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Newsletters

Estate Planning and Wealth Preservation under the Tax Cut and Jobs Act of 2017

March 29, 2018

Charitable Gifting Strategies

The Tax Cut and Jobs Act of 2017 ("TCJA") repealed most itemized income tax deductions and increased the standard deduction—now $24,000 for married couples filing jointly, $18,000 for heads of household filers, and $12,000 for single taxpayers. The only itemized deductions remaining are for state and local income taxes ("SALT"), but they are limited to a total of $10,000 per year, mortgage interest, again subject to certain limitations, and charitable deductions. Thus, married taxpayers with no mortgage interest deduction will have at least $14,000 of standard deduction over and above the deductible SALT. For many, that would mean charitable deductions in that year are non-deductible. One might make two or three years' worth of contributions to make them deductible in one year and take the next year or two off. If over 70½ with an IRA or other retirement plan, the best strategy is to direct the custodian to transfer any amount up to $100,000 to a charity or charities, which will not be taxable to you or the charity. Additionally, such a distribution (referred to as a "Qualified Charitable Distribution" or "QCD") satisfies the Minimum Required Distribution requirement. You can make a QCD every year thereafter if you so choose

What is a Donor Advised Fund and Why Should I Care?

A Donor Advised Fund is like having your own private foundation to make charitable gifts, but without the high cost and complicated rules. You can set one up with a local community foundation, or a national brokerage firm like Fidelity or Schwab, with an initial contribution as low as $5,000. After funding the Donor Advised Fund ("Fund"), you direct the Fund to make distributions to the charities you select. Because the contribution to the Fund is deductible when you initially make the contribution, you can utilize the charitable deduction in that year for a contribution which is large enough to be an itemized deduction even if you make no distributions to any charity for years afterward. Generally, the sponsors of Donor Advised Funds impose a fee and you cannot get the assets back, but you can make a significant tax deductible contribution in one year and arrange for gifts to your favorite charities every year with no missed years when employing this doubled up contribution strategy.

Review Existing Estate Plans Now

If you created your will or revocable trust several years ago and expected your estate to be subject to federal estate tax, it may no longer be an issue for most of us given the new approximately $11.2 million exemption per person required for federal estate tax. Your existing estate plan likely calls for the exempt amount

Attorneys

Marcia L. Mueller

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Estate & Trust Administration

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to fund a trust called a "Family" or "A" trust, also known as a "credit shelter trust." Under the TCJA, all assets will go into that trust up to the $11.2 million limit. The problem, however, is that the tax basis for those assets is the date of death value at your death and any appreciation between your death. When the assets are distributed at the death of the surviving spouse, they will be subject to capital gains tax when sold. If those assets had been left to your spouse or another person, there would be no estate tax, and when that individual dies, the assets and any appreciation would again escape estate tax due to the federal estate tax exemption of that individual. Further, if the assets you leave to your spouse and the assets owned by your spouse are in excess of $11.2 million, your spouse can use any of your unused federal estate tax exemption (referred to as the "deceased spouse unused exemption" or "DSUE"), so no federal estate tax would be incurred until the combined total of your assets and your spouse's assets are over $22.4 million. An estate tax return must be filed for the first spouse that dies even if the estate is not taxable to establish the DSUE amount to be used at the surviving spouse's death.

Can I Ignore Estate Planning Due to the TCJA?

In a word, "No." If you live in a state with estate tax—like Illinois, where estate taxes are due if your estate is in excess of $4 million—you may want to postpone or avoid the state estate tax by funding a trust for the surviving spouse that satisfies the requirements to be a Qualified Terminable Interest Property ("QTIP") trust for state estate tax purposes with the assets remaining after funding a Credit Shelter Trust with the amount exempt from the state estate tax. The executor or trustee will make a state QTIP election on your estate tax return. The assets held in the trust after the death of the surviving spouse will be subject to the state estate tax if (1) the surviving spouse is still a resident of a state that imposes state estate taxes at the surviving spouse's death, and (2) the assets have not been distributed in the meantime to your surviving spouse for support or health care. Also, the TCJA sunsets in 2025, which means the federal estate tax in 2026 will be reinstated with a $5 million exemption indexed for inflation unless the TCJA is extended by Congress (based on the current rate of inflation the exemption is expected to be slightly in excess of $6 million in 2026). Since the current high federal estate tax exemption threshold will only be in place for 8 years, it may be prudent to include a bifurcated plan in your estate planning documents: one in the event that the $11.2 federal estate tax exemption would result in no federal estate tax (providing for an outright distribution of all assets to the surviving spouse), and another that provides for the funding of a credit shelter trust with the amount in excess of the exemption to be distributed to your spouse, or held in a marital trust if that is the better approach given the exemption available.

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