What Physicians and Advisors Can Expect Under the Trump Administration – Plan Now to Best Thrive with Changes in Health Law, Taxation and Related Areas of Concern

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The authors thank Edwin P. Morrow, III for use of some of his tax PowerPoints.

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

"Those who cannot remember the past are condemned to repeat it." --- George Santayana

"If you're not confused, you're not paying attention." --- Tom Peters (from the book Thriving on Chaos)

- HEADLINE NEWS -

- Trump disagrees with Republicans on taxing foreign imports.

- Trump disagrees with Republicans on health care issues.

Trump, House Republicans may butt heads on tax plan [Published January 16, 2017 – FoxNews.com]

"Anytime I hear border adjustment, I don't love it," he told The Wall Street Journal. "Because usually it means we're going to get adjusted into a bad deal. That's what happens."

The border adjustment tax plan is one of the most controversial parts of the House Republicans' tax plan. The measure is reportedly part of a broader plan to encourage companies to locate jobs and production in the U.S.

TRANSITION TO TRUMP

"If you take out the border adjustment, you have to really think about an entirely different reform," Kyle Pomerleau, director of federal projects at the Tax Foundation, a conservative leaning group in Washington, told the paper.

Foreign companies that import goods to the U.S. would have to pay the tax, increasing the cost of imports.

Exporters love the idea. But importers, including big retailers and consumer electronics firms, say it could lead to steep price increases on consumer goods. The lobbying has already begun.

Koch Industries Inc., said last month that the measure could be "devastating" for the economy. The Journal, citing independent analyses, said the tax plan would lead the dollar to appreciate, which would offset the cost for retailers.

Under current law, the United States taxes the profits of U.S.-based companies, even if the money is made overseas. However, taxes on foreign income are deferred until a company either reinvests the profits in the U.S. or distributes them to shareholders.

Critics say the system encourages U.S.-based corporations to invest profits overseas or, more dramatically, to shift operations and jobs abroad to avoid U.S. taxes.

House Republicans want to scrap America's worldwide tax system and replace it with a tax that is based on where a firm's products are consumed, rather than where they are produced. (*The Associated Press contributed to this report.)*

Medical Economics
SMARTER BUSINESS. BETTER PATIENT CARE.

Physicians react to Trump's new vaccination safety committee

January 11, 2017 | By Medical Economics staff

On Tuesday, noted vaccine skeptic Robert F. Kennedy, Jr., walked into Trump Tower to meet with President-elect Donald Trump. He walked out as the head of a new commission studying the development and safety of vaccinations.

Kennedy, a nephew of former President John F. Kennedy, told reporters following the meeting that the president-elect had asked him to chair a new government commission on vaccine safety and scientific integrity. (A Trump spokesperson said later on Twitter that "Trump is considering a 'committee on Autism' but "no decisions have been made.")

Kennedy is widely known as a proponent of the theory that vaccinations are linked to autism.

The controversy comes on the heels of another recent vaccine-related uproar, this one stemming from a blog post written by Daniel Neides, MD, medical director of the Cleveland Clinic Wellness Institute. Neides wrote that "newborns…are being over-burdened with preservatives and adjuvants in the vaccines" and claimed that the formaldehyde in a flu shot made him ill. The Clinic responded on Twitter, saying in part "We fully support vaccines to protect patients & employees. Statements made by our physician do not reflect the position of Cleveland Clinic."

Reaction to Kennedy's appointment was swift in the medical community, including from the American Academy of Pediatrics, whose leadership issued a statement reiterating the safety of vaccinations to protect children's health and save lives. "Vaccines are safe. Vaccines are effective. Vaccines save lives," the statement read in part.

The American Medical Association also weighed in with its concern about the new commission through a statement by its board chair, Patrice A. Harris, MD, noting the new body, "would cause unnecessary confusion and adversely impact parental decision-making and immunization practices."

Medical Economics sought the opinions of some of its readers on the topic as well. Here's what they had to say:

"Frankly, words fail me. The medical community takes vaccine safety incredibly seriously. … It can get absolutely exhausting on the ground trying to convince and reassure parents about how safe and effective vaccines are. Thimerosal and vaccines are not linked with autism. This isn't a question and this hasn't been a question for years. The literature and the scientific consensus are as strong as they get… Giving a national, public platform to a prominent critic of vaccines and vaccine policy is basically a slap in the face to the scientific and medical communities."

Dennis Z. Kuo, MD, MHS
Primary care physician, Buffalo, New York
Associate professor, University at Buffalo
Chief, Division of General Pediatrics
UBMD Pediatrics / Women & Children's Hospital of Buffalo

"At least Trump is consistently acting like an idiot. …Not many rays of sunlight in his grim microcosm."

JT Bakos, MD
Internal Medicine
Roseville, California

Introduction

- Tax legislation normally occurs in September through November, to be effective the following year. Congress normally breaks in August. That may be the soonest that comprehensive tax law changes occur.

- Its is possible for tax legislation to occur earlier in the year, and to be retroactive, or only prospective.
- There are four (4) primary taxes for discussion
  - Federal Income Tax
    - Present highest rate reaches 39.6% at $415,051 for a single person and $466,951 for married filing jointly.

  - The 3.8% Net Investment Income Tax (Medicare Tax) for most income exceeding $200,000 if single and $250,000 if married filing jointly.
    - S-corporation dividends are not subject to this tax.

  - FICA Taxes
    - Social Security Taxes - 6.2% for the employer and 6.2% for the employee (12.4% total) on up to $118,500 of wages.
    - Medicare Taxes - 1.45% for the employer and 1.45% for the employee (2.9% total).
    - An additional Medicare tax of 0.9% applies on wages in excess of $200,000 for single filers and $250,000 if married filing jointly.

  - Federal estate tax on assets exceeding $5,490,000 per spouse.
    - Also applies to lifetime gifts that cumulatively exceed the above.

Introduction

- Middle class voters are not concerned with the 3.8% Net Investment Income Tax (Medicare tax) and with the federal estate tax.

- An early move to repeal federal estate tax would enable Trump’s opposition to claim that he is really doing this primarily for himself and his “billionaire friends.”

- All tax reduction will likely be significantly delayed by filibuster unless or until sufficient Democrats are brought onboard by some sort of compromise so that there are 60 of the 100 Senators in agreement.
- Under the Byrd Rule, unless 60 of 100 Senators agree with changes related to the budget, then such changes will “sunset” in ten years, similar to what occurred with the Bush Tax Cuts in 2010.
- If President Trump spends his political capital on building the wall, dismantling Obamacare, trade agreements, and other “hot button” items, how much capital will he have left for reducing taxes on the wealthy?

Will Changes Apply for the 2017 Tax Year?

- With the exception of a few provisions, the majority of The Tax Reform Act of 1986, which was signed by Ronald Reagan on October 22, 1986, were made effective for taxable years beginning after December 31, 1986.

- While the majority of the provisions of the Bush Tax Cuts of 2001 and 2003 were designed to be phased in over time, certain cuts took effect for year in which the bill was signed.

- It is possible that Trump's tax plan could be enacted and effective for the 2017 tax year, but time will tell what Congress can get done in 2017.

Trump on Estate and Gift Tax Reform

- Trump (along with majority of Republicans in Congress) proposes to eliminate the estate and generation skipping transfer taxes.

- Most Republican proposals on estate tax keep the gift tax intact to avoid gaming the income tax system through unlimited tax-free gifts. Trump has not made mention of the gift tax.

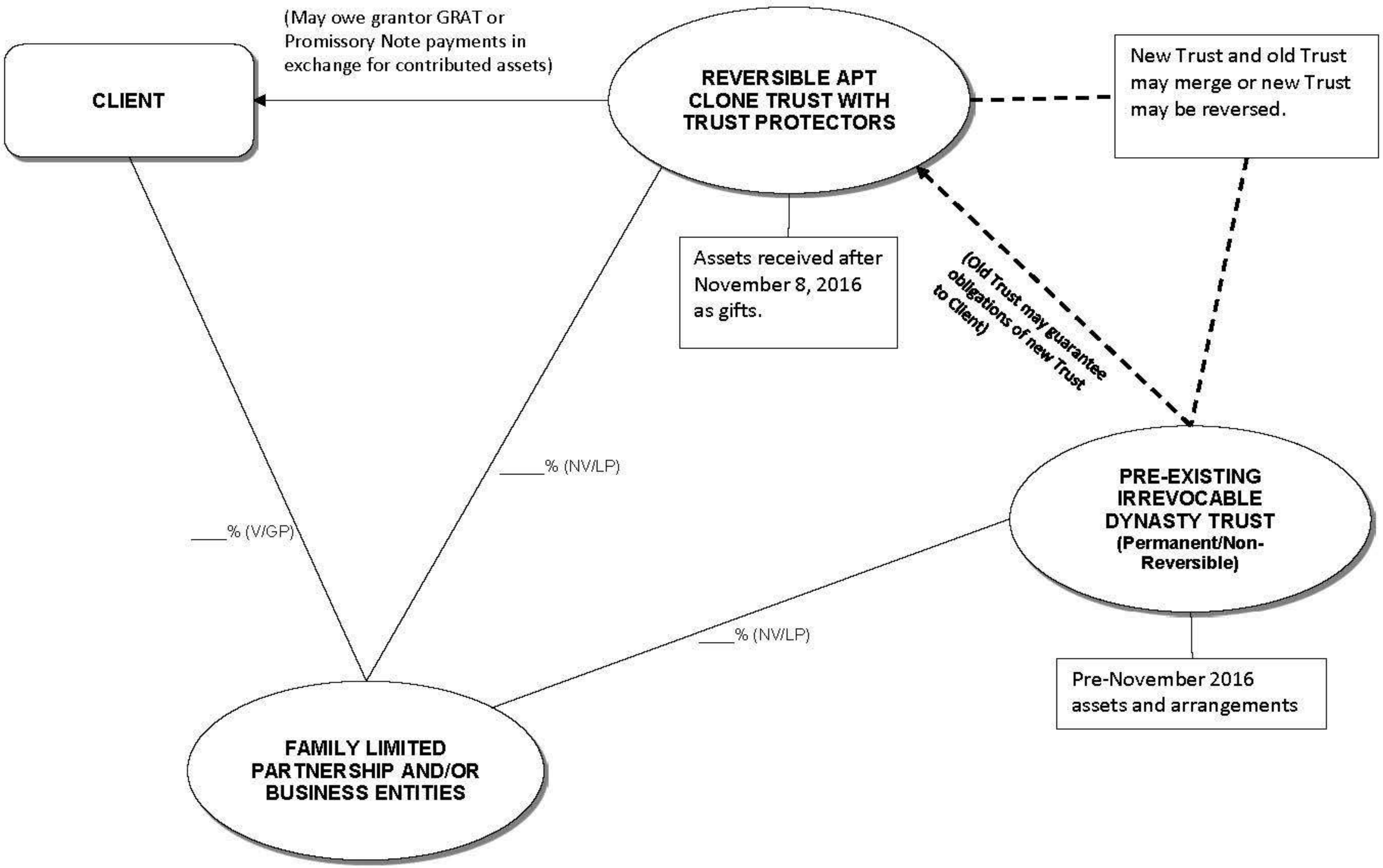
- However, Trump has proposed a new regime based upon the following paragraph from Trump's website:

> "The Trump Plan will repeal the death tax, but capital gains held until death and valued over $10 million will be subject to tax, to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed." **https://www.donaldjtrump.com/policies/tax-plan/**

The Choices of an Affluent Client Who is in the Middle of a Large Discounted Gift, Installment Sale or GRAT Planning Matter

	DO NOTHING	GO WITH PLAN	A HYBRID APT GRAT
1	Risk – pay more estate tax and GST tax in future if law does not change.	Risk – will not have been needed, and will not be reversible (unless reversible APT trust with Trust Protectors is used).	Little or no risk of gift treatment.
2	Risk of paying capital gains tax on death if client is considered owner of assets.	Grandfather loopholes to estate tax that may be lost as part of new legislation.	Reversible by Trust Protectors.
3	Worse creditor protection if client keeps assets.	Better creditor protection and better business purpose for making transfers that could be challenged later by creditors.	Could be grandfathered if loopholes are eliminated.
4	Time and investment of expenses towards planning will be lost.	Relatively small investment of additional time and money for the above advantages.	Can reduce or eliminate capital gains on death – defective grantor trust advantage of possible step-up basis on death of grantor may be solidified under Republican-based legislation as a continuing loophole to reward those who did this in the past.
5			Business purpose for creditor protection advantages.
6			Time and investment factor.

THE REVERSIBLE EXEMPT ASSET PROTECTION ("REAP") TRUST



If large gifts are being made to existing irrevocable trusts based upon what was in progress before the election results, consider using an identical but reversible irrevocable trust to gift to, which can either be merged into the pre-existing trust, held in parallel, or reversed back by Trust Protectors if and when the estate tax is truly and permanently eliminated.

GOP Tax Reform Blueprint – Corporate Tax Reform

- Would have a flat Corporate Tax Rate of 20%

- Allow full expensing of both tangible and intangible assets in the year of purchase (i.e. unlimited 179 deduction)

- Interest expense will only be deductible against interest income, and any non-deductible amount may be carried forward to offset future interest income.

- Net Operating Losses (NOLs) can be carried forward indefinitely and will be increased by an interest factor, however any NOL carry forwards can only offset 90% of taxable income in future years.

  No Carrybacks of NOLs will be allowed.

- 8.75% Repatriation tax on cash and cash equivalents held overseas, and a 3.5% tax on other assets held overseas. Can elect to pay the resulting tax liability over a period of eight (8) years.

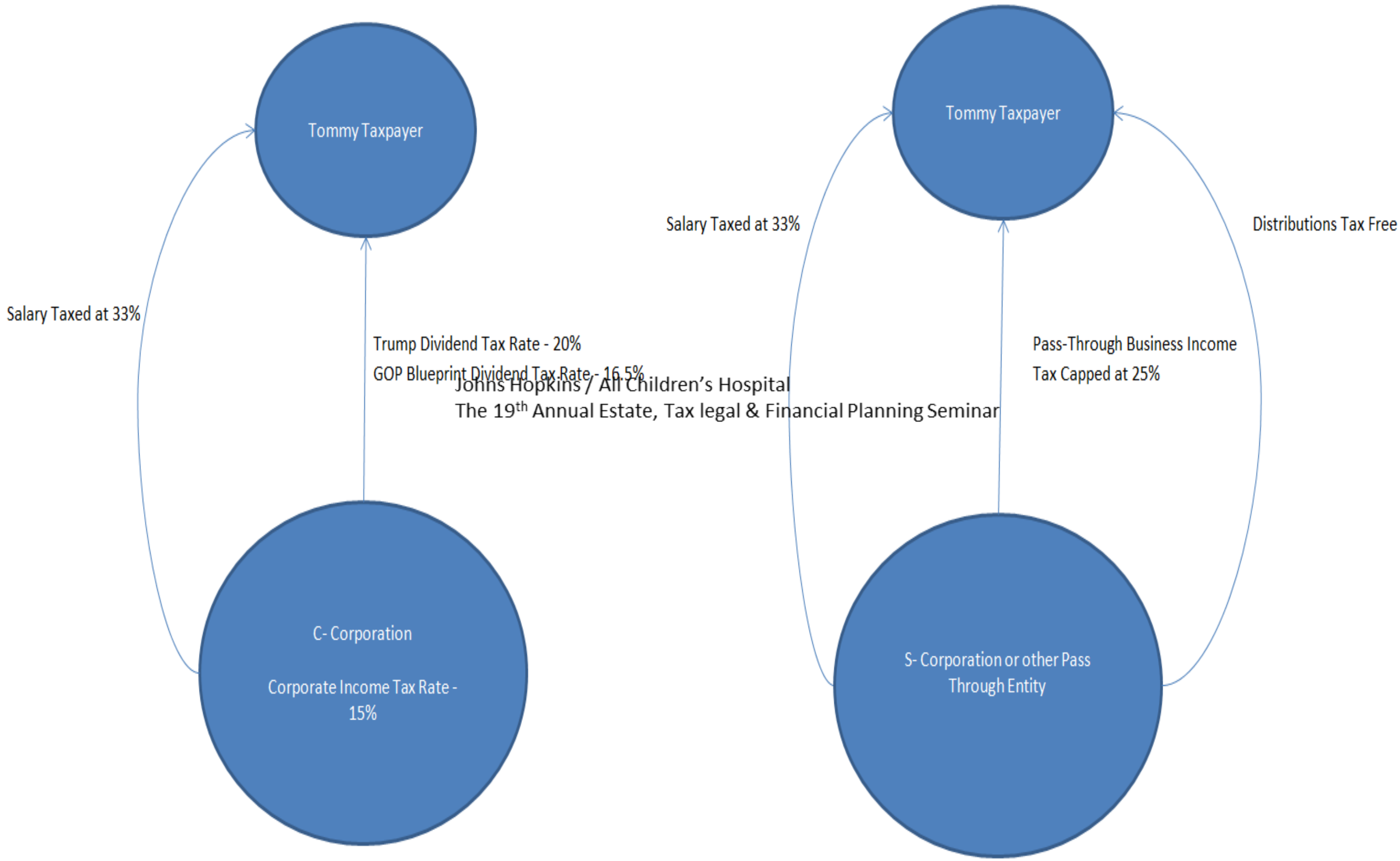
Trump on Corporate Income Tax Reform

- Trump proposes to reduce the top tax rate applicable to C corporations from 35% to 15%, and to eliminate most corporate tax expenditure deductions except for the R&D credit.

- Repatriation of corporate profits held overseas (over $2 trillion) at low tax rates (perhaps up to 10%, perhaps lower) is now highly likely.
- Firms engaged in manufacturing in the US may elect to expense capital investment and lose the deductibility of corporate interest expense. Could this lead to less bank borrowing by corporations?

- Note—Both political parties have proposed and agreed in principal for years on lowering the corporate tax rate and "closing loopholes" – but historically they can't agree on which ones, and whether the changes should be "revenue neutral" (Democrats) or be deficit funded (favored by Republicans).

Should I make an S-corp election?



Choices and Factors with Respect to Allocation & Payment of Medical Practice Income for the Solo Practitioner

Owned by Physician or as Tenants by the Entireties

S CORPORATION PRACTICE ENTITY

PAYEE	CREDITOR PROTECTED IN FLORIDA?	TAX/EXPENSE	NOTES AND OBSERVATIONS
Pension Plans	Yes	Costs for staff and to maintain plan – spouse on payroll to justify additional contribution.	
Children on the Payroll	Yes – If goes to Roth IRA in the name of the child.	Child in lower rate (Lowest bracket – 10%) but 15.3% employment taxes apply,.	Can do this for parents and in-laws as well!
Wages paid to Doctor	If Head of Household, Florida Statute 222 may apply – deposit directly into protected account.	15.3% employment taxes on first \$127,200, and then 2.9% over \$127,200 plus .9% tax on wages exceeding \$200,000 for single person and \$250,000 for married joint filers.	Up to \$270,000 countable for pension contribution purposes.
Dividends to owner of entity.	Only if owner is protected – such as tenants by the entireties or a family limited partnership owning the entity.	Not subject to payroll taxes – but could be recharacterized by IRS.	Not creditor protected as wages.
Spouse on payroll.	Yes, if spouse is safe.	15.3% employment taxes on first \$127,200, and then 2.9% over \$127,200 plus .9% tax on wages exceeding \$200,000 for single person and \$250,000 for married joint filers.	
Rent	Yes, if renting entity is protected. They protect PA assets if landlord has lien to enforce rent on long-term lease.	7% sales tax – after tax cost is 4.55%. Subject to the 3.8% Medicare tax for single taxpayers with MAGI over \$200,000 and MFJ taxpayers with MAGI over \$250,000.	May be worth paying full retail rent if owner or part owner of building or equipment are children and/or bypass trust for spouse to facilitate estate tax savings.
Interest owed to related parties.	If related party is protected.	Deductible as interest – receiving party pays interest income.	Why pay a bank 7% with personal guarantees when a family limited partnership or trust for the children might loan the money without guarantees at 14% and take a lien on all practice assets.

Choices and Factors with Respect to Allocation & Payment of Medical Practice Income for the Solo Practitioner

Owned by Physician or as Tenants by the Entireties

S CORPORATION PRACTICE ENTITY

PAYEE	CREDITOR PROTECTED IN FLORIDA?	Current Taxes/Expenses	Proposed Trump Tax Changes
Pension Plans	Yes	Costs for staff and to maintain plan – spouse on payroll to justify additional contribution. Highest tax - 39.6%. Nonqualified plans subject to 3.8% Medicare tax	Highest tax bracket 33%. Eliminate 3.8% Medicare Tax
Children on the Payroll	Yes – If goes to Roth IRA in the name of the child.	Child in lower rate (Lowest bracket – 10%) but 15.3% employment taxes apply.	Lowest bracket will be 12%. Standard Deduction = $9,275
Wages paid to Doctor	If Head of Household, Florida Statute 222 may apply – deposit directly into protected account.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers.	Elimination of additional .9% tax on wages exceeding $200,000 for single taxpayer and $250,000 for married joint filers
Dividends to owner of entity.	Only if owner is protected – such as tenants by the entireties or a family limited partnership owning the entity.	Not subject to payroll taxes – but could be recharacterized by IRS, and not subject to the 3.8% Medicare tax unless distributions represent income from passive sources.	Elimination of 3.8% Medicare Tax. Flow Through Business Income tax capped at 25%
Spouse on payroll.	Yes, if spouse is safe.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers.	Elimination of additional .9% tax on wages exceeding $200,000 for single taxpayer and $250,000 for married joint filers
Rent	Yes, if renting entity is protected. They protect PA assets if landlord has lien to enforce rent on long-term lease.	7% sales tax – after tax cost is 4.55% Subject to the 3.8% Medicare tax for single taxpayers with MAGI over $200,000 and MFJ taxpayers with MAGI over $250,000.	Elimination of 3.8% Medicare Tax
Interest owed to related parties.	If related party is protected.	Deductible as interest – receiving party pays interest income.	Interest expense may only be deducted against interest income

GOP Tax Reform Blueprint – Individual Income Tax Reform

The GOP proposals would

1. Eliminate the Alternative Minimum Tax (AMT)

2. Cap business income tax at 25%,

3. Cap long-term capital gains at 16.5%

4. Eliminate domestic production activity deduction. (what the heck is this?)

5. Simplify the multiple education credits/deductions

6. Increase Standard Deduction to $24,000 for Married Filing Joint, $18,000 for single parents, and $12,000 for single individuals

7. Eliminate all itemized deductions except for the mortgage interest deduction and the charitable contribution deduction. The proposed elimination will result in the loss of deductions for medical expenses, state and local taxes, investment interest, casualty and theft losses, gambling losses, and other miscellaneous deductions.

See the January 12, 2017 Leimberg LISI article by Jonathan Blattmachr & Kevin Matz: The Impact of Limiting the Annual Deduction for Charitable Contributions Proposed by President-Elect Trump at: http://leimbergservices.com/all/LISIBlattmachrMatz1_12_2017.pdf

8. Propose consumption tax similar to European VAT.

Senate Finance Committee Proposals – RESA Would Significantly Reduce Stretch IRAs

- This fall, the Senate Finance Committee UNANIMOUSLY (full bipartisan support) approved the “Retirement Enhancement and Savings Act of 2016” (“RESA”).

- RESA would change the post-death RMD (Required Minimum Distribution) rules to generally require that all distributions after death (regardless of whether to a “designated beneficiary”) be made by the end of the fifth calendar year following the year of death.
- Exceptions would be made for
- A. surviving spouse
- B disabled, or chronically ill beneficiaries, and
- C. individuals who are not more than 10 years younger than the decedent,
- D. a child who has not reached the age of majority.
- E. where total amount stretched is under $450,000.

- In addition, RESA would provide that the new 5-year distribution requirement only applies to the extent that the amount of an individual’s aggregate account balances under all IRAs and defined contributions plans, determined as of the date of death, exceeds $450,000 (indexed for inflation).

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