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2017 Tax Reform Has Made It Essential to Review Estate Plans and Wills

Most of the coverage of the Tax Cuts and Jobs Act passed in December 2017 has centered on business and individual income tax impacts. But the legislation also made some major changes in estate taxes that may require a review of your estate planning and the provisions of your will.

The most important change: The new law **doubles the “applicable exclusion”** from federal estate taxes from \$5.6 million to \$11.2 million per person, effective 2018-2025. This exclusion will be inflation adjusted in future years. Beginning January 1, 2026, however, unless new legislation is passed affecting the exclusion rate, the exclusion amount and the generation skipping tax exemption will revert to the levels that would have prevailed under pre-enactment law (\$5.6 million adjusted for inflation over the eight years).

The tax rates for estates and trusts have also decreased and now consist of only four brackets.

- New rates: 10%, 24%, 35%, and 37%.
- Old rates: 15%, 25%, 28%, 33%, and 39.6%

A key concern with respect to Wills and Revocable Trusts is that many were written using formula clauses tied to the exemption amount in effect on the date of death. The doubling of the exemption amount may cause significantly larger distributions than intended. This could result in funding trusts with much larger amounts than anticipated when the documents were signed. Automatic, maximum funding of a “credit shelter” trust at the first spouse’s death could sacrifice the opportunity for a “step-up” in cost basis at the surviving spouse’s death.

Higher generation-skipping exclusions provide an opportunity for rethinking multi-generational wealth preservation planning. Using a charitable bequest may not result in any tax deduction to the estate under the higher exclusion amount. Lifetime giving strategies, which provide a tax deduction against current income if you itemize, may make more sense.

The increased exclusion means that couples who have used their full pre-2018 gift tax exemption amounts, can transfer an additional \$11.2 million (\$5.6 million each) to their descendants prior to 2026, without imposition of the federal gift tax.

In addition to the increased exemption amounts above, an individual may give annually \$15,000 in 2018 (up from \$14,000 in 2017) to as many individuals as he or she desires without incurring a gift tax and without using any of the gift tax exemption amount. In addition to making gifts using the gift tax exemption and annual exclusion amounts, there is an unlimited gift tax exclusion for amounts paid on behalf of an individual directly to medical care providers for medical care and to educational institutions for tuition.

Remaining unchanged are (1) the “portability” election, which permits a deceased spouse to transfer unused exclusion amounts to a surviving spouse, and (2) the “step-up” in cost basis at death for capital assets.

When reviewing your estate plans, make a note that everything could change again in eight years. Wills and trust documents cannot be considered “forever” documents if there is any complexity in your estate. **State-level estate taxes are not affected by these changes unless pegged by state law to the federal estate tax provisions.** Depending on your state of residency, you may need to make additional plans to minimize the state-level tax bite.

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