CalCPA | CalCPA EDUCATION FOUNDATION

Tax Reform Impacts on Estate Planning

December 22, 2017

Estate Planning Changes For 2018 Under the New Tax Laws
By Megan Lisa Jones, Esq. & Michael Allmon, CPA, MBT

We finally have a tax reform plan, known as "The Tax Cuts and Jobs Act." The impacts on individual estate, gift and generation skipping taxes is confined to two pages out of more than 500, but the changes—scheduled to end Jan. 1, 2026—are material.

In short, the conference bill adapts the Senate version of earlier drafts. The estate tax exemption amount is increased to $10 million, which is indexed for inflation dating to 2011, thus totaling $11.2 million per person (double for a married couple, or $22.4 million), and which will continue to be indexed for inflation until dropping back to a lower rate in 2026 (unless changed in a later year). The gift and generation skipping exemption amounts also increase to the $11.2 million total per person. Since the top income tax rate has dropped to 37 percent, this rate will apply for estate planning purposes as well. The rules relating to the step up in basis at death are unchanged. Regulations explaining the application of the new rules have not been released.

Analyzing these changes is more complex. Importantly, these reforms are anything but bipartisan, thus could all be repealed should the Democrats regain control of our federal governing bodies. Next, while they are set to expire in 2026, they could get extended or made permanent (or changed again before that time). This uncertainty about the long-term nature of, what are basically short-term, but material changes, creates extra planning complexity.

Our clients should revisit their estate planning to determine how the new changes impact their options. CPAs should actively suggest that they do so, getting involved when possible. New changes a few years back made portability of one spouse's exemption amount possible (thus carrying over any unused exemption to the surviving spouse). This portability is often not addressed in plans more than a few years old. The portability provisions continue under the new tax plan.

Additionally, due to the changing nature of the exemption amount and tax rules, all estate planning documents should now contain provisions that allow for changes if tax laws change yet again. Such flexibility is especially important for irrevocable documents, which should probably include protectors who can revise plans if the tax laws change, especially since California has no "decanting" statute. Decanting language—allowing for assets to be transferred into a newly created trust with more advantageous provisions—can and should be included in trust documents.

Gifting will increase immediately in 2018, especially of assets likely to appreciate in the future. No one should ever gift away assets that they need to live on, for estate planning purposes or otherwise. But, for assets not so needed, using the increased exemption amount while it is in place (especially since it might not stay in place) is wise.

In 2017, the risk that using discounts with respect to valuation for estate planning purposes might go away was concerning. But now, the government has decided not to do away with such discounts, so they can be applied for gift purposes as well. Essentially, an asset is discounted for lack of control or marketability, thus the value of the gift is lower (and the use of the lifetime exemption less). Assets likely to appreciate are ideal for gifting because the appreciation occurs outside of the estate, the benefits accruing to the gift recipient. The asset does continue to have the gift giver's income tax basis, but obviously any gain is only recognized upon a sale or other liquidation event. Gifting decisions should take into account the relative benefits of a step up in basis at death versus appreciation outside the estate.

The current changes have fiduciary income tax and complicated trust implications,

Leave a Message

Increased arbitrage options, including buying back or swapping assets based on basis, to take advantage of the step up at death, can be contemplated.

Ultimately, the new tax reform changes require a more hands-on approach to estate and income tax planning. The new provisions have very different implications for each individual client, often adding complexity instead of removing it. On the estate planning front, clients will need input into their plans options, so they can decide how aggressive they want to be in taking advantage of a much larger exemption amount that will (as currently written) be going away. Most importantly, each individual should be assessing their own lifestyle needs, and only once those are covered, should the estate planning options be implemented. And documents, even irrevocable ones, should allow for revisions if tax laws change.

Megan Lisa Jones, Esq., JD, LLM specializes in tax, estate planning and some business advisory work. Michael B. Allmon, CPA, MBT is a partner at Michael B. Allmon & Associates, LLP CPAs, and is the founding chair of the CalCPA Estate Planning Committee.

Back to News

©2017 California Society of CPAs • 1710 Gilbreth Road • Burlingame, CA 94010 • (800) 922-5272

Powered by Azure Servers

Leave a Message