Panorama

April 2024 ISSUE 51

Contributing to this issue:

R. Craig Brubaker

2727 N Harwood, Suite 225

Dallas, TX 75201

Table of Contents

- Backdoor Roth IRA
- Texas Franchise No Tax Due
- Biden's '25 Budget Proposals
- CTA Ruled Unconstitutional?

Backdoor Roth IRA

If your income is too high to be eligible to contribute to a Roth IRA, there's potentially another way for you to still open and fund one. As with any type of retirement account, the ingredients for successful wealth accumulation are: 1) contributions, 2) tax deferral, and 3) time.

A Roth IRA is generally unavailable for many higher-income earners because of the statutory income limits for making contributions to these accounts. For the 2023 tax year, the limits are:

- $228,000 for married couples filing jointly
- $153,000 for single filers

Despite these income limits, there may still be another way to fund a Roth IRA — sometimes referring to taking the "backdoor" route. With this method, you open a traditional IRA in addition to a Roth IRA. Next, make your desired nondeductible contribution to the traditional IRA. Income limits don't prevent

you from making the maximum annual contribution to a traditional IRA. Rather, the traditional IRA income limits only preclude you from taking a tax deduction for that IRA contribution.

At a later date, convert the traditional IRA funds to a Roth IRA. To be clear, this is not a rollover. The conversion is a taxable distribution of your traditional IRA. But since you were not allowed to claim a tax deduction for your contribution to the traditional IRA, only the post-contribution earnings in that IRA will be taxable in the conversion. But the IRA balance will now be compounding tax-free in the Roth IRA.

With a Roth IRA, you get no up-front tax deduction, as you do with a traditional IRA, 401(k) retirement plan, or other tax-deferred account. However:

- You pay no tax on either principal or earnings when you withdraw your money (although you must be at least age 59½ and have had the Roth for five years).
- There's no time requirement on when you must withdraw money, if ever — an appealing option for those wanting to leave the money to heirs.

If you have no other traditional IRAs, figuring out your tax due on the conversion will be simple. However, it can be more complicated if you have other IRAs. The IRS employs a pro-rata rule that requires you to include all your traditional IRA assets — that means your IRAs funded with pretax (deductible) contributions as well as those funded with after-tax (nondeductible) contributions — when figuring the conversion's taxes. Then, you pay a proportional amount of taxes on the original account's pretax contributions and earnings.

Roth conversions can make sense for many higher-income investors with substantial amounts saved in traditional IRA or 401(k) accounts. But we also see interest by parents and grandparents in using the Backdoor Roth strategy to help their younger employed family members get a head start on their retirement savings by gifting them the money to fund the annual IRA contribution.

Texas Franchise No Tax Due

Many of our clients have Texas limited liability companies or limited partnerships they use to hold and manage their passive investments. Historically, an annual Texas "no tax due" report and public information report was required to be filed to keep the entity in an active status for legal purposes. These reports are easily filed online with the Texas Comptroller's office.

In July 2023, the legislature passed Senate Bill 3, which increased the no tax due threshold and eliminated reporting requirements for certain entities. In response, the Comptroller's office has changed

the way some entities have to report for franchise tax purposes. For reports originally due on or after Jan. 1, 2024, the no tax due threshold is increased to $2.47 million.

For reports originally due on or after Jan. 1, 2024, a taxable entity whose annualized total revenue is less than or equal to $2.47 million is no longer required to file a No Tax Due Report. However, the entity is still required to file Form 05-102, Public Information Report or Form 05-167, Ownership Information Report, using the online webfile system.

Biden's '25 Budget Proposals

The Biden Administration's Fiscal Year 2025 Revenue Proposals (called the "Greenbook") were released on March 1, 2024. Many of the proposals are similar to items in his prior Greenbooks. As with prior proposals, we don't expect these proposals to be enacted into law given our split Congress. However, the fact that these proposals are restated year after year suggests the proposals could be quickly pulled from the shelf and enacted in the future when the political climate is different. So, we will review a few of the frequently recurring items below:

- Increase the corporate income tax rate from 21% to 28%.
- Increase the top individual marginal ordinary income tax rate from 37% to 39.6%.
- Tax the capital gains income for high-income earners (taxable income over $1 million, $500,000 for married filing separately, both indexed) at ordinary rates.
- The net investment income tax rate would increase from 3.8% to 5.0% for taxpayers with more than $400,000 of earnings (indexed, and new in FY24 Greenbook) and the net investment income tax would be applied to pass-through business income for high-income taxpayers (in the FY23 and FY24 Greenbooks).
- The proposed 39.6% top marginal income tax rate and the 5% net investment income tax rate would bring the top marginal rate to 44.6%.
- The Medicare tax would increase from 3.8% to 5.0% for taxpayers with more than $400,000 of earnings (indexed, and new in FY24 Greenbook).
- Treat transfers of appreciated property by gift or on death as realization events; gain on unrealized appreciation also would be recognized by every trust, partnership, or other non-corporate entity if the property has been held on or after Jan. 1, 1942, and has not been the subject of a recognition event within 90 years.
- Impose a 25% (up from 20% in the FY23 Greenbook) minimum tax on the income (generally including unrealized gains) of the wealthiest taxpayers similar to what has been referred to as the "Billionaires Income Tax" proposals. Senator Wyden introduced the "Billionaires Income Tax Act" on Nov. 30, 2023, which would annually tax the value of unrealized gains on assets using

mark-to-market taxation for taxpayers with adjusted gross incomes of more than $100 million or assets valued at more than $1 billion.
- Eliminate real estate like-kind exchanges for gains more than $500,000 ($1 million for joint returns, not indexed).
- Add additional restrictions on grantor retained annuity trusts (GRATs), including a 10-year minimum term and a 25% remainder interest. This would effectively kill the use of GRATs going forward.
- Recognize gain on sale transactions between deemed owners and grantor trusts (with an effective date for transactions after the date of enactment). A refinement in the FY24 and FY25 Greenbooks would disallow losses in such transactions.
- Treat the payment of income tax by the grantor on trust income as a gift (effective for trusts created after the date of enactment, with refinements in the FY24 and FY25 Greenbooks).
- Require reporting (not specified as to how detailed the reporting will be) of the estimated value of trust assets for trusts valued over $300,000 or with gross trust income over $10,000. This information is described as providing information for a comprehensive statistical database about trusts rather than for targeting trust audits, but the reporting could be very burdensome and for many, quite ominous. This would be applicable to taxable years ending after the date of enactment.
- "Simplify" the exclusion from gift tax for annual gifts. This proposal would limit the annual exclusion for many types of gifts to $50,000 per donor.
- Retirement accounts owned by high-income taxpayers ($450,000 for married filing jointly, indexed) with an account balance exceeding $10 million on the last day of the preceding calendar year would be required to distribute at least 50% of the excess (with additional requirements for accounts exceeding $20 million), subject to the 25% penalty for failing to take required minimum distributions (RMDs).
- High-income taxpayers ($450,000 for married filing jointly, indexed) could not roll over a retirement account that is not a Roth IRA or a Roth account to a Roth IRA.

CTA Ruled Unconstitutional?

Since our last newsletter, there has been some noteworthy news related to the Corporate Transparency Act (CTA).

On Feb. 7, 2024, FinCEN filed a new proposal to further combat money laundering that would require reporting by settlement agents, title insurance agents, escrow agents and attorneys for non-financed residential real estate transfers to entities or trusts (not individuals). Information about the beneficial owners of the entities or trusts (specifically including revocable trusts) must be reported. As a practical

example of how this might apply, if you own your residence debt free and transfer ownership to your revocable living trust for estate planning purposes, this would be a reportable transaction. Various exceptions will apply, including transfers that occur as the result of the death of the property's owner, that are the result of a divorce, or that are made to a bankruptcy estate.

A federal district court in Alabama recently ruled the CTA unconstitutional (*National Small Business United, d/b/a the National Small Business Association v. Yellen*, Case No. 5-22-cv-1448-LCD [N.D. Ala. March 1, 2024]). The court held that the Corporate Transparency Act is unconstitutional "because the CTA exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals …" The court examined and debunked three arguments proposed by the government to support the constitutional authority for Congress' enactment of the CTA: 1) the foreign affairs power, 2) the Commerce Clause authority, and 3) Congress' taxing power. The bulk of the opinion analyzes the Commerce Clause, and the focus of the analysis is on the distinction between regulating the mere formation of entities versus the regulation of entities that move in foreign or interstate commerce. The court expressed the view that "Congress would have written the CTA to pass constitutional muster … [by] imposing the CTA's disclosure requirements on State entities as soon as they engaged in commerce, or … prohibiting the use of interstate commerce to launder money, 'evade taxes, hide … illicit wealth, and defraud employees and customers.'"

Shortly after the ruling, FinCEN issued a notice that it will continue to implement the CTA generally but will not enforce the Act against specific plaintiffs in the case including members of the National Small Business Association as of March 1, 2024 (I know you're thinking, "How much does it cost to join the NSBA?" but you're too late!). Having too much invested in this CTA legislation, the government filed a notice of appeal with the Eleventh Circuit on March 11, 2024. At least two other cases have been filed in federal courts challenging the constitutionality of the CTA on different grounds, arguing invalidity of the CTA and its regulations under the Constitution, the Paperwork Reduction Act, and the Administrative Procedure Act and seeking nationwide injunction. The court made several comments in its opinion of inartful legislative drafting of the CTA and noted that FinCEN's 2016 Customer Due Diligence rule (requiring disclosure of nearly identical information) is clearly constitutional. It sounds like a hint from the court to Congress to go back and amend the language to fix the problems identified in the opinion.

I've had recent conversations with several Dallas area law firms whose advice to their clients is that they still plan on complying with the CTA by Dec. 31, 2024. But it won't hurt to wait until later this year to see if any developments ensue that could change or delay the reporting requirement. A couple of Congressmen have recently introduced legislation to try to postpone the reporting for another year or more, so stay tuned.

Panorama

View Capital Advisors, LLC was founded in 2004 by its principals with the mission of providing sophisticated investment asset management and financial and estate planning to our U.S. and Non-U.S. clients.

We seek to bring wealth planning best practices and a wide range of non-proprietary solutions to our clients. We also conduct our own research and diligence on world markets and investment alternatives.

For further information, please contact your investment representative or one of our wealth planning specialists:

R. Craig Brubaker 214-855-2556 cbrubaker@view-cap.com

The information in this report was prepared by View Capital and is believed by View Capital to be reliable and has been obtained from public sources believed to be reliable. View Capital makes no representation as to the accuracy or completeness of such information. View Capital's views and opinions expressed in this report are current as of the date of this report and are subject to change. Any projections, forecasts and/or opinions contained in this report are necessarily speculative in nature and are based upon certain assumptions. It can be expected that some or all of such assumptions will not materialize or will vary significantly from actual results. View Capital has no obligation to update, modify or amend this report or to otherwise notify a reader thereof in the event that any matter stated herein, or any opinion, projection, forecast or estimate set forth herein, changes or subsequently becomes inaccurate.