FL&B
FITZPATRICK
LENTZ & BUBBA
ATTORNEYS AT LAW

January 2018

Re: Estate Planning -- The Tax Cut and Jobs Act of 2017

Dear Client/Colleague:

As you know, new tax laws were enacted in late December that affect the taxation of individuals, estates, corporations and pass-through entities. We wanted to summarize for you the new estate, gift and generation skipping transfer tax aspects of the law.

On December 22, 2017, President Trump signed into law the Tax Cut and Jobs Act of 2017 (the "new Act"). In 2017, the federal estate tax, gift tax and generation skipping transfer ("GST") tax exemptions were $5,490,000 per person with a tax rate on any excess of 40%. The new Act doubled the exemptions that were originally put in place in December 2010. The new Act provides that the federal estate, gift and GST tax exemptions will be $10,000,000 (indexed for inflation each year). After the inflation adjustment, these tax exemptions for 2018 are essentially $11,200,000 for each individual. The 40% tax rate remains as to any excess.

The new Act also continues the portability provisions that were introduced in December 2010. These provisions make the federal estate and gift tax exemptions (not the GST tax exemption) "portable." Portable means that a surviving spouse may utilize the unused federal estate and gift tax exemption of his or her deceased spouse. The portability provisions allow a married couple to pass assets equal to their combined exemptions without having to establish a "Bypass" or Family Trust at the death of the first spouse. In order to preserve a deceased spouse's exemption, a federal estate tax return (Form 706) must be filed for the estate of the first spouse to die. Including portability, a married couple in 2018 now has up to $22,400,000 of exemption from federal estate and gift tax.

Due to Congressional budget rules, the provisions that double the exemptions are scheduled to "sunset" for the 2026 tax year. What this means is that without future legislative action, these exemptions will revert back to $5,000,000 (plus inflation adjustments) in 8 years. Moreover, while it is unlikely that these changes to the tax code will be repealed while President Trump is President, if he is not reelected and/or Congress changes hands, it is possible that these exemptions will be substantially lowered within the next few years.

For Nearly All Of Our Clients

In light of the above changes to the estate, gift and GST tax laws, you should review your current estate planning documents. Many of the estate plans that were previously established by us or others for married persons provide for the automatic creation of a Bypass or Family Trust at the first death. These Trusts may no longer be necessary to maximize both spouses' exemptions, because of the exemption increases and the portability provision described above. Hence, your existing documents could be creating an unneeded Trust and/or reducing or eliminating the surviving spouse's share. Specifically, married couples with assets under $22,400,000 (which is the maximum 2018 combined exemption for spouses) will have to decide whether they want to create a trust for the survivor. There may be non-tax reasons for creating a trust (such as second marriage or creditor protection concerns), and in such instances, it may be desirable to create a trust regardless of the exemption amount. Married couples whose combined assets do not exceed $22,400,000 and who have "Disclaimer" plans do not need to change their plans if they decide that they do not want to create a trust for the survivor. In those disclaimer plans, which will remain increasingly popular, all assets pass outright to the surviving spouse; however, the surviving spouse has the option of disclaiming assets which would cause them to pass to a Family Trust for the survivor's benefit.

As mentioned above, the new Act also has an effect on the income tax rates for all taxpayers, curtails itemized deductions, lessens the impact of the Alternative Minimum Tax, and expands the benefits of 529 Plans. You should consult with your accountant or other tax advisor to discuss these changes. These income tax issues can have an impact on estates and trusts, and we would be happy to discuss these matters with you, especially if you are a trustee or the beneficiary of an estate or trust.

For Our Wealthier Clients

Many of our wealthier clients have made substantial gifts in the past because of concerns that the federal exemptions would be lowered. These gifts represent good planning because future appreciation is removed from the estate and there is no Pennsylvania gift tax. Those who made these gifts may wish to "top" them off because of the doubling of the available exemption; those who did not make significant gifts may wish to reconsider the potential benefits of gifting (all taxpayers should know that the gift tax annual exclusion has increased to $15,000 in 2018). Keep in mind, however, that gifted assets retain their basis whereas assets inherited at death receive a "stepped-up" basis to the date of death value.

For Everyone

Given these recent changes to the tax laws, you may wish to update your planning, particularly if you are married and your plan automatically creates a Family or Bypass Trust. We would obviously be pleased to provide any assistance you may request or answer any questions you may have about the new Act.

In the event there are significant future changes to the estate, gift and generation-skipping tax laws, we will endeavor to inform you of such changes. Also, if you would like to receive future updates via e-mail, please provide us with your e-mail address(es). To ask for e-mail updates, please contact Gabrielle Suchta at 610-797-9000 (Ext. 393) or at gsuchta@flblaw.com.

We apologize for not personalizing this letter, but in the interest of getting it out relatively quickly, we decided to send a form letter. This letter is also available on our website (www.flblaw.com). Thank you and best wishes for 2018.

Sincerely,
The Estates Group at Fitzpatrick Lentz & Bubba, P.C.

Edward J. Lentz

James A. Bartholomew

Albertina D. Lombardi

Peter E. Iorio