Year-End Planning Letter: Post-Election Version

2020 continues to be a tumultuous year. November 3 may have past, but the ramifications of the election are still to be determined. While Joe Biden is the President-elect which party organizes the Senate will not be clear until the Georgia runoff elections on January 5th. With narrower majorities in both houses it will be important for legislative proposals to be bipartisan and much of what the next Administration hopes to accomplish may have to wait until after the elections in 2022.

Several additional factors can impact key tax and charitable planning decisions this year-end. While the COVID-19 pandemic continues to affect virtually all aspects of the economy, House and Senate leaders remain at loggerheads in crafting additional COVID relief that might include new tax provisions. Congress needs to pass funding legislation by mid-December to avert a government shutdown. States and local governments face unprecedented fiscal crises that also could lead to new or larger tax burdens to balance their budgets.

While passage of the Biden Administration's tax program remains uncertain, it revolves around several important tax changes that are targeted to individuals with incomes greater than $400,000 and especially those with incomes over $1 million. The Biden plan contemplates re-imposing a top income tax rate of 39.6 percent above $400,000 and taxing capital gains and dividends at ordinary income tax rates for those with incomes over $1 million.

In addition, the Biden plan would cap the value of itemized deductions (including the charitable contribution deduction for those who itemize) at 28 percent. The estate tax rate might increase from 40% to 45% and the estate and gift tax exemption amount could be reduced to as low as $3.5 million (rates and amounts that were in place in 2009). Other significant estate tax changes such as the elimination of the stepped-up basis at death (or imposition of a tax on unrealized gain on a decedent's final tax return) could also be part of a Biden plan.

It is unlikely that even if any of these proposed changes were enacted they would be effective until sometime late in 2021 or tax year 2022.

Some of the key considerations for year-end decisions include:

- **Perhaps the tried and true year-end tax planning mantra prevails:** Consider deferring income and accelerating deductions where appropriate to reduce the current year's tax bill.

- **Certain tax provisions enacted in 2020 could be most beneficial:** The CARES Act enables the current deduction of up to 100 percent of adjusted gross income for cash gifts to charity (other than to donor-advised funds, supporting organizations, and private foundations). Individuals considering large cash donations may find this one-year expansion of the AGI limitation particularly beneficial.

- **Don't forget about the IRA charitable rollover:** The IRA charitable rollover remains an attractive alternative to those over age 70½ who may not otherwise be able to itemize their deductions and claim a tax benefit from a charitable contribution. Keep in mind Congress has suspended the pension rules which impose "required minimum distribution" requirements for 2020 in response to the COVID crisis, yet rollover contributions to qualified charities still could make sense for some, especially who have used such contributions as a form of annual support for favored charitable organizations.

- **Use appreciated assets when possible to make a gift:** Donating stock or other appreciated capital assets remains a best practice. You avoid capital gains tax on the appreciation, and you can qualify for a charitable contribution deduction for the full fair market value of the shares or other assets as of the date of contribution. With the current rally in the stock market, such assets could be prime candidates for donation at year-end.

- **Other charitable planning strategies might make sense:** In addition to gifting long-term appreciated securities, there are several other charitable planning strategies that can be beneficial. For example, consider establishing a (or adding to an existing) donor-advised fund at the Federation and take advantage of an immediate charitable tax deduction and then recommend grants from the fund over time. Other charitable giving vehicles including a charitable lead trust, especially as interest rates remain low. A CLT is an irrevocable trust that benefits charity and the non-charitable beneficiaries such as family.

- **Some wealth transfer strategies may be appropriate, especially as interest rates remain low:** It may make sense to engage in certain wealth transfer or gift transactions before year-end to take advantage of the higher estate and gift exemption amount. There are a number of estate planning techniques that can be utilized including using gifts or sales of property expected to produce income or increase in value to remove existing or future wealth from the donor's transfer tax base.

As with any significant tax and charitable planning, it is always advisable to carefully consider potential changes in the context of your complete financial profile.

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