CARLTON FIELDS

Tax Alert: Administration's Proposed Tax on Dynasty Trusts

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The Obama Administration's 2013 revenue proposals would limit the duration of the generation-skipping transfer ("GST") tax exemption. Under current law, a person has a lifetime GST exemption ($5,120,000 in 2012) which can be allocated to all gifts in trust. Many states have repealed or limited the Rule Against Perpetuities, so that trusts may continue forever. For example, Florida allows trusts to last for up to 360 years. These trusts, commonly referred to as "dynasty trusts," are a popular estate planning technique. By placing up to $5,120,000 of assets in a dynasty trust, and allocating the available GST tax exemption to the gift in trust, the assets of the trust can be held in trust without any further gift, estate or generation skipping transfer taxes from generation to generation. The Obama proposal would tax a trust on the value of all of its assets at the new 45% estate tax rate every 90 years. However, a trust created and funded before the enactment of the new law will be grandfathered and forever exempt from the new GST tax. The proposed change to limit the use of dynasty trusts, coupled with the additional proposal to reduce the gift tax exemption back to the 2009 level of $1,000,000 from the $5,120,000 available for this year, creates a sense of urgency for anyone thinking of making a gift in trust during the remainder of 2012. In order to take advantage of the current treatment of dynasty trusts, these gifts should be made prior to the enactment of the proposed legislation which may occur by the end of the 2012 year. While it is by no means certain that the Obama proposal to tax dynasty trusts will be enacted, we recommend that you consider making a gift to a dynasty trust, ***even if it is of a small amount***, as soon as possible to take advantage of having a dynasty trust that can be exempted from the proposed limitation on dynasty trusts, which would tax the trust every 90 years. Most importantly, once a GST exempt dynasty trust is in place, it can be used as a platform for estate planning that one may do in the future without having to worry about exposing a trust to an estate tax every 90 years. Furthermore, with the proposal to limit the gift tax exemption to $1,000,000, anyone considering gifts in trust in excess of $1,000,000 should also take advantage of the limited opportunity for the remainder of the 2012 year. If you have any questions regarding this alert and need assistance in implementing your gift, please contact a member of our Wealth Preservation Group.

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