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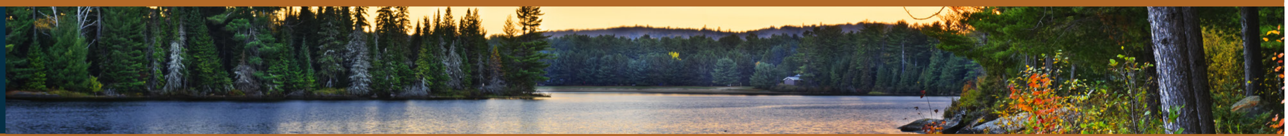
TRUSTS & ESTATES NEWSLETTER

August 2020



Recently, there has been talk about how current economic conditions and the 2020 elections might impact the federal estate tax. Although there is no certainty at this point, we thought it would be helpful to outline how potential changes may impact our trusts and estates clients.

Will 2021 Bring Increased Estate Taxes?

In the past two decades, the federal estate tax exemption has risen from $675,000 to over $11.5 million ($23 million per married couple), while the top rate has declined from 55% to 40%. As a result, far fewer than 1% of all estates currently pay federal estate tax and many of our clients do not currently need to aggressively plan for that tax.

There are reasons to think the exemption amount or estate tax rate might change in 2021. The federal government is spending massive amounts to combat the Covid-19 epidemic at the same time as economic conditions are weakening in many sectors of the economy. The resulting budgetary pressure may lead Washington to rethink, and possibly reverse, the long-term trend toward higher estate tax exemptions and lower tax rates. Such changes may be even more likely if Democrats, who traditionally favor more robust estate taxation, win the Presidency or key Senate seats in November's elections. As a result, some clients may need to revisit their estate tax planning.

What to Do?

While urgent action is not required, or even appropriate, given the significant current uncertainty, clients should consider the possibility that the estate tax exemption could soon revert to lower levels and should consider how that might impact their estate planning. Under current law, the estate tax exemption is already scheduled to revert to $5.5 million (plus inflationary adjustments) in 2026. Many commentators suggest that a future Congress could accelerate that reduction. Others have suggested that Congress could act more aggressively, lowering the exemption to the $3.5 million level in place when President Obama took office or perhaps even lower. Similarly, the tax rate could be increased from its current 40% level. Any changes enacted next year could be made retroactive to January 1, 2021.

While each client's response to these possible tax changes will depend on their personal and financial situation, a few general guidelines apply. One logical first step you may wish

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to consider is to make gifts which reduce your estate but do not use up any of your estate tax exemption. For example, you may make "annual exclusion" gifts of up to $15,000 per donee this year without using any of your exemption and may also directly pay others' medical or tuition bills.

Making larger gifts, or funding trusts, with appreciating assets such as securities or life insurance may provide additional ways to shift future growth out of your estate. Furthermore, some clients with the resources and circumstances to justify more aggressive planning may wish to consider using up all or most of their current exemption by making gifts to family members or trusts for their benefits during 2020. Done properly, such gifts should "lock in" use of the current exemption and guard against a potential future reduction of that exemption. Such planning is far from simple given the size of the gifts involved and a number of tax and lifestyle considerations implicated by such planning. Nevertheless, the potential tax savings could be dramatic for clients with the means to consider this approach.

We will continue to watch as events in Washington unfold in the coming weeks and months. For now, we hope this newsletter has provided some preliminary guidance for your consideration. As always, please contact your estate planning attorney with any questions on the topics summarized in this newsletter or with questions regarding your estate planning matters.

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