



TRUSTS & ESTATES LAW UPDATE

January 2018

Federal Changes

- **The lifetime gift and estate tax exclusion amount rises to \$11.2 million in 2018.** Under the Tax Cuts and Jobs Act (TCJA) passed by the U.S. House of Representatives and Senate, the federal, gift and generation-skipping transfer (GST) tax exemptions doubled to \$11,200,000 per individual. As a result, a married couple will have combined exemptions of \$22,400,000 in 2018. The exemption amounts will revert to the pre-2018 levels starting in 2026.
- **The annual exclusion amount for gifts increases at \$15,000.** Before you have to tap into your lifetime exclusion amount, you're allowed to give up to a certain amount to as many individuals as you want. That amount adjusts for inflation but is rounded off in thousand-dollar increments, and the increase this year brings this annual exclusion amount from \$14,000 to \$15,000.
- **Portability of the lifetime exclusion amount is still available.** Beginning in 2011, the estate tax laws made it permissible for a surviving spouse to take advantage of any unused lifetime exclusion amount from the estate of the deceased spouse. This dramatically simplified estate planning and gave married couples an easy way to take maximum advantage of both spouses' exclusion amounts.
- **The new federal tax law does not eliminate the "step up" in basis at death.** Therefore, the recipient's (heir's) basis for any asset includible in someone's estate is the value of that asset as of the date of death (or alternate value if elected on the estate tax return).

New Jersey Update

- **New Jersey's estate tax repeal became effective as of January 1, 2018.** The New Jersey inheritance tax, however, is still in effect. The New Jersey Inheritance tax is levied on inheritances passing to siblings, nieces and nephews, step-grandchildren and other unrelated individuals, so bequests to certain beneficiaries may still be subject to inheritance tax despite the changes to New Jersey's estate tax. Inheritance tax rates start at 11% and go as high as 16%.

New York Update

- New York's current exclusion for estate taxes is \$5,250,000. New York's exclusion is expected to match the federal exemption on January 1, 2019. More than likely, NY lawmakers will get into high gear to make a change to this law to ensure that the increase will only be to the former federal exclusion amount. Stay tuned.

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About Giordano, Halleran & Ciesla:

Giordano Halleran & Ciesla is a multi-specialty law firm dedicated to providing sophisticated, complex legal services and solutions. The attorneys maintain personal relationships and gather in-depth knowledge of clients' businesses and industries to construct both sound legal advice and effective strategies to resolve business issues. With a focus on responsiveness and producing results with outstanding value to their clients' bottom line, the firm provides experienced legal representation in a wide variety of practice areas, including: Corporate and Business; Creditors' Rights and Bankruptcy; Environmental; Healthcare; Intellectual Property and Technology; Labor and Employment; Litigation; Real Estate, Land Use and Development; and Trusts and Estates.

What this means to you.

Estate Tax Planning. If your estate plan includes a bequest tied to the New Jersey estate tax exemption (or the amount that could pass free of federal or state estate tax), you may wish to revisit your plan to be sure it continues to carry out your wishes. It is important to keep in mind, however, that while estate taxes may have played a significant part in creating an estate plan that involves trusts, other factors – such as second marriages, young or disabled beneficiaries, death tax liens, or creditor concerns – continue to justify the importance that trusts play in a solid estate plan.

Revocable Trusts. Designed as a probate avoidance vehicle, Revocable Trusts are fast becoming a beneficial estate planning tool. In addition to keeping the terms of your estate plan private, they will also ease the administrative process after death. Clients with real property in other jurisdictions should also consider a revocable trust to avoid unnecessary ancillary probate regulations.

Spendthrift/Dynasty Trusts. While estate taxes may have played an important part in creating an estate plan, there are many other factors such as: second marriages, minor or disabled beneficiaries, divorce protection for beneficiaries, or creditor concerns, continue to justify the importance that trusts play in a solid estate plan. Please contact us if you need to address any of these concerns in your plan.

Review Outdated Estate Plans. It is critical that all estate planning documents and overall estate plan be reviewed in light of the new law in order to avoid unwanted estate tax and asset transfer consequences and to maximize the benefits available under the new law. Clients with irrevocable trusts funded with low basis assets with estate values under the new current estate tax threshold may also want to think about decanting or amending these trusts to take advantage of the step-up on basis rules.

Asset Titling/Beneficiary Designations. This is also an appropriate time to review the ownership of your assets to confirm that the manner in which you own your assets is coordinated with your estate planning documents. In addition, this may also be a good time to confirm who are the beneficiaries of your retirement plans and life insurance policies to ensure that they too are consistent with your estate planning objectives.

If you are interested in making an appointment to review your current planning or if you need to update your contact information, please contact Connie Buccellato (cbuccellato@ghclaw.com or 732.219.5489).



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