



405 PARK AVENUE
NEW YORK, NY 10022

TEL: 646-445-5100

WWW.REIDPLLC.COM

JANUARY 2018

ESTATE AND TAX PLANNING

Looking back on 2017, we must regard the year as one that will make a significant impact on the way in which assets are held and ultimately disposed of, due in part to the legislation referred to as the Tax Cut and Jobs Act of 2017 (the “Act”) signed into law last month.

Set forth below are some of the highlights of the Act which may impact our clients, as well as an overview of certain State law changes made in the last year.

Federal Transfer Taxes

The Act has made significant changes in our Federal tax rules effective as of January 1, 2018. The Federal estate, gift and generation-skipping (“GST”) tax exemptions have been increased from \$5.6 Million per person to approximately \$11.2 Million per person (\$22.4 Million per couple), indexed for inflation. The basis of assets will continue to be stepped-up at death. The annual gift tax exclusion, which was not affected by this legislation, will be \$15,000 per donee in 2018.

The Act is a product of Congressional “reconciliation” with a Republican Presidency and a narrowly-controlled Senate. As a result, the estate, gift and GST tax provisions and most of the individual income tax provisions are temporary in that they will “sunset” in seven years and revert to the tax law provisions in effect in 2017.

Planning is needed to address several scenarios; among them:

- Many estate plans are designed around “formula” clauses that automatically adjust when exemption amounts are changed. Unless action is taken, this could lead to the unintended result of giving more to certain beneficiaries than expected, since the Federal exemption amount will in effect be doubled.

- A number of states, including New York and Connecticut, have exemptions that do not currently mirror the increased Federal exemption. An estate plan with a formula clause equal to the Federal exemption will likely trigger the payment of a significant state estate tax in those states.

- We will continue to monitor IRS guidance to determine whether transfers should be made during lifetime to take advantage of the increased gift tax exemption, or not, if there is a potential for “clawback” if death occurs after 2025.

- Future estate planning documents will likely need to anticipate the possible reversion after 2025 to the “old law” and its provision.

* * * * *

In addition to the adjustments in the applicable Federal transfer tax rules, the Act makes major changes in the income taxation of corporations, such as the reduction of the top rate, and of individuals, including:

- Owners of certain businesses that are treated as “pass-through” entities may be eligible to deduct a portion of the income from such entities.

- For divorce or separation agreements executed after 2018, alimony payments would not be deductible by the payor-spouse nor taxable to the payee-spouse.

- The itemized deduction for state and local income and real estate tax paid will be limited to \$10,000 in the aggregate, while the deduction for interest on a mortgage acquired after 2017 will be limited to interest on a mortgage of up to \$750,000 for married taxpayers. The AMT is still in place.

- First-In, First-Out (“FiFo”) identification will not be required, and the identification of securities sold and their basis will continue to be allowed.

* * * * *

Exempt Organizations and Charitable Planning

The Act affects exempt organizations in a number of ways, including the imposition of an excise tax on the net investment income of certain universities and on compensation paid to certain employees in excess of \$1 Million. Also, the Act increases the annual limit on cash contributions to most public charities from 50% to 60% of a taxpayer's adjusted gross income.

New York Estate Tax

After January 1, 2019, the New York estate tax exemption is scheduled to match the amount of the Federal estate tax exemption. Yet absent state legislation, the New York exemption will apparently be limited to the Federal exemption in effect in 2017. Beware "the cliff", which triggers a New York estate tax *computed without the benefit of any exemption* as soon as the amount of the decedent's taxable estate exceeds 105% of the available exemption.

Connecticut Estate and Gift Tax

Connecticut has revised its estate and gift tax rules to increase its applicable exemption to \$2.6 Million in 2018, \$3.6 Million in 2019 and is then scheduled to match the Federal exemption in 2020.

New Jersey Estate Tax Repeal

The New Jersey estate tax has been repealed as of January 1, 2018. New Jersey will continue to assess an inheritance tax, which is a tax on distributions at death to persons other than the decedent's spouse, parents, grandparents, descendants and charitable organizations.

Execution of New York Wills Abroad

Following the recent adoption of CPLR §2106(b), New York Wills may be executed abroad without having to resort to a trip to the nearest U.S. consular office in a foreign country. This can now be accomplished with new language added at the end of the Will, which includes an affirmation in addition to a self-proving affidavit.

Common Reporting Standard

The exchange of financial information between and among more than 100 jurisdictions implementing the Common Reporting Standard ("CRS") is now in effect. The U.S., not a party to CRS, continues to enforce its own Foreign Account Tax Compliance Act ("FATCA").

* * * * *

If you would like to discuss an update to your estate plan or any subject mentioned in this report, please feel free to call us.

This Advisory is provided as general information only. No action should be taken solely on the basis of its contents.

REID MICHAELIS
405 Park Avenue
New York, NY 10022
Tel: 646-445-5100
Fax: 646-445-5063

jreid@reidpllc.com
646-445-5103
cmichaelis@reidpllc.com
646-445-5102
cchambers@reidpllc.com
646-445-5105
cfortgang@reidpllc.com
646-445-5106

