

Happy New Year!

Well, my newsletter is late this year, but for good reason! The tax bill that was signed later last month will impose sweeping changes in our personal and business lives. I'm not sure how it will effect my income taxes, but I know it will have a big impact on my estate planning business.

Estate Tax in 2018 and Beyond

I started practicing law in 1996, and at that time, the estate tax was imposed if a person died with over \$600,000. Since that threshold applied to a very high percentage of my clients, my colleagues and I engaged in a number of estate planning techniques that were designed to minimize the tax burden, either through life insurance trusts, charitable giving, or strategic gifting during lifetime.

Over the last 21 years (ouch!), many of those techniques have fallen into disuse as the estate tax threshold increased, first slowly and now dramatically to \$11.2 million per person. You read that right: if you die with less than \$11.2 million, your heirs will pay no estate tax on receipt of those assets. There's no California inheritance tax on those assets either. And, if you are married, your heirs can receive \$22.4 million tax free. The tax free amount will increase with inflation until 2025, and then is scheduled to go back to \$5 million per person unless the law is continued by the next administration.

Carol Elias Zolla



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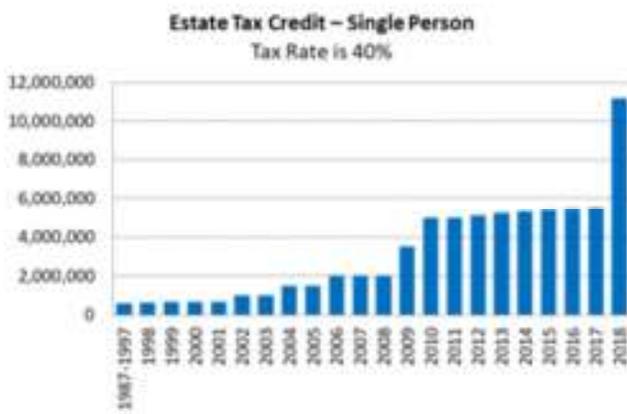
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If you are like most of my clients and once had a taxable estate, but your heirs will no longer face any tax, it is essential that you open your blue binder and carefully read through your trust!

*Are you married and does your trust contain A/B Trust provisions? If so, please talk to your spouse and think about whether those provisions are still useful. Unless a couple's assets are significantly greater than \$22.4 million, an A/B Trust does not provide much tax benefit through 2025. That said, if taxes aren't the primary concern, but you want to be sure that your spouse cannot change the beneficiaries of your share of the trust following your death (perhaps because of a blended family), an A/B Trust may still be the best option.

*For my clients with very large estates, does your trust provide that one beneficiary will receive the "tax free" amount, and the balance of the assets will be distributed to family members or charities? When the trust was drafted, you may have assumed that the tax free amount was going to be less than \$5 million at your death. As the exemption is now \$11.2 million, it may turn out that the primary beneficiary will receive much more of the estate than expected, so a tune up is in order.

*Finally, as your assets continue to grow, you may want to be more generous with your charitable gifts. If your heirs receive their entire inheritance without a 40% reduction for estate taxes, please consider including your favorite institutions in your estate plan.

Keep in mind, though, the new estate tax threshold is only in effect until the end of 2025. Although unlikely, any new administration may elect to lower the tax free amount to increase the federal tax receipts.

Joint Tenancy Accounts

Many of my clients with living trusts have elected to keep a checking out of the trust, and add a child as a joint tenant for convenience.

A joint tenancy account goes directly to the surviving joint tenant at the client's death and does not have to be split between all of the client's children. The account is also not subject to the client's debts, so in some cases the trust balance is reduced by mortgages and credit card debt, but the surviving joint tenant receives 100% of that account without any deductions. Although the client may believe the child inheriting the joint tenancy account will use the funds to pay for her funeral and emergency expenses, since the account is not legally responsible for the client's debts there is no guarantee the funds will be used for that purpose.

I admit, banks can be frustrating places. If your checking account is held in your trust, your successor trustee will have delayed access at your death because your child will have to wait up to 10 days for a death certificate, and then the bank manager has to approve the change of trustee. Alternatively, a joint tenancy account is a clean, simple process, that doesn't require a visit to the lawyer, and the surviving tenant can access the account without waiting for a death certificate.

My concern is with clients who put significant amounts in to a joint account, with the expectation that the surviving child will use the funds for funeral or other death expenses, but then divide the balance equally between the child's siblings. I can tell you from experience: in a good number of cases, there is no sharing. If you're okay with the surviving joint tenant receiving the balance of those funds, this isn't a problem. But, if you're under the assumption that this is a way of avoiding disagreements between your children and will make payment of the funeral easier, please take another look. You may want to consider pre-paying for funeral or cremation services, which

can minimize the need for significantly large joint tenancy accounts.

Donor Advised Funds Revisited

In my 2014 newsletter, I wrote an article about my experience with Donor Advised Funds (“DAF”). I think it was my best-received article in the 14 years I’ve been sending out this newsletter (five positive comments!). I don’t want to copy the article here, but I do want to remind you to consider DAFs as a part of your overall tax and estate planning.

As a refresher, a DAF is an account that is set up with many charitable institutions and community foundations. One of the largest community foundations in the country is our very own Silicon Valley Community Foundation, which has billions of dollars under management, but there are also smaller groups like the Saratoga-Monte Sereno Community Foundation, the Jewish Federation of San Francisco, and the Catholic Community Foundation of Santa Clara County. Some of the largest organizations that allow for donor advised funds are affiliated with corporate brokerage accounts such as Fidelity Investments, Morgan Stanley, and Vanguard. This is to say: you can set up a DAF just about anywhere.

The primary advantage of a DAF is the ability to make a large charitable contribution in one year for tax purposes, but spread out the distribution of the gift over future years. For instance, I can contribute \$10,000 in assets to a DAF in 2018, but direct the gifts to my favorite public charities and my kids’ school funds over the next few years as I see fit. I can also easily contribute appreciated mutual fund shares and receive a tax deduction based on the present value of the fund. Instead of selling a mutual fund, paying capital gains tax of around 25% (federal and state), and distributing the balance to charity, I can contribute that mutual fund to the DAF directly and the charities will get 100% of the dollars. This allows me to be more generous and not worry about the higher cost to sell the mutual fund, given that state income taxes will likely not be deductible for me beginning in the 2018 federal tax year.

With this new tax law, many of my clients will be stuck using the standard deduction because of the SALT limitations. If you make small charitable deductions for your church and schools annually, they may not push you over the higher standard deduction threshold. However, if you lump your charitable deductions in one year by giving to a DAF, but spread out the disbursements over the next five, you'll likely be able to benefit from the charitable deduction in that first gift to the DAF. It will require planning, but since the DAFs are so easy to set up and use, you'll wonder why you didn't do it sooner!

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I am hoping to finalize my new website in the next few months, which should be better optimized for mobile devices. I am proud to say, it's being designed and built by my 13-year old son, who has become quite experienced with HTML, programming, and working with a demanding client.

I am so thankful to all of you for your business and your referrals. I hope you had an amazing holiday and are looking forward to the new year.

This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.

Tel: (408) 358-6900
Fax: (408) 358-6903
Email: carol@zollalawfirm.com