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Changes in the Estate, Gift and Generation-Skipping Tax Exemptions

This year's sweeping tax law included a dramatic change in the federal estate. The tax legislation (effective January 1, 2018) doubled the federal estate, gift and generation-skipping tax exemptions to $11.18 million per person (indexed for inflation), minus any exemption already used. These changes will "sunset" - or revert back to pre-2018 levels - in 2026 unless Congress takes additional action.

We will need to monitor the situation; Congress rarely rolls these types of exemptions back, but much about our current political situation is unprecedented and we can't rule anything out. Moreover, the possibility of sunset introduces an additional element of uncertainty which will require flexibility in new estate plans.

The federal concept of portability remains unchanged, as do the unlimited marital and charitable deductions. The estate and gift tax rates also remain the same with taxable estates bearing tax at 40% for taxable amounts over the exemption. There are also changes in the income tax for trusts and estates with modest drops in the applicable rates but the elimination of some deductions, much like what has been widely publicized concerning changes in the individual income tax deductions. The annual exclusion for gifts has increased to $15,000 per donee for 2018.

Maine Estate Tax

The Maine Estate Tax system has, once again, "de-coupled" from the federal system. The Maine estate tax exemption remains at $5.6 million in 2018 and is indexed for inflation.

Maine does not recognize the concept of exemption portability, so the Maine estate tax exemption remains a "use it or lose it" proposition.

The de-coupling of the Maine estate tax from the federal system adds an additional planning wrinkle, and clients with assets near, at, or above the Maine exemption amount should review their plans to ensure they still meet their planning objectives.

100 Years of Estate Tax Exemptions			
1918: $50,000	1980: $161,000	1998: $625,000	2011: $5,000,000
1926: $100,000	1981: $175,625	1999: $650,000	2012: $5,120,000
1932: $50,000	1982: $225,000	2000: $675,000	2013: $5,250,000
1935: $40,000	1983: $275,000	2002: $1,000,000	2014: $5,340,000
1942: $60,000	1984: $325,000	2004: $1,500,000	2015: $5,430,000
1977: $120,000	1985: $400,000	2006: $2,000,000	2016: $5,450,000
1978: $134,000	1986: $500,000	2009: $3,500,000	2017: $5,490,000
1979: $147,000	1987: $600,000	2010: $5,000,000*	2018: $11,180,000

* In 2010, an estate could "opt out" of the estate tax, but would then lose stepped up basis.

What Does This Mean for Estate Plans?

These changes are sweeping and we advise all individuals who have estate plans that contain tax planning to revisit those plans. Many couples can completely eliminate the use of trusts intended solely for tax-sheltering purposes and create a simple, streamlined estate plan. Some may choose to opt for a “disclaimer” plan that includes “back up” trusts that come into being on the death of the first spouse only if the surviving spouse, with input from advisors, concludes it is warranted or prudent for estate tax or other purposes. Such an approach will be an element of many plans for the foreseeable future, due to the threat that the estate tax exemption may revert to lower levels under the sunset arrangement or legislative changes. Estate tax planning, which previously was a critical element of many plans, will no longer be a relevant consideration in many cases.

Even if tax planning is no longer necessary, clients will want to think about whether continuing trusts are still a valuable element of their estate plan. There may be good nontax reasons to keep assets in trust for beneficiaries: (i) asset protection (including divorce and domestic relations issues), (ii) concern for management either until beneficiaries attain a particular age or after they have reached an advanced age, or (iii) certainty that assets held in trust will ultimately pass to the donor’s other beneficiaries, as could be appropriate in a subsequent marriage with children from a prior marriage.

Most clients who still have tax reasons to include trusts in their estate plans, will want to review the flow of assets under their plans. Prior tax-based plans were created when exemptions were much smaller (see table above) and holding the full exemption amount in trust, or even having it pass to children free of trust on the death of the first spouse, may have been appropriate under prior tax laws. However, the larger exemptions may result in excessive amounts being held in trust with no assets passing to the surviving spouse or children free from trust. Even if a client wants to keep the full exemption amount in trust, the terms of those trusts should be reviewed as these trusts will now represent a much larger portion of an overall estate.

Finally, some estate plans that contain old formulas require urgent attention. Some older documents can actually result in an unnecessary payment of estate tax when the first spouse dies instead of deferring all estate taxes until the second spouse’s death. For example, clients with large estates who have made significant taxable gifts can face an estate tax under these old formulas.

What Should You Do?

If your estate planning documents contain trusts designed to minimize or defer estate taxes, or if your plan divides assets based on tax formulas, they should be reviewed. Please call us to schedule an appointment to review your estate planning documents. We will need an updated asset summary that highlights how assets are titled-that is joint, individual or trust, so that we can help you understand what your current estate plan would do and be sure you have a plan in place that achieves your goals.

Planning for substantial gifts to use the higher exemption amount may be appropriate for some clients, in case the exemption is lowered in the future.

Firm News

After practicing law in Portland, Maine for over 40 years, **JAY YOUNG**, one of the founders of LeBlanc & Young, will change to "Senior Counsel" status as of the first of the New Year. Jay will continue to be associated with the firm, and while he may not be in the office every day, he will be available for consultation with other lawyers at LeBlanc & Young and for meetings with clients.

We are pleased to announce that **KRISTIN P. BARRY** has accepted a position as an Attorney, effective October 1, 2018. Kristin began her legal practice in Washington, D.C., working at a large law firm. After returning to Maine, she opted for a smaller, more personal practice and has greatly enjoyed working with families and individuals to create estate plans tailored to meet varying goals. Kristin graduated cum laude from Dartmouth College and received her J.D. from Georgetown University Law Center. She lives in Scarborough with her husband and two children. A long-time competitive distance runner, Kristin is a two-time Olympic Marathon Trials qualifier and a member of the Maine Sports Hall of Fame.

We are also pleased to report that **NATE PIKE**, who recently graduated from the University of Maine School of Law, has accepted employment as a Trust and Estates Administrator with the firm. Nate will focus primarily on estate and trust administration, including probate fiduciary accountings, estate and fiduciary tax return preparation, and estate tax returns. Nate graduated from Fairleigh Dickinson University in Madison, New Jersey with degrees in Creative writing and Criminology. After completing his undergraduate studies, Nate attended the University of Maine School of Law in Portland, where he obtained his Juris Doctor, focusing on taxation and trusts and estates. Outside of work, Nate enjoys playing basketball in local leagues, playing tennis, and golfing when weather permits.