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Elder Law: Every election changes something for financial planning

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"No matter whether the Constitution follows the flag or not, the Supreme Court follows the election returns." — columnist Finley Peter Dunne (1867-1936)

Well, even if the Supreme Court doesn't (for example, who knows what will happen with Affordable Care Act), we should try to — relative to our estate and financial planning — for the next few years.

To quote another wise man, Benjamin Franklin (1706-1790), "nothing can be said to be certain, except death and taxes." Certainly nothing has changed in that regard. But under the Biden administration, it looks as though the details will.

Here we take a look at some of the potential changes.

Our national debt is now $27 trillion dollars (over $82,000 per citizen), more than it has been since the end of World War II. One would think that this debt has to be serviced at some point in time. And taxes are what service it.

Most of the known tax proposals put forth by President-elect Joe Biden would affect, at least initially, corporations and those individuals earning over $400,000, who represent the top 1.8% of taxpayers, earning about 25% of the nation's income. Not a whole lot of people, but a fair amount of money.

At present, the 2020 gift and estate tax exemptions from federal taxation of $11.58 million per person and $23.16 million per couple are set to expire and revert back to the pre-2018 $5 million per person and $10 million per couple amounts in 2025.

OK, we recognize that not many of us are too concerned about being in a worry category about those amounts. However, it's now quite possible that those amounts could be changed back to their 2009 level of $3.5 million, with a graduated tax rate up to 77%, compared to today's flat 40% rate. There has even been discussion about lowering the exemptions to $1 million.

As to capital gains taxes which are set at lower rates than ordinary income rates, Mr. Biden might require that people who inherit appreciated assets pay income taxes on those unrealized gains.

Presently, these assets get what's called a "step up in basis." That is, those who inherit those assets have to pay income taxes only if they sell them and then only on the gains since the prior owner's death.

How many people might be adversely affected? Not necessarily a whole lot. And any of these changes will require co-operation between the president-elect and Congress. How likely will that be?

Let's now look at more immediate tax concerns and some possible options before year end.

The biggest immediate tax impact will be the reinstitution of required minimum distributions (RMDs), which were waived for

2020. These are the amount of money that must be withdrawn from a traditional, simplified employee pension (SEP) or SIMPLE IRA account by owners and qualified retirement plan participants by April 1 following the year that the account holder reaches age 72.

In addition, the IRS recently issued proposed regulations for new required minimum distribution tables — decreasing the amounts necessary to be withdrawn because of increasing life expectancies. We have previously written about the Secure Act and the elimination of the “Stretch IRA” for most beneficiaries.

The beginning points for most of us are: How much money do you need to live; how well you want to live; how can/will you generate the income to attain/maintain that lifestyle; what kind of assets do you have; how healthy you are or think you will be in the near and far future; and, quite importantly, what are your gifting objectives, if any?

A lot to consider. The sooner you consider these issues, hopefully the higher the comfort level you can have.

So, for some year-end planning, here are some thoughts as to minimizing tax hits to your beneficiaries and maybe to you:

1. Roth IRA conversions — Convert a portion of your individual retirement account to a Roth IRA, paying the taxes now while giving your beneficiaries a tax-free sum of money when you die.

2. Qualified charitable distributions — Rather than take all or a portion of your required minimum distribution (up to $100,000) yourself, direct that amount to a charity or charities of your choice, thus avoiding taking that money as taxable income.

3. Life insurance — You might want to take required minimum distribution funds even greater than that amount which you are required to take and use some to purchase life insurance, which at your death would be tax-free to the beneficiary.

4. Gifting — You can give up to $15,000 each year to as many individuals as you wish tax-free — to you and to them. This can decrease the amount of your taxable estate while at the same time benefitting now people you wanted to benefit under your will. In addition, you can direct any amount you want, directly for education and/or health care expenses, to institutions providing those services.

5. Estate planning — As we always preach, review your estate planning documents to ensure that they follow your wishes as to beneficiaries and agents and that they are consistent with your present wishes.

Enjoy a safe and healthy Thanksgiving!

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