planning matters

PRACTICAL INSIGHTS INTO ESTATE PLANNING & WEALTH PRESERVATION

INSIDE FOR WINTER 2018

2017 Tax Cuts & Jobs Act
Portability Election
Repeal of New Jersey Estate Tax
Update on Digital Assets

Compliments of Lindabury's Wills, Trusts & Estates Group

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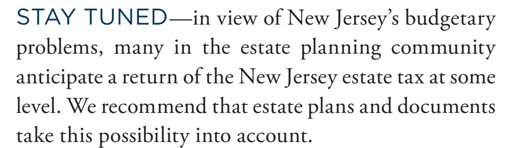
New Jersey estate tax repealed



As a result of 2016 legislation, New Jersey's estate tax was repealed for years beginning January 1, 2018. However, the New Jersey inheritance tax imposed on gifts at death (and, in certain circumstances, in the three years prior to death) remains, at rates ranging from 11% to 16%. Gifts to a spouse, direct descendants (children, grandchildren, etc.) and direct ancestors (parents and grandparents) are exempt from the inheritance tax, as are gifts to qualified charities.

STAY TUNED—in view of New Jersey's budgetary problems, many in the estate planning community anticipate a return of the New Jersey estate tax at some level. We recommend that estate plans and documents take this possibility into account.

digital assets update

With Governor Christie's signature on September 13, 2017, the "Uniform Fiduciary Access to Digital Assets Act" was enacted in New Jersey. The UFADAA makes it possible for fiduciaries such as executors, trustees, guardians, and agents acting under powers of attorney, to manage a person's digital assets and accounts. Note that while a person's fiduciaries will have the general authority to deal with digital assets without the need for specific reference to this power in a governing document, a fiduciary's access to electronic communications (e-mail, text messages, and social media accounts) will be restricted unless the account owner specifically grants this authority in a will, trust, or power of attorney. Therefore it continues to be important to include in estate planning documents specific language granting one's fiduciaries the power to access and manage such electronic communications.

portability

examination of a predeceased spouse's estate tax return

by Anne Marie Robbins, Esq.

In a recent case that is a cautionary tale to preparers of federal estate tax returns, the Tax Court held that the IRS was permitted to examine the estate tax return of the first spouse to die in determining the deceased spousal unused exclusion amount (DSUE) available to the estate of the surviving spouse. The result was an increase to the federal estate tax in the estate of the second spouse.

A husband died in 2012 and his estate reported his DSUE on form 706, the federal estate tax return, and elected portability of the DSUE to the surviving spouse. The IRS sent the husband's estate a federal estate tax closing letter reporting the return was accepted as filed. When the wife died in 2013, her estate claimed the DSUE reported by the husband's estate. As part of the examination of the wife's federal estate tax return, the IRS also examined the 706 filed by the husband's estate. Without determining a deficiency against the husband's estate, the IRS reduced the amount of the husband's DSUE by the amount of taxable gifts given by husband during his life. This reduction in the DSUE reduced the total exclusion available in the wife's estate and resulted in an increase of the estate tax.

Several holdings by the court are noteworthy:

1. The IRS may examine the estate tax return of a predeceased spouse to determine the correct DSUE amount. I.R.C. § 2010(c)(5)(B).
2. A letter stating the estate tax return of a predeceased spouse has been accepted as filed is not a closing agreement under I.R.C. § 7121, nor does it estop the IRS from examining the return of the predeceased spouse.
3. An examination of the estate tax return of a predeceased spouse in which the IRS reviews records in its possession and asserts no additional tax is not a second examination within the meaning of I.R.C. § 7605(b), nor can the estate of the later deceased spouse challenge whether such examination is improper—only the examined party can seek protection from a second examination under I.R.C. § 7605(b).
4. The period of limitations on assessment of tax for the estate of the predeceased spouse is not implicated if the IRS does not determine an estate tax deficiency in the estate of the predeceased spouse.

Estate of Sower v. Commissioner, 149 T.C. No. 11 (9/11/2017)

by Robert S. Schwartz, Esq. & Anne Marie Robbins, Esq.

President Trump signed the Tax Cuts and Jobs Act (the "Act") on December 22, 2017. The Act makes significant changes to the Internal Revenue Code, covering a broad range of income, corporate, and estate taxes. Most of the changes to the Code are effective as of January 1, 2018. Because of Senate rules requiring limits on legislation that increases the federal deficit, many provisions of the Act, including the estate, gift, and generation-skipping transfer (GST) tax provisions, will expire after December 31, 2025.

From an estate-planning perspective, some key takeaways are:

- The federal estate, gift, and GST taxes have not been eliminated, as some had hoped. Instead, the exemptions have increased making it less likely that such taxes will be imposed on all but the wealthiest individuals. The base federal estate and gift tax exemption has been doubled to $10 million, indexed for inflation, for tax years 2018 through 2025. The effect is that a single person may now transfer, during life or at death, a total of approximately $11.2 million (the inflation-adjusted figure), or $22.4 million for a married couple. The GST tax exemption has also increased to a like amount.
- The tax rates on transfers of assets in excess of the exemptions remains at 40%.
- The unused estate and gift tax exemption of a predeceased spouse (the "deceased spouse unused exclusion," or DSUE) continues to be available for the use of the surviving spouse provided a proper "portability" election is made by filing a timely federal estate tax return following the first spouse's death.
- The annual exclusion for gift tax purposes, that is, the amount that a person may give to individual donees each year without using the larger gift and estate tax exemption, is $15,000, or $30,000 for a married couple.
- Even with the larger gift and estate tax exemption, the cost basis of inherited assets will continue to receive a step-up in basis under section 1014 of the Code.
- As of January 1, 2026, the large transfer tax exemptions revert back to the law as of December 31, 2017. Therefore very wealthy individuals (i.e., people with assets in excess of the exemption amounts) should consider large gifts prior to 2026.
- There were also changes to the tax treatment of pass-through entities, including a new deduction of 20% of qualified business income for taxpayers who own partnerships, S corporations, and LLC's.

Individual income tax provisions:

- Tax rates: There are now 7 income tax brackets for individuals, ranging from 10% to 37%. There are 4 brackets for estates and trusts, ranging from 10% to 37%. As had been the case under prior law, the top bracket for estates and trusts applies at a very low level of taxable income—$12,500.
- The Alternative Minimum Tax (AMT) exemption amounts for individuals were increased: $109,400 for married taxpayers filing jointly; $70,300 for single taxpayers; $54,700 for married taxpayers filing separately.
- The personal exemption has been eliminated.
- The standard deduction has increased for tax years beginning after December 31, 2017 and before January 1, 2026: $24,000 for married taxpayers; $18,000 for head of household; and $12,000 for single taxpayers.
- A deduction for mortgage interest remains, subject to a limitation of a loan amount of $750,000. The deduction for home equity loan interest is suspended. The above rules apply only to new indebtedness incurred after December 16, 2017. For indebtedness acquired prior to that date, former law continues to apply.
- 529 Plans: Elementary and secondary school expenses of up to $10,000 per year are now qualified education expenses and may be withdrawn from 529 accounts.
- The charitable deduction for cash has increased; it had been limited to 50% of adjusted gross income (AGI); it is now 60% of AGI.
- The Act suspends all miscellaneous itemized deductions that had been subject to the 2% floor on itemized deductions.
- State and local sales, property, and income tax (SALT) deductions are limited under the Act to $10,000 per year.
- Alimony: For 2019 and following, alimony will no longer be deductible for the payor, nor be included in the gross income of the payee.
- The individual mandate (the requirement that individuals comply with the insurance coverage provisions of the Affordable Care Act, or pay a penalty) is permanently repealed for months beginning after December 31, 2018.

Corporate tax provisions:

- The maximum corporate tax rate is 21%, effective January 1, 2018. This change is permanent, in other words, it does not sunset in 2026.
- The Corporate AMT has been eliminated.

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