

Form an IDIT Now!

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The uncertainty about the recent presidential and California elections has vanished and one thing is absolutely clear—taxes are going to be much higher. Unlike the situation two days ago, ***there is now a very strong possibility that one of the most powerful wealth transfer vehicles will soon be legislated out of existence.***

Intentionally defective grantor trusts (or “IDITs”) are among the most powerful estate and gift tax saving strategies in existence. IDITs have been used successfully over the past 20 years. They let you get assets out of your estate, provide asset protection for your children, grandchildren, and great-grandchildren, and allow continuous wealth transfers (by the grantor’s payment of income taxes on the trust’s assets) without further gift taxes. They can be used to pass wealth which will greatly exceed the \$1 million gift and estate exemption which will automatically take effect on January 1, 2013.

The problem is that President Obama’s Fiscal Year 2013 revenue proposals included the elimination of the IDIT by including the trust assets in the estate of the person who created the trust. Politicians make legislative proposals all the time. The troubling points about the President’s proposal to eliminate IDITs are:

- This was the first time a specific change targeting IDITs was made.
- With the President’s re-election, there is a far greater likelihood that the proposal will be enacted.
- Just today, House Speaker Boehner announced that House Republicans would agree to higher taxes under the “right conditions.” ***Because of the pending “fiscal cliff” and the need for Congress and the President to agree on budget measures, including tax increases, there is an increased likelihood that the IDIT will disappear in the next few months.***

The President’s proposal stated that existing IDITs that had been created prior to the enactment of legislation would be “grandfathered.” There is an important catch—no one knows whether existing IDITs will actually be grandfathered, or whether post enactment sales to a grandfathered IDIT will be exempted or not. However, the potential benefit of having an IDIT that may be able to take advantage of changed law is—to families who don’t yet have such trusts—well worth the cost of setting it up.

That is why we are strongly recommending, for wealthy clients who have not yet taken advantage of this technique, that you form IDITs as soon as you can (certainly before the end of the year and before any legislation is enacted), and fund the trust with some assets. That will at least give you a chance at having a “grandfathered” wealth transfer vehicle in place in case the President’s proposal passes.

Given the election, Senate Majority Leader Harry Reid’s statement that the election is a “mandate for higher taxes,” and the need for action to trim budget deficits, the elimination of IDITs has a much better probability of occurring than just two days ago.



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