BURR ALERT

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An Update on Mrs. Clinton's Estate Tax Proposals

Since we published our Burr Alert summarizing each presidential candidate's estate tax proposals earlier this month (***FAMILY-CONTROLLED BUSINESSES -- TAX TARGETS AGAIN: Newly Proposed 2704 Regulations and Presidential Candidates' Positions*** ("***Tax Targets Again***")), Mrs. Clinton has expanded and updated her tax platform adding a number of provisions that could prove even more devastating to family businesses than her original proposals. For example, Mrs. Clinton's newest tax platform suggests that the top estate tax rate should be increased to 65%, or nearly two-thirds (2/3) of an estate's value. As outlined in ***Tax Targets Again***, Mrs. Clinton's original platform called for trimming back the estate tax exemption amount by nearly $2 million per person ($4 million per couple), which would take the estate tax exemption from the current amount of $5.45 million per individual to 2009 levels which were $3.5 million per person. Further, her original platform only advocated increasing the estate tax rate by 5%, from a flat 40% to a flat 45%.

With the Presidential race appearing to tighten as we move from September into October, Mrs. Clinton has revised her position on estate taxes in a manner many political pundits believe is an effort to attract more of Mr. Sanders' supporters. In addition her original proposals, Mrs. Clinton is now championing the addition of three (3) more estate tax rates, re-imposing a graduated rate schedule starting at 45%. For estates with over a $10 million value, Mrs. Clinton is suggesting a 50% tax rate. When the value of the estate reaches $50 million, she would apply a 55% tax rate. And for those estates in excess of $500 million, a 65% tax rate has been floated. When combined with her initial proposals and the proposed IRS regulations detailed in ***Tax Targets Again***, the estate tax would again become a very real obstacle to the ability of American families to keep businesses, farms, ranches, timber and other large holdings "in the family."

When an estate is comprised primarily of stock or other ownership interests in a family-controlled business, few if any such family business owners have sufficient liquidity independent of the business which itself is often without sufficient cash reserves to pay a 45% estate tax rate, much less a 65% estate tax. Thus, estate planning and, in all probability, life insurance will increase in importance for family business owners as key elements of succession planning. Whether the cash proceeds from life insurance are used by the business to help minimize the damage of losing its owner and the patriarch of its growth (e.g., key man insurance) or to provide needed liquidity to the family in order to pay estate taxes and other expenses, if liquidity has not been a focus during succession planning and these proposals from the Democratic candidate become law, there is a strong possibility that many families will have to sell or liquidate the family enterprise in order to pay such a confiscatory tax.

In addition to the estate tax proposals above, Mrs. Clinton has also stated that she would like to see concepts designed to reduce, if not completely eliminate any minority and/or lack of marketability discounts in estates such as the rules proposed by the IRS in August codified in the tax law. She has further indicated an interest in limiting like-kind exchanges and the ability of taxpayers to defer capital gain.

The reality is that many family businessmen and businesswomen, whether running an active business, a farm, a ranch or rental real estate holdings are deemed wealthy solely because of their business holdings, not because of the amount of cash in their bank accounts. If these proposed changes to the estate tax become law, they will so significantly increase that tax's burden on family businesses that the potential of the business having to be sold when the senior generation dies will increase several fold. Family businesses are clearly front line targets in the political war to raise government revenues in order to pay for populist programs and pet projects.

If you would like more information on these estate tax proposals, their impact on family businesses, succession planning or any other tax matter, please contact:

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