



Year End Tax and Estate Tax Planning

It's that time of year again: here are our year-end recommendations concerning estate planning. There are important things to consider given the new tax law and now is a good time for a New Year's resolution to give your plan a tune-up and do some year-end gifting. Existing estate plans should be reviewed to plan for upcoming changes.

New Estate Tax Law

- Each person can pass up to \$5,490,000 free of Federal estate or gift tax in 2017. The new law would double the 2018 estate and gift tax exemption amount of \$5,600,000 to \$11,200,000. This increased exemption (with future inflation adjustments) is effective for gifts made or persons dying before 2026. The bill does not repeal the estate tax.
- Do not abandon keeping your estate plan up to date because the Federal exemption covers your assets. State estate tax exemptions are not yet increasing to match the Federal increases (New York \$5,250,000, Connecticut \$2,600,000, New Jersey has no estate tax effective 2018) and portability does not apply to state exemptions. As a reminder, "portability" between spouses means that any unused *federal* estate exemption of the first spouse to die can be added to the surviving spouse's exemption for the survivor's own gifts or future estate. In contrast, your spouse cannot inherit your *state* estate exemption. It's "use it or lose it." To avoid losing your state estate exemption, a married person's estate plan must continue to use "credit shelter," "bypass," or "exemption" trusts. Moreover, it is very important to note that New York has an estate tax "cliff": once an estate exceeds a small amount of the New York exemption, there is no exemption at all and the entire estate (not just the excess) is taxed. Compounding this, New York counts in your taxable estate gifts made within three years of death. It's also entirely possible, and we hope probable for your sake, that you will not die until after 2025, unfortunately when the lower exemption amount comes back. A power shift in Washington could result in a change in this law at some point.
- It may also be wise, before the new estate tax exemptions are changed in the future, to lock in the higher exemptions by making gifts using the exemption up. Gifting techniques that take advantage of still very low interest rates are still attractive and should be considered as they can produce highly advantageous results for your family. Techniques such as Grantor Retained Annuity Trusts ("GRATs"), Charitable Lead Trusts ("CLTs"), sales to Intentionally Defective Grantor Trusts ("IDGTs"), and loans to your children are among those to be considered. Moreover, future appreciation on gifted assets benefit the gift recipient and escape estate taxes. Family partnerships are an important planning tool, particularly for less liquid assets, since Congress repealed pending regulations that would have severely limited their use.
- The tax legislation makes it even more critical to coordinate gift and estate planning with capital gains taxes. Planning must balance minimizing capital gains taxes and taking maximum advantage of the "step-up" in cost basis assets receive at death. Joint ownership or placing assets in the name of the spouse who may be more likely to die first can maximize the step-up. Please let us review your asset structure to determine how to construct the optimal plan. Your estate planning documents need to coordinate with assets now more than ever for this reason.

Annual Tax Free Gifts

- In 2017, you can give \$14,000 (\$28,000 if you are married) to as many people as you choose without dipping into your lifetime Federal exemption. In 2018, that the amount will increase to \$15,000 (\$30,000 if you are married). Gifts can be made outright, to trusts, and to 529 college savings plans.

(continued)

- You can “front-load” 529 plans with up to five years’ worth of annual gifts.
- Tuition and medical bill payments are also gift tax free if made directly to the school or provider.
- The annual exclusion for gifts from a US citizen spouse to a non-US citizen spouse (who is not eligible for unlimited tax free gifts) will increase from \$149,000 to \$152,000 in 2018.
- Not to be morbid, but it is wise to take care of annual gifts in January as none of us can predict if we will be here and able to take care of this in December 2018.

Charitable Gift Giving

- Consider gifts of appreciated stock to satisfy your charitable giving. The charity pays no capital gains tax on the sale of the stock as you would, essentially allowing you to make charitable gifts at a reduced cost to you.
- Consider creating a “donor advised fund” administered by a local community trust. You can make a gift in 2017 to your donor advised fund and take a charitable deduction for 2017, but defer distributions to charities of your choice until the need for a contribution arises. The funds are invested until distribution and community trusts offer planned giving advice to help you choose reputable and effective charitable recipients.
- If you are over 70½, use up to \$100,000 from your IRA to make gifts to a charity directly from your IRA and pay no income tax on the amount. The distribution (called a “Qualified Charitable Distribution”) counts towards your annual required minimum distribution, but you will not receive a charitable income tax deduction. If interested, check with us or your accountant.

Tune Up Your Estate Plan.

- You should, as always, review your estate planning documents to confirm they are up to date and reflect your current situation. Consider if any changes need to be made to bequests, executors, trustees, guardians, powers of attorney, and health care documents. Make sure your retirement plan, insurance, and other beneficiary forms are current and coordinate with your plan. Changes may be warranted if you sold an asset or business, you have a new job, a child married, you became a grandparent, a marriage ended, someone died, or if there is a need for asset management protection for you or a family member.

Avoiding Probate

- With estate tax’s bite lessening with increased exemptions, probate is an unnecessary expense and delay to avoid in administering an estate by creating a revocable trust. Probate can be avoided by joint ownership or designating beneficiaries.
- If you own real estate in a state other than your home state, a revocable trust can eliminate the requirement to probate in that other state. The more organized and consolidated you make your finances, combined with the use of a revocable trust, the more your executor and heirs will thank you (and you will save them money and aggravation).

Trust or Pre-Nup?

- People are marrying later in life, when they’ve established careers and amassed significant assets, or marry for a second or third time. Pre-nuptial agreements can safeguard property and assets accumulated before a marriage, but must be carefully prepared and often lead to tensions on the eve of a joyous occasion. Both sides must be represented by attorneys and there must be full asset disclosure. They cannot be prepared on the eve of the wedding. Trusts, however, created by the individual to be married or his or her parents may be another way to address the issue and ensure that separate and inherited property remains separate after a marriage. Transferring property to a trust may accomplish the same outcome as a pre-nup with less stress. Consider including them in your estate plan to protect your children from a spouse.

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Estate Planning for Same-Sex Couples

- Same-sex couples have the same tax benefits and protections that are available to heterosexual couples. Same-sex couples who are married or plan to marry should review their estate plan. Transfers between same-sex couples are free of Federal gift tax, but there are income tax reasons to consider before assets are transferred.

College Students

- An eighteen-year old child is an adult in the eyes of the law. This means that parents no longer have a right, or face hurdles and delay, to speak to doctors, see their child's medical and financial records, or make critical decisions on their behalf. It is a good idea for your young adult to designate you as a health care decision maker, permit you access to medical information, and grant you a power of attorney. And if your young adult has an old custodial account that is substantial, consider creating a trust for the child's benefit, with you as Trustee, until he or she reaches a more mature age. The funds are legally the child's now and available to him or her.

3.8% Medicare Surtax

- A 3.8% surtax on net investment income was enacted in 2013 as part of health care reform.
- It applies to higher income individuals, but also applies to trusts and estates who have net investment income in excess of \$12,300 in 2017. Trusts and estates should consider end of year distribution strategies to reduce or eliminate the tax.

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We welcome an opportunity to discuss these important issues with you. Please contact [Doris L. Martin](mailto:Doris.L.Martin@garfunkelwild.com) (516-393-2205, dmartin@garfunkelwild.com) or [Michelle Lewis Salzman](mailto:Michelle.Lewis.Salzman@garfunkelwild.com) (516-393-2504, msalzman@garfunkelwild.com) to discuss these ideas further.

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