**The Taxing Drums are Getting Louder**
-Sanders Proposals and Escaping SALT States-

Senator Bernie Sanders (I-VT) has introduced a significant tax reform bill titled "For the 99.8 Percent Act," which reduces the estate, gift, and generation-skipping tax exemptions from $11.4 million to $3.5 million; limits the duration of wealth exempted by the generation skipping tax exemption; increases the estate tax rate from its current 40%, to a range of 45% to 77%; and eliminates strategies and exemptions commonly used to reduce the estate tax. At the same time, states like California and New York are bracing themselves for reaction (an exodus that has already begun) to President Trump's tax reform limitation on the deduction of state and local taxes, by enhancing their audit capabilities. James Gazzale, a spokesman for the New York Department of Taxation and Finance, was recently quoted saying: "Ensuring taxpayers pay their fair share is a top priority, therefore, our *nonresident* audit program continues to be very active!"

**For the 99.8 Percent Act**

Tax Increase: Senate Bill 309 establishes Sanders' progressive estate tax with the following brackets:

- 45% on estates valued from $3.5 million to $10 million;
- 50% on estates valued from $10 million to $50 million;
- 55% on estate values of in excess of $50 million; and
- 77% on estate value of in excess of $1 billion.

Sanders bases his proposal within a backdrop of support from Republican President Theodore Roosevelt, who espoused purposeful creation of wealth and a progressive tax system. Almost 110 years ago, Roosevelt stated:

> *We grudge no man a fortune in civil life if it is honorably obtained and well used. It is not even enough that it should have been gained without doing damage to the community. We should permit it to be gained only so long as the gaining represents benefit to the community … The really big fortune, the swollen fortune, by the mere fact of its size, acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and … a graduated inheritance tax on big fortunes, properly safeguarded against evasion, and increasing rapidly in amount with the size of the estate.*

A century ago, progress on inheritance taxation was blocked for decades by a U.S. Senate that had been captured by the corporate conglomerates and the organized wealthy of the day. States responded in the face of federal intransigence by levying their own wealth taxes. Between 1902 and 1916, the number of states with inheritance taxes rose from 26 to 42. With the passage of the 17th Amendment in 1913, allowing direct election of U.S. senators, the grip of concentrated wealth on our political system began to loosen. Reformers rallied, implementing long overdue income taxes along with inheritance taxes. As the U.S. entered World War I, the estate tax was viewed as a means to "conscript wealth" to the cause. From 1941 to 1976, the top estate tax rate was the same as Sanders proposes (77%), and some economists suggest it is necessary to avoid a second gilded age. Presently, it is estimated that the top one-tenth of one percent owns almost as much wealth as the bottom 90 percent.

Other Measures: In addition to decreasing the estate, gift, and generation-skipping tax exemptions and raising rates, the bill:

1. Limits the duration of exempt trusts, exempted by use of the generation skipping exemption from the estate tax system, to the longer of 50 years from creation or from enactment of the Act;
2. Curtails the use of short term GRATs, by requiring a minimum duration of 10 years;
3. Treats property in grantor trusts for income tax purposes, that are composed of property previously gifted, as owned by a decedent for estate tax purposes;
4. Sharply reduces the annual gift tax exclusion (presently $15,000 per donee) to $20,000 per donor; and
5. Would eliminate the manipulation of value of nonbusiness assets by valuation discounting techniques, such as are commonly used with family partnerships.

The bill is proposed to be effective on enactment without grandfathering provisions for existing entities and structures. However, historically, measures such as Senator Sanders proposes have been grandfathered in one or more ways. Furthermore, several of these proposals may not pass Constitutional scrutiny and, like proposals for an annual recurring wealth tax of 2% to 3% on amounts over $50 million, are direct taxes that are not fairly apportioned among the states. As such, as discussed in our recently Client Update, our general recommendation to clients is and has historically been to use these techniques in anticipation of tax reform in hopes of grandfathering protections. For others who have already created grantor trusts, or have implemented other strategies, consideration should be given to accelerating the shift of wealth to junior family members. See Page 2 and 3 of our recent Client Update: https://www.jckempe.com/wp-content/uploads/2019/01/Newsletter-2019.pdf

**Fleeing States Targeted by Salt Limits**

For the first time, taxpayers paying 2018 federal taxes may experience the pain of President Trumps' tax reform measures, that limit the deduction of state and local taxes ("SALT limits) to $10,000. This has the consequence of punishing residents of states with high income taxes, such as California, Minnesota, New Jersey, New York, and other taxing states. The result is that many are leaving and heading to low or no tax states, such as Florida. Establishing new residency is seldom a difficult process, but severing the taxing jurisdiction of the former state must be managed with a clear understanding of the notion of "abandonment." This topic is discussed in detail in our most recent Client Update, commencing on the cover page: https://www.jckempe.com/wp-content/uploads/2019/01/Newsletter-2019.pdf


In essence, provided a former resident of one state intends to become a resident of Florida and limits presence in the former state, Florida will welcome them and the resident should not be subject to income tax in the former jurisdiction. However, the new Florida resident should be prepared to demonstrate acts of abandonment, where former relations and circumstances are eliminated and new ones gained in Florida. For example, if your spouse, business, doctors, lawyer, accountant, children, church, and much of your philanthropy remain in or with the former state, you would fail the abandonment test. Intending to be a Florida permanent resident means you are establishing a new “domicile.” This does not mean you may not continue to own your former residence. You must demonstrate that you have abandoned the former domicile and to do so the location of “near and dear” items will be questioned. This is commonly referred to as the “Teddy Bear Test,” and in one prominent case the bear was an elderly dog who was relocated from New York to Texas. In another case, simply relocating two classic guitars, a professional espresso machine, a doctoral degree certificate, and a 1988 Ferrari weren’t as weighty as relocating the elderly dog, and the taxpayer was considered to remain domiciled in New York and subject to New York income tax - with past due taxes, interest, and penalties.



**Our Office Locations:**

941 N Highway A1A
Jupiter, FL 33477
561-747-7300

1101 East Ocean Boulevard
Stuart, FL 34994
772-223-0700