Beating Bernie’s Bill in 2019

Friday, April 26, 2019

It would be wise and prudent for every person concerned with estate planning and/or wealth preservation to meet with appropriate advisors in 2019 to consider further steps.

On January 31, 2019, Bernie Sanders introduced S.309, the “For the 99.8 Percent Act,” in the U.S. Senate (the Act). It is highly unlikely that the Act will receive Senate approval in 2019. However, the Act, drafted to be effective as of January 1, 2020, contains proposals that resonate throughout substantial portions of the Democratic Party (and others). If the Democratic Party is successful in the 2020 elections in achieving control of the House, the Senate and the presidency, there is a material risk that some or all of the proposals will be enacted.

The Act, inter alia, rolls back the estate tax exemptions to $3.5 million; reduces gift tax exemptions to $1 million; raises the top estate tax rate to 77 percent; includes in the gross estate of a decedent all unrealized appreciation in his/her “grantor” trusts; imposes material restrictions on the use of grantor retained annuity trust (GRATs); limits the duration of “dynasty trusts” to 50 years; eliminates virtually all valuation discounts on transfers of privately held entities; and virtually eliminates most Crummey powers from trusts.

What does this all mean? It means that planning to use existing strategies should be fully optimized in 2019 because there is no certainty that any particular strategy will be available after December 31, 2019. Thus, clients should contact their wealth and estate planning advisors to ascertain whether any of the strategies they are currently using should be updated or modified and whether there are any strategies they are not currently using that might be lost if not used.

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