GILMORE REES & CARLSON PC

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Federal Estate Tax Changes

The Tax Cuts and Jobs Act of 2017 made numerous changes to the Internal Revenue Code. The majority of those changes pertain to income taxes, but there is a significant estate tax related change as well: the federal estate, gift and generation-skipping tax exemption increased from $5,600,000 to $11,180,000 per person (and will continue to adjust for inflation). This change, however, is not permanent; it is presently scheduled to sunset as of January 1, 2026, reverting to $5,000,000, adjusted for inflation from 2011.

Almost everything else has remained the same. The federal estate tax rate on gifts and estates in excess of the exemption is still 40%. The so-called "portability" election still allows unused federal estate tax exemption of one spouse to be retained for use by the surviving spouse.

What does this mean for you? For many people, the Act has little to no estate planning impact; for some, however, the tax changes introduce new opportunities.

The increased exemption can be used to make (additional) lifetime gifts to children, grandchildren and others, either outright or through existing or new trusts. Of course, gifted assets carry the donor's basis to the recipient, whereas assets held by the donor at death receive a stepped-up basis equal to fair market value. Balancing estate and income tax considerations is a critical component of any plan to make gifts, and can ultimately dictate how much to give, or what assets to use.

Previously gifted assets now held in irrevocable trusts (including a qualified personal residence trust ("QPRT")) should be reviewed. The increased exemption may provide an opportunity to cause those assets to be included in the donor's estate (if circumstances allow) for purposes of obtaining a basis step-up at death, all without triggering a federal estate tax liability. In addition, if the assets in an irrevocable trust are currently "non-exempt" for purposes of the generation-skipping transfer ("GST") tax, and the donor now has excess GST exemption, the donor should explore whether or not to allocate GST exemption to the trust (this is allowed, but GST exemption is allocated based upon the current value of the assets, not the value when initially transferred to the trust).

If the concept of a "sunset" to the increased exemption sounds familiar, it is because we faced a similar situation in 2012. If history is any guide, we may not know whether these changes will be made permanent until the last minute. Accordingly, when considering planning opportunities, you should keep in mind that they may not be available forever.

If you would like to discuss how the increased exemption might impact your estate plan and whether any new opportunities are available to you and your family, please contact us.

Health Care Planning

Health care planning is the important process of setting forth your wishes regarding your medical care and treatments. Ideally, your plan should be documented in a Living Will and a Health Care Proxy, which should be given to those you name to act for you and to your physician. It should be filed with your medical records, especially if you live in or may move to a nursing home or an assisted living facility. In Massachusetts, a Living Will is a non-binding statement of your wishes concerning medical care and treatment (often relating to end-of-life care and treatment) if you are no longer able to speak for yourself. A Health Care Proxy, on the other hand, is a binding appointment of another individual (an "agent") to make your medical decisions if you cannot make or communicate them yourself.

To ensure these documents reflect your wishes, you should review them at least every 10 years or so. You should also give them a second look when a significant event occurs such as a divorce or legal separation (which would revoke your Health Care Proxy if your spouse is named as your agent), the death of a loved one, a significant change in your health, or a change of residency/move to another state. The risk of not having a valid Health Care Proxy in place is the possibility of a judge making your health care decisions in the event your physician and family members cannot agree on a course of action regarding your medical treatment.

Finally, since Living Wills are not binding, make sure your agents know your wishes for medical care and treatments by having a conversation with them in addition to giving them a copy of your Living Will and Health Care Proxy.

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About Gilmore Rees & Carlson PC

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One of the largest estate planning firms in New England, our attorneys have been recognized for their exceptional experience in the field. The firm carries the highest professional rating in the national Martindale-Hubbell Law Directory and is listed in the Bar Register of Preeminent Lawyers. Many individual attorneys are listed in the Best Lawyers in America and New England, Massachusetts and Rhode Island Super Lawyer lists.

Please feel free to contact the firm if you would like to discuss the matters highlighted in this newsletter, or any other legal matters.

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