Death, Taxes and Changes in the New Tax Act

Some things never change. For instance, two things you can't avoid are death and taxes. Even though significant and sweeping changes have recently been passed by Congress with the Tax Cuts and Jobs Act of 2017, this basic rule still holds.

Several rules in regard to gift and estate taxes did not change.

For example, the annual exclusion allowing an individual to gift to any number of individuals without cutting into his or her lifetime exemption is one thing that was not changed by the new tax law. However, the annual gifting amount did change to $15,000 for 2018, up from $14,000 in 2017 due to indexing for inflation. Be aware that if one is in need of long term care coverage from a means-tested governmental benefit such as Medicaid, then this gifting rule should not be relied upon because all gifts or transfers for less than fair market value are penalized under Medicaid rules if done within a five year period before application for eligibility is made.

Another part of the tax law that did not change is the adjusted basis rule, also known as the step-up-in basis rule. This rule lets you to inherit a highly appreciated asset without having to pay the usual capital gains tax on the appreciation or growth that accumulated during the life of the decedent. The step-up-in basis rule allows you to inherit the appreciated asset without having to pay capital gains tax on the value of the asset as of the date of death. Thus all of those years of prior appreciation go tax free to the heirs. This rule applies whether your estate is small or large and can be an advantage to estates even of modest size.

The biggest change in the new tax law effects the estate tax, sometimes called the "death tax." Although both the estate and gift tax have been retained in the new law, the exemptions have greatly increased. The amount of money that is automatically exempt from federal estate tax at death has doubled to just over $11 million per taxpayer. If the taxpayer was married and took advantage of maximizing the use of the deceased spouse's exemption, then the amount that can pass estate tax free, is double that amount, or $22 million. These new rules apply to estates of decedents dying and gifts made after December 31, 2017 and before January 1, 2026.

These are just a few of the changes made in the newest tax bill that might affect your estate. In light of these significant changes, your estate plan should be reviewed to ensure it still meets your objectives. For example, if your Will contains bypass or credit shelter trusts, you should have an estate planning attorney review your estate to determine if you still have a taxable estate with the new increased exemption amounts. Additionally, you may wish to avoid funding a trust to take advantage of the adjusted basis rules. As always, it is best to review your plan regularly with an attorney who specializes in this field so that the most advantageous options in your best interest can be tailored specially for you.

You may email your questions to education@wrightabshire.com *or visit our website at* www.wrightabshire.com*. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire*

are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.