

New Year – New Tax Law – Should Your Estate Planning Change?

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On December 22, 2017, President Trump signed the new tax law, entitled “*The Tax Cuts and Jobs Act.*” By now, you have a pretty good idea of what this new tax law does and you may have already started the process of assessing how it impacts you, your family and your planning. This article will provide you with the basic changes brought about by the new law and present the planning changes you may want to take advantage of and potential changes in planning you must be very cautious about.

The Tax Cuts and Jobs Act Basics

- The individual income tax brackets are lower and the bracket thresholds have increased. The top individual tax rate has been reduced from 39.6% to 37%;
- The corporate Alternative Minimum Tax (AMT) is eliminated, however, the individual AMT remains, with higher exemption and phase out amounts;
- The Standard Deduction is doubled to \$12,000 individual and \$24,000 married but the Personal Exemption is eliminated;
- Deductions for state and local income, sales and property taxes (SALT) are limited to \$10,000 aggregated;
- The deduction for home mortgage interest is allowed for new mortgages up to \$750,000 (loans taken after December 14, 2017). Mortgage loans taken before that date are grandfathered under the prior \$1 million interest limit;
- The deduction for Home Equity Loans is eliminated;
- Also eliminated are deductions for moving expenses (excluding Armed Forces members), alimony payments, and payments subject to the 2% floor (for example: tax preparation and investment fees);
- The charitable contribution limit is increased to 60% of Adjusted Gross Income (AGI) from 50%;
- There is a 20% deduction for qualified business income from a tax “pass-through” business. These include sole proprietorships, partnerships, LLCs and S corporations. NOTE: trusts and estates that own pass-through business interests are entitled to take this 20% deduction;
- The corporate tax rate is reduced from 35% to 21%;
- The gift and estate tax exemption is doubled to \$11.2 million for individuals and \$22.4 for married couples starting in 2018. Remember that, like many other provisions in the new law, this provision “sunset” at the end of 2025 and like in the Cinderella story, everything goes back to the way it was before – more on this later in this article.

New Law Impacts on Your Estate Planning

- The new gift and estate tax exclusion amounts substantially increase your opportunities to make large lifetime gifts to individuals or trusts free of transfer tax – this makes the acquisition of sufficient life insurance owned by a trust very attractive because tax free gifts to trusts for premiums are limited only by the higher gift and estate tax exclusion amounts.
- You can give more of your adjusted gross income to your chosen charities either directly, through a Donor Advised Fund or a Private Foundation, which increases your charitable deduction amounts (up to 60% of your AGI with a 5 year carry-forward).
- If you have implemented estate-freeze planning techniques, including certain types of trusts (for example, Grantor Retained Annuity Trusts or GRATs) or installment sales, you should review these with your estate planning advisors. These strategies may no longer be needed.

A Cautionary Word

Before you consider any changes to your estate planning, including wills, trusts, charitable giving and life insurance, please consider the following:

- There will be technical changes and rulemaking under the new law that will begin in early 2018 and will continue indefinitely. These activities could substantially change how the law is applied;
- The tax law may be changed or eliminated in the near future. The mid-term elections of 2018 may change the majority party in Congress and of course, the same applies for the Presidential election in 2020.
- Sunset, Sunset, Sunset. Assuming the election outcomes do not result in a change in the estate tax law, it is not permanent. On January 1, 2026 the gift and estate tax exclusion amount reverts back to the amount in 2017 (\$5.49 million) indexed for inflation. This indexed exclusion amount is estimated to be somewhere between \$6 and \$6.5 million in 2026. This raises the question of what happens if you make large gifts prior to 2026 and pass away sometime after. Will there be a “clawback” of those gifts, bringing them back into your taxable estate, causing you to pay even more in estate taxes than you would have without the new tax law? Under the new law, the Internal Revenue Service can proscribe regulations to address this potential difference in exclusion amounts that can occur over time that will significantly change the amounts that can be transferred free of tax. The burning question is will the IRS address this in time? The bottom line is, we simply don’t know.
- Don’t forget the State Estate Tax. The new federal law does not change state-imposed estate taxes. If your permanent residence is in one of the following states, you will still be responsible for paying state estate taxes. These states include: Massachusetts, Rhode Island, Connecticut, Vermont, Maine, New York, Maryland, Illinois, Minnesota, Oregon, Washington, Hawaii and the District of Columbia. For example, for those of us fortunate enough to live in Massachusetts, our state estate tax exemption is \$1 million. This means that every dollar in an estate in Massachusetts above \$1 million will be taxed and the top tax rate is 16%. This rate may not appear to be very high but what causes the total tax to be high is the very low exemption amount of \$1 million.
- It is important (and interesting) to note that there have been various forms of federal estate tax dating back to the Stamp Tax enacted in 1797 to fund the potential military conflict with France. The modern federal estate tax was enacted in 1916. Since then, it has been “permanently” repealed 4 times. This shows us that estate tax repeal has never been permanent in the past, even though made into law.
- We encourage you to think about your planning horizon. Whether it is 5,10,20,30 years or more, many, if not most things will change within your horizon, not just tax regimes but your circumstances as well. Good estate

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planning is designed to address a number of needs, concerns, and changes that may occur over time, not just the estate tax.

When considering the estate tax, a statement made by President Kennedy comes to mind: “the one unchangeable certainly is that nothing is certain or unchangeable.”

If you have questions or concerns about the new tax law and how it may impact you, your family and your planning, we are here to help. We look forward to hearing from you.

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