

ALERTS

New Tax Act And Its Effects On Estate Planning

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In December 2017, President Trump signed the Tax Cuts and Jobs Act. The Act doubles the federal exemptions for gift, estate and generation-skipping transfer tax. This increase will sunset on December 31, 2025. This year, the Exemption Amount will be \$11.18 million per individual, or \$22.36 million for a married couple. The exemptions are indexed for inflation. The exemptions are scheduled to revert to pre-2018 levels (as adjusted for inflation) beginning in 2026.

With the good news came some bad news. The New Tax Act eliminates or caps certain income tax deductions for individuals. The deduction for state and local tax (SALT) is now capped to \$10,000. The cap for the mortgage deduction for new mortgages is lowered to \$750,000 and the deduction is limited to funds used for the acquisition or improvement of a home. Both of these changes are also subject to a sunset provision and will be eliminated effective January 1, 2026.

Below we highlight some concerns as well as opportunities you may want to consider in light of the new tax act. We encourage you to discuss these topics with your estate planning attorney.

1. Avoid unintended consequences under existing estate plans

Many revocable trusts fund a credit shelter trust equal to the current estate tax exemption amount. Because of the rapid increase of the exemption amount, we recommend you confirm that the surviving spouse is a beneficiary of the credit shelter trust. In addition we recommend you discuss with your estate planning attorney whether the surviving spouse should be the sole beneficiary in order to ensure the surviving spouse is adequately provided for.

In addition, there are potential issues with funding clauses for individuals who live in states with a state death tax. In such instances you will want your attorney to advise you on the state tax implications of your current funding clause and whether the clause should be modified to eliminate all taxes at the death of the first spouse.

2. Consider gifting options

Individuals may now make additional tax-free gifts to take advantage of the increased exemption amounts up to \$11.18 million (or \$22.36 million for married couples). As the increase in exemptions is slated to sunset at the end of 2025, many individuals will want to make use of the increased exemption prior to 2026. There are a variety of gift/sale options that you may want to consider.

Because of the withdrawal of the regulations eliminating discounts, many clients continue to make gifts/sales of interests in family limited liability

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corporations. Increasingly, individuals are making gifts to trusts that include the spouse as a beneficiary (often referred to as a Spousal Lifetime Access Trust or SLAT). This increases flexibility for your gifting program as the spouse has access to the trust funds as necessary.

Other alternative gifting strategies include forgiving existing loans or pre-funding the premiums on life insurance policies owned by irrevocable trusts.

Finally, you may consider maximizing your generation-skipping tax exemptions (GST exemption) use by making a late allocation of GST exemption to an existing non-exempt trust without having to make an additional cash gift.

3. State residency planning

We anticipate clients will continue to “flee” high income tax states (or states with a state estate tax) and move to states that have a lower income tax burden or no estate tax. The new tax law increases the potential benefits of this type of planning given the cap on the SALT deductions.

4. Reassessing current structures

The increased exemptions and the loss of the SALT deduction in excess of \$10,000 will result in more emphasis on state income tax planning. In some instances, clients may wish to consider converting grantor trusts to non-grantor trusts so the trust pays its own income taxes.

In addition, it might make sense for some clients to terminate existing credit shelter trusts or eliminate planned credit shelter trusts at the first spouse’s death in order to benefit from the step-up basis or utilize the increased GST exemption. Similarly clients with irrevocable trusts that have springing powers of appointment might want to “spring” the powers in order to step up basis or utilize GST exemption.

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