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Trusts & Estates

James T. Betts

Joanne Butler

Coleman H. Casey

Jeffrey A. Cooper

Danielle P. Ferrucci

Stephen K. Gellman

Bryon W. Harmon

Charles B. Kaufmann, III

Lori E. Romano

Laura A. Schuyler

Lyn Gammill Walker

Increase in Federal Estate and Gift Tax Exemptions Under the 2017 Tax Act

The Tax Act of 2017, passed by Congress in late December, increases the federal estate, gift and generation-skipping transfer (GST) tax exemptions to \$11.18 million per person in 2018. The exemptions are indexed for inflation and thus may increase each year going forward. As has been the case under prior law, the exemptions are applied to taxable gifts made during life and/or applied to one's estate at death. It is important to note that based on current law, the increased exemptions will sunset effective January 1, 2026. This means that, absent further legislative action, the federal estate, gift and GST tax exemptions will revert in 2026 to pre-2018 law with an exemption of approximately \$5.5 million adjusted for inflation. It is also possible that Congress could repeal the Act at some point in the future.

Under the Act, a surviving spouse may continue to use his/her deceased spouse's unused federal estate and gift tax exemption (so-called "portability"). This means that a married couple can use the full \$22,360,000 federal exemption (indexed for inflation) between them. The maximum rate for the federal estate, gift and GST taxes for transfers in excess of the exemption amount remains at 40%.

Annual Exclusion Gifts

***Effective January 1, 2018,
the maximum annual gift
tax exclusion has been
increased to \$15,000
per recipient.***

With these changes in the tax law, it is important to review your current estate plan. In some cases, it may make sense to build in greater flexibility by implementing a disclaimer based plan. Other existing plans may be simplified. Although most taxpayers' estates will not pay a federal estate tax, the GST tax exemption is not portable. In addition, clients residing in states that have an estate tax, such as Connecticut and New York, will still need to take the state estate tax into account. Specifically, as noted in our November 2017 client alert, Connecticut's estate and gift tax exemptions are scheduled to increase to meet the federal exemption after a two year phase-in period. Under current Connecticut law, that exemption increased to \$2.6 million in 2018 and will increase to \$3.6 million in 2019. Beginning in 2020, the Connecticut exemption is scheduled to match the federal exemption, however, the



Connecticut legislature will likely enact legislation to clarify whether that means matching the federal exemption of \$11.18 million or the \$5.5 million exemption that existed when the current law was enacted. In addition, the New York estate tax exemption is currently \$5,250,000 and will be increased for inflation beginning on January 1, 2019. Unlike Connecticut, New York does not have a gift tax, but gifts made by a New York resident within three years of death and between April 1, 2014 and January 1, 2019 will be includible in the decedent's gross estate for purposes of computing the New York estate tax. After January 1, 2019, any gifts made by a New York resident will not be so included, nor will such gifts reduce the New York estate tax exemption amount.

Of course, there are many important non-tax considerations involved in estate planning. For instance, trusts can provide protection from a beneficiary's creditors or divorcing spouse. Trusts also structure how beneficiaries inherit wealth by directing to whom payments may be made and for what purposes. Thus, we recommend reviewing your current estate plan to make sure it does what you want under current tax law and your current family circumstances.

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

265 Church Street - Suite 1207
New Haven, CT 06510-7013
203-836-2801

400 Park Avenue - Fifth Floor
New York, NY 10022-4406
212-376-3010

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

www.shipmangoodwin.com

Trusts & Estates

James T. Betts
(860) 251-5150
jbetts@goodwin.com

Danielle P. Ferrucci
(860) 251-5105
dferrucci@goodwin.com

Lori E. Romano
(203) 869-5600
lromano@goodwin.com

Joanne Butler
(203) 863-6408
jbutler@goodwin.com

Stephen K. Gellman
(860) 251-5109
sgellman@goodwin.com

Laura A. Schuyler
(860) 251-5338
lschuyler@goodwin.com

Coleman H. Casey
(860) 251-5112
ccasey@goodwin.com

Bryon W. Harmon
(860) 251-5106
bharmon@goodwin.com

Lyn Gammill Walker
(860) 251-5146
lwalker@goodwin.com

Jeffrey A. Cooper
(203) 863-6418
jcooper@goodwin.com

Charles B. Kaufmann, III
(203) 869-5600
ckaufmann@goodwin.com

www.shipmangoodwin.com/trustsandestates/

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