



3 West 35th Street, Floor 9
New York, New York 10001
Tel: (212) 682-2280
Fax: (212) 682-2153

TRUSTS & ESTATES UPDATE

SPRING 2018

As spring makes its slow, but eventual, arrival, it is a perfect time to evaluate your current state of affairs in light of your future goals and aspirations. Estate planning is an integral part of financial planning that prepares you and your family for an uncertain future in the context of your wishes for your legacy.

This *Trusts & Estates Update* provides an overview of some recent changes to consider as you face important decisions about your estate. Whether you are new to estate planning or have previously established an estate planning structure, Holm & O'Hara LLP will help you navigate these and future updates.

THE NEW TAX SCHEME

INCREASE IN THE FEDERAL ESTATE AND GIFT TAX EXEMPTION AMOUNTS

At the end of 2017, Congress passed the Tax Cuts and Jobs Act, which included several changes to the Federal Estate and Gift Tax that will have an impact on individuals with large estates. This legislation doubled the Federal and Estate Tax exemption threshold from \$5,490,000 to \$11,200,000. This increased exemption amount will revert back to the previous exemption amount, with adjustments for inflation, by 2025.

The new Federal and Estate Tax exemption amount would allow individuals with large estates to transfer more of their wealth tax-free at death. However, since estate tax regimes vary across the states, the actual impact of the proposed federal estate tax exemption increase is uncertain.

For example, New Jersey has already eliminated their estate tax (but not their inheritance tax) effective as of January 1, 2018, so they will not be affected by the new law. New York, on the other hand, updated its tax regime in 2014 to align with federal tax law. As a result, changes to the federal estate tax could have significant implications in New York. Additionally, due to the new tax law, states will likely reevaluate their regimes now that the federal estate tax exemption amount has increased significantly.

Explore the potential consequences of the increase in the estate tax exemption amount based on your state of residence.

KEY REMAINING PROVISIONS

BASIS STEP-UP AT DEATH

The new tax law keeps some key provisions that existed under the old tax law. Tax on unrealized gain is forgiven at death. For example, if during her lifetime, an individual sold a house for \$1,000,000 that she originally purchased for \$400,000, she would owe tax on the \$600,000 gain. But if the individual left the house to her son on her death, he would take a basis step-up to the fair market value of \$1,000,000. If her son sold the property immediately, he would realize no gain—the tax on his mother’s \$600,000 unrealized gain would be forgiven.

PORTABILITY

The federal estate tax exemption amount per individual is now currently at \$11,200,000. If an individual who is married dies and does not use up all of the exemption amount they are entitled to, their spouse can use the remaining amount on their death. Thus, a married couple with net assets of under \$22,000,000 would in theory avoid federal estate tax liability. Since the 2018 exemption amount is significantly higher, it may be beneficial to review your overall estate plan.

Consult your estate planning attorney for an update to your estate plan.

DISCOUNT VALUATION REGULATIONS

A common estate planning technique is to gift, sell or transfer interests in a limited liability company or family limited partnership to family members. The interests transferred often receive a valuation discount for tax purposes based upon lack of marketability or lack of control. This has been a valuable planning technique to help reduce the size of your estate by passing discounted assets to your family.

Ensure that you are transferring interests in your LLC or family limited partnership for strategic reasons, such as asset protection or family planning, rather than simply in anticipation of an unfavorable regulatory climate.

ESTATE TAX CONSEQUENCES TO NON-U.S. CITIZENS

Estate tax issues often arise for couples in which one spouse is not a U.S. citizen. U.S. tax laws usually allow married individuals to pass an unlimited amount of assets to a spouse, free of gift and estate taxes. However, different laws apply to couples in which one spouse is not a U.S. citizen. When the surviving spouse is a U.S. citizen, he or she may benefit from the unlimited marital deduction. However, if the U.S. citizen dies first and transfers assets to a non-U.S. citizen spouse, estate taxes are imposed on assets surpassing the lifetime exclusion amount of \$11,200,000 for 2018.

To minimize estate tax liabilities, mixed-nationality couples may consider establishing a qualified domestic trust (QDOT) or an irrevocable life insurance trust, maximizing lifetime gifts or pursuing U.S. citizenship for both spouses.

Non-U.S. citizens may be classified as either nonresident aliens (NRAs) or non-U.S. citizen residents (“green card” residents). For tax purposes, it is usually better to be classified as an NRA, since the estate tax applies only to an NRA’s U.S. property, not worldwide property. Still, an NRA who plans to invest in

U.S. real estate or securities should invest through a foreign corporation or a foreign irrevocable trust to avoid the U.S. estate tax on U.S. situs assets on his or her death.

Review your estate plan to avoid U.S. estate and gift taxation on your investments.

NEW YORK UPDATE

INCREASE IN EXEMPTION AMOUNT

The New York estate tax exemption amount is currently at \$5,250,000 and will stay at this amount until the end of 2018. Next year it is set to increase slightly based on the rate of inflation. This could result in significant estate tax savings for New York residents. For instance, if an estate is valued at \$5,000,000, the NYS estate tax liability, as well as the federal estate tax liability, for this year would be nothing. As illustrated with the increase in the federal estate and gift tax exemption amount, the increase in the New York estate tax exemption could mean significant estate tax savings for you.

Review your estate plan to ensure that assets are organized optimally to take advantage of the exemption increase.

TREATMENT OF GIFTS

New York law has changed regarding certain gifts made during a decedent's lifetime. Prior law did not impose a gift tax on lifetime gifts and excluded such gifts from the New York gross estate. Under new law, gifts made within three years of a decedent's death will be added back to the New York gross estate, and might therefore be subject to New York estate tax at a maximum rate of 16 percent. The add back does not apply to gifts made before April 1, 2014, after January 1, 2019, or during a time when the decedent was not a resident of New York State.

Consider creating a bypass trust to set aside and ensure the proper disposition of New York's basic exclusion amount.

Holm & O'Hara LLP Trusts & Estates Team

These are just a few recent updates for your consideration. The Trusts & Estates Team at Holm & O'Hara LLP are prepared to discuss these and other concerns with you. Estate planning can be complex and overwhelming, but we will provide you with guidance as to how your estate plan can meet your goals both during and after your life.

Michael L. Landsman, Esq.

Co-Managing Partner

Mr. Landsman represents fiduciaries and beneficiaries, assisting with the administration of trusts and estates, including federal and state tax compliance. In addition, Mr. Landsman advises clients regarding estate planning strategies and legal approaches, particularly when commercial real estate is involved.



(212) 682-2575
m.landsman@hohlaw.com

William P. Holm, Esq.

Senior Partner

Clients trust Mr. Holm to take on tough legal problems and to get the right answers to even the most complicated questions. Mr. Holm's trusts and estates practice focuses on estate planning, trust and estate administration.



(212) 682-2281
w.holm@hohlaw.com

Chaya Biskin-Sitko, Esq.

Partner

Ms. Sitko's trusts and estates practice focuses on counseling regarding complex trusts & estates administration and management, domestic and international estate planning, federal gift and estate tax litigation against the IRS, and state fiduciary and probate controversy work.



(646) 214-0107
c.sitko@hohlaw.com

Steven E. Glass, Esq.

Associate

Mr. Glass advises clients on best approaches for ensuring that their long-term goals for distribution of their assets are fulfilled, while minimizing potential estate tax consequences. He also assists fiduciaries in administering trusts and estates.



(212) 986-5780
s.glass@hohlaw.com