>, <u>liabilities in excess of basis shall be disregarded</u>.*" This rule would appear to effectively provide that the tax basis for inherited negative basis properties would be zero. Hopefully, something like section 1022(g) will be adopted in any final legislation.

• One of the greatest issues with carryover basis is the inability to properly determine the tax basis of a transferred asset. As noted previously, Code section 1015 provides that the donee receives the donor's adjusted tax basis. But the language of section 1015(a) offers an interesting planning possibility, "*If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner <u>shall be the fair market value of such property</u> as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner*" (emphasis added). Will Congress adopt something like the section 1015(a) exception, which allows a fair market value basis when a carryover basis cannot be properly determined? If that provision is not adopted, then clients who cannot reasonably determine the basis of an asset may want to gift the assets during their lifetime in order to take advantage of the 1015(a) exception.

OTHER UNKNOWNS IMPACTING ESTATE PLANNING

The Final Details of Tax Reform will add new Complexity to Estate Planning.

Effective Date. One essential but unknown factor is what will be the effective date of any tax reform. Will it be retroactive to January 1, 2017? Will it be effective upon enactment? Will tax provisions be phased in, with differing parts of the legislation having either different effective dates, or will they have expiration dates to reduce the adverse impact on the federal budget? Effective dates will be a central part of the upcoming Congressional horse trading.

Fiduciary Income Taxes. Under current law, in 2016 the ordinary income tax rate on trusts and estates reaches the top rate when the trust or estate has as little as $12,400 in undistributed taxable income. The reduction of individual income tax rates should also produce a reduction in the income tax rates for trusts and estates, but neither the House plan nor the Trump plan mentions the income taxation of estates and trusts.

TAX REFORM'S IMPACT ON CHARITIES

Charities will have to Retool their Planned Giving Approaches.

There is a number of ways in which charities may be impacted by 2017 tax reform, including (but certainly not limited to):

Will the reduced tax rates reduce charitable donations? While the reduction in the tax savings from charitable contributions may be reduced, studies have consistently indicated that most taxpayers are not driven by the tax benefits of charitable contributions.[19]

With the loss of an estate-tax-driven benefit of making charitable bequests, clients may consider bequeathing assets to heirs with the expectation that the heirs will make the charitable contributions and receive the concomitant income tax savings, or clients may make large donations during life to obtain a lifetime, income tax charitable deduction.[20]

HOW DO WE DO ESTATE PLANNING IN THIS EVOLVING ENVIRONMENT?

Estate Planning Needs to Continue While We Wait on Tax Reform .

Implementing Your Current Plan. Irrevocable planning in the face of temporary repeal is generally not advisable—at least until we know the contours of any changes. However, clients whose planning is not tax driven should implement their plans to make sure appropriate documents are in place in the event of an unexpected death or incapacity.

Lifetime Transfer of Assets. If the gift tax remains, and the estate and GST taxes are temporarily eliminated, wealthy clients will want to consider strategies to move assets into GST trusts and heirs' hands. Strategies in this new interim environment include:

• Discounting values will remain a critical part of estate planning. Contrary to the statements of some commenters, the controversial terms of the section 2704 regulations may remain because wealthy donors will want to discount the value of their gifted assets to preserve as much gift tax exemption as possible. It could also be possible that the Trump administration will revoke the section 2704 regulations.

• Discounting techniques like Charitable Lead Trusts and GRATs will increase.

• "Net Gift" planning, in which donees pay the gift taxes of the donor, convert the transaction into a part-sale/part-gift and can be used to drive down the effective gift tax rate.

• Sales to Defective Grantor Trusts will continue to be a useful tool in funding dynastic GST trusts.

Life Insurance. Given that any elimination of the estate tax will be temporary, clients should be reluctant to terminate any life insurance they hold or are purchasing. Heirs may need the insurance proceeds to cover reenacted estate taxes, and the insured may no longer be insurable at a reasonable cost when reenactment occurs. During the interim, the life insurance could be used to cover the cost of taxes on the sale of inherited assets or be used to equalize bequests among heirs (e.g., the son in the family business receives the business ownership, while the sister gets the life insurance proceeds).

WILL ESTATE PLANNING WORK DIMINISH?

Estate Planning Work Will be Increased by 2017 Tax Reform and Then Increased Again when the Estate and GST Taxes are Ultimately Re-Imposed.

The expected tax reform in 2017 is not going to decrease the work of estate planning professionals. Why? The elimination of the estate tax is not going to materially decrease the transfer tax work of most estate planning professionals. The new rules will require most affluent clients to reconsider their current estate plan in light of the temporary elimination of the federal estate and GST taxes. Moreover, planning for the tax basis of assets will start at lower thresholds than planning for an estate tax that applies to few taxpayers.

Other legal and demographic trends are going to radically increase the work of estate planning professionals through 2050. For a detailed, 37-page article on this subject, see: "Where is the Estate Planning Profession Going?", available at http://www.scrogginlaw.com/Scroggin-FurtureofEstatePlanning.pdf.

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FOOTNOTES

1 Democratic Chairman of the Senate Finance Committee, as reported in *The New York Times*, (November 7, 2014).

2 "Tax Reform That Will Make America Great Again," (September 14, 2016). https://www.donaldjtrump.com/positions/tax-reform.

3 "A Better Way, Our Vision for a Confident America: Tax" (June 24, 2016). http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf.

4 For more information, see: "*History, Present Law, And Analysis of the Federal Wealth Transfer Tax System*," Joint Committee on Taxation, (March 16, 2015) and "*A History of Federal Estate, Gift, and Generation-Skipping Taxes*," Congressional Research Service report (April 9, 2003).

5 Generally, federal "transfer taxes" refers to federal taxes imposed on bequests, on gifts and on generation-skipping transfers.

6 *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895), *affirmed on rehearing*, 158 U.S. 601 (1895).

7 For more information, see: David Joulfaian, "*The Federal Gift Tax: History, Law and Economics*," US Department of the Treasury OTA Paper 100 (November 2007).

8 "*The Estate and Gift Tax Provisions of the American Taxpayer Relief Act of 2012*" (February 15, 2013).

9 See: Richard Schmalbeck and Jay A. Soled, "*Estate Tax Relief and the Erosion of Capital Gains Tax Revenues,"* Tax Analyst (November 11, 2011).

10 See: Tax Foundation, "*Details and Analysis of the Donald Trump Tax Reform Plan*, September 2016" (September 19, 2016).

11 The Tax Foundation's analysis of the House Plan states, "*The plan would reduce federal revenue by $2.4 trillion over the first decade on a static basis. However, due to the larger economy and the broader tax base, the plan would reduce revenue by $191 billion over the first decade*." See: Tax Foundation, "Details and Analysis of the 2016 House Republican Tax Reform Plan" (July 5, 2016).

12 Richard Rubin, "After Years of Turmoil, Republican Tax Overhaul Picks Up Speed," *The Wall Street Journal* (November 20, 2016).

13 The "nuclear option" was a phrase coined by Senator Trent Lott to describe the full or partial elimination of the rights of a minority party to filibuster in the Senate. Filibuster is not a statutory or constitutional right. Rather it is a traditional right of minority parties in the Senate. For more information on the history of the filibuster and the nuclear option, see: https://en.wikipedia.org/wiki/Filibuster and https://en.wikipedia.org/wiki/Nuclear_option.

14 See Tax Code section 1014.

15 "*A History of Federal Estate, Gift, and Generation-Skipping Taxes*," Congressional Research Service report, page CRS-28 (April 9, 2003).

16 See: Richard Schmalbeck and Jay A. Soled, "Estate Tax Relief and the Erosion of Capital Gains Tax Revenues," Tax Analyst (November 11, 2011).

17 See: The Economic Growth and Tax Relief Act of 2001.

18 Pursuant to Tax Code sections 1015(e) and 1041(b), a spouse who is gifted an asset by a spouse receives the donor/spouse's tax basis for purposes of computing both gain and loss.

19 C.f., Andrew Blackman, "*The Surprising Relationship Between Taxes and Charitable Giving*," *The Wall Street Journal* (December 12, 2015).

20 But note that any charitable contribution carryover cannot be used by the decedent's estate or heirs. See: Rev. Rul. 74-175, 1974-1 CB 52. A surviving spouse may be able to use the carryover on the couple's final joint income tax return.

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