Biden's 2024 Green Book Tax Proposals, the Sunset and What it Means for Private Wealth Clients

A Trust & Estate Planning Alert for Our Clients, Their Families and Professional Advisors

by

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Every year the White House releases its fiscal year budget, commonly referred to as the "Green Book," which explains the revenue proposals in the President's budget and whereby the administration shares its plans, vision and rationale of tax policy changes it seeks to implement, along with the Treasury's revenue projections.[1] In its 2024 Green Book released in March, the White House described the Green Book as "clos[ing] tax loopholes for the wealthy and cracking down on tax cheats by proposing additional tax reforms that would ensure wealthy corporations pay their fair share."[2] The breadth and depth of the proposals it contains are ambitious and could carry far and lasting potential implications for many taxpayers and their families. Some of these ideas and proposals have been discussed and suggested before by previous administrations and politicians, and it now appears the Biden administration will be trying to pass them in the coming weeks and months.

At the very same time, the Administration and Congress are at odds once again over the 2024 Budget, and whether to raise the debt ceiling again v. facing another potential government shutdown. President Biden and Speaker of the House McCarthy have had multiple private meetings to discuss the 2024 Budget and they each have publicly made their pledge to continue discussions to negotiate the 2024 Budget. In fact, recently, after a meeting on May 16th, Speaker of the House McCarthy told reporters the two sides remained far apart on an agreement to lift the debt ceiling. But he said, "It is possible to get a deal by the end of the week. It's not that difficult to get to an agreement." [3] After yet another meeting that same week, Speaker McCarthy did not seem nearly as optimistic; however, President Biden attending the G-7 Summit in Japan this past Saturday, stating he was "not at all" concerned about the state of the talks. "I still believe we'll be able to avoid a default, and we'll get something decent done," President Biden said.[4]

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[1] See General Explanations of the Administration's Revenue Proposals for Fiscal Year 2024 (treasury.gov)
[2] Ibid
[3] Reuters, Biden, McCarthy hopeful on debt ceiling deal, US president cuts Asia trip short | Reuters
[4] NPR, White House-McCarthy debt ceiling talks resume after snag : NPR

It seems inevitable that there will be some horse-trading and compromises to get a new budget deal finalized, and it is very uncertain what the impact will be on wealthy families and the estate planning techniques they have used for decades – and in some cases for centuries. As one leading estate and gift tax expert attorney recently stated in discussing his own observations of what the Green Book proposals mean for taxpayers: "They must do a deal [on the Green Book proposals] because they need to have a deal on the budget," adding, "Something is going to get done and some of these proposals will come into law," adding, "The two things that shouldn't be seen while they are being made are sausages and laws."[5]

Some of the more important proposed changes contained in the Green Book that if passed will have a profound impact on most private wealth clients, their families and their advisors include:

A Massive Expansion of Reporting for Trusts. Just like with The Corporate Transparency Act[6], whereby the United States is in many ways following other countries of the world to have more corporate transparency and becomes effective in 2024, the Green Book similarly proposes a massive extension of reporting regulations for the vast majority of trusts in existence, and not just the large ones.[7] The IRS states in the Green Book that "The IRS *has no idea* the amount or magnitude of wealth held in trusts."[8] (emphasis added). As such, the new proposal will require trusts to report (1) a general estimation of the value of a trust, and also (2) the name and address and social security number of *every* grantor and trustee of the trust. [9] This is likely to have a very chilling effect on grantors and trustees who established these trusts because of the privacy current law has afforded them for centuries.

A Major Estate and Gift Tax Planning Strategy, the Grantor Trust, Will No Longer Be Attractive. The Green Book makes multiple changes to grantor trusts to such an extent that most clients will no longer use the strategy after enactment.

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[5] A First Look at the Radical Estate Tax Changes Contained in the Biden 2024 Budget: Urgent Impact on High Net Worth Families! Webinar, Leimberg Information Services, Inc., February 2023 (Jonathan Blattmacher quoting Otto Von Bismark in the second quote)(the "Leimberg Information Systems, Inc. First Look")

[6] The Corporate Transparency Act, Federal Register Vol. 87, Nov. 189, Beneficial Ownership Information Reporting Requirements (Sept. 30, 2022), https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf.

[7] Leimberg Information Services, Inc. First Look

[8] General Explanations of the Administration's Revenue Proposals for Fiscal Year 2024 (treasury.gov)

[9] Ibid

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The End of Family Discounts. Under the proposal, there will no longer be discounts to the value of a partial interest in non-publicly traded property. If the family owns 25% or more of any such property or businesses, there will be no discounts since the "family" will now be treated as a whole. Regarding publicly traded or passively owned securities or ownership interests, there will be no discounts allowed either. The proposal is unclear how "family" will be defined.

A Cap on the Amount You Can Make in Annual Gifts. The IRS has been fighting annual gifting for years. Now, under the Green Book proposals, annual gifts would be capped at $50k total *per donor*, not per donee. So clients who for years have made or want to start making annual gifts to help our their children or grandchildren during life will be severely restricted from doing so if they want to make gifts to three (3) or more persons.

Expansion of the Role, and Responsibility and Liability of Executor(s)/Personal Representative(s). This seemingly administrative provision will have quite significant immediate impact on anyone serving as a Personal Representative or Executor, now or in the future, leaving many unanswered questions such as: How much responsibility will the Personal Representative/Executor now have? What about foreign assets and reporting, which carry significant civil and potentially criminal penalties? Who will want to serve in this role if these changes take effect and become law?[10]

Attack on Generation Skipping. The proposals as a matter of policy do not believe that dynasty trusts that avoid estate trust tax beyond a taxpayer's grandchildren should be allowed. Right now if you are very careful you can protect yourself, and your great-grandchildren, and further generations in many states.

Restriction of Some Charitable Giving Techniques. The Green Book suggests restrictions on a popular form of charitable giving, the Charitable Lead Trust, a strategy where the donor client provides a current interest in property to a charity for a term of years or for life, with the remainder interest to return to the family.

Loan to a Trust to Be Taxed and Possibly Subject to Generation Skipping Tax. Under the new proposals, such a loan to a trust will carry out distributable net income (DNI) and possibly be subject to Generation Skipping Tax (GST).

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[10] Leimberg Information Services, Inc. First Look

Recommendations

1. **Set up a meeting with us NOW to discuss how the Green Book proposals might affect your particular situation.** Assume that a significant number of the many proposed Green Book changes will be coming in a matter of weeks, not just months, and as soon as June or July. If you schedule now, we should have sufficient time to analyze your particular situation and look at the best possible ways to get grandfathered in and save lots of money, heartache and headache in the future.[11]

2. **Consider creating an irrevocable grantor trust now for your family while you still can.** This should allow you to minimize your taxable estate and to shift any growth or appreciation to the next generation and/or to your desired charitable organization. There is no downside to creating such a trust. In fact, regardless of wealth and the estate and gift tax benefits, most families should consider having such a trust for the asset protection benefits it affords the family alone. In Florida, we have asset protection statutes that are quite strong and Floridians need not necessarily go to other jurisdictions to find more favorable asset protection statutes and laws.

3. **Remember the Sunset and plan ahead as early as you can in 2023.**
   - ✓ Under the Tax Cuts and Job Cuts Act of 2017, the estate tax exemption (currently $12.92 million for individuals and $25.84 million for married couples in 2023) returns to its pre-2017 level of $5 million, adjusted for inflation. The IRS has stated that "Making large gifts now won't harm estate after 2025."[12]
   - ✓ 2025 is coming sooner than you think. 2023 should be the year of planning, especially with the Green Book proposals out there.
   - ✓ Proper planning takes time, focus and organization. Waiting is much more stressful and expensive, both from a business perspective, and with the sunset coming, potentially from a net after tax family wealth perspective for those who do not plan under current law.

[11] Leimberg Information Services, Inc. First Look
[12] Internal Revenue Service, Estate and Gift Tax FAQs | Internal Revenue Service (irs.gov)

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