

2019 Estate Planning Update

Below is a brief update regarding tax laws relevant to estate planning. In particular, this update highlights certain inflation and interest rate adjustments, as well as noteworthy Federal and state gift and estate tax developments.

Federal developments

Gift, estate and GST tax exemptions

For 2019, the Federal gift, estate and generation-skipping transfer (“GST”) tax exemptions are \$11.4 million per individual (increased from \$11.18 million in 2018), or \$22.8 million for married couples.

Under current law, the exemptions will revert in 2026 to prior levels (\$5 million, indexed for inflation from 2010 to 2026).

Although clients have approximately seven years to take advantage of the temporary increase in the Federal gift and GST tax exemptions, many clients may wish to accelerate gift plans for a number of reasons. As always, early use of the exemptions maximizes the potential to transfer post-gift appreciation on the gifted property to lower generations. Further, it is possible that Congress could enact legislation to reduce the exemptions earlier than 2026. Finally, as discussed below, New York clients may be subject to a three-year “clawback” provision that would impose a New York estate tax on gifts made within three years of death, and an early gift would begin the running of the three years. (For Connecticut clients, on the other hand, scheduled and proposed changes in tax laws may argue for a postponement of taxable gifts, as discussed below.)

The increase in the Federal gift and GST exemptions to \$22.8 million for a married couple creates both opportunities and complexities for clients. Many clients who wish to utilize the exemptions before the scheduled reversion to prior levels will want to consider multiple issues, including their personal liquidity and potential need for access to the property given away. We discuss a number of techniques that may be of interest to clients, including the use of so-called “spousal lifetime access trusts” (or “SLATs”) and “qualified personal residence trusts” (or “QPRTs”), in Section III of our 2018 memorandum [Overview of Lifetime Gift and GST Tax Planning](#) (the “2018 Memorandum”). The appropriate strategy for each client will differ depending on personal and financial circumstances, and some strategies may involve multi-year planning. We encourage clients who are interested in pursuing a gift plan to discuss with us the planning techniques that may best achieve their goals.



Annual exclusion gifts

For 2019, the annual exclusion amount remains \$15,000 per donee (or \$30,000 per donee for married couples who elect to split gifts). For gifts to a non-citizen spouse, the annual exclusion increased to \$155,000 (from \$152,000 in 2018). As always, we recommend that annual exclusion gifts be made as early as possible in the calendar year.

By way of reminder, payments of certain qualified education and medical expenses, including tuition payments and health insurance premiums, also qualify as tax-free gifts if made directly to the provider.

Current interest rates

Although interest rates have been increasing, rates remain relatively low. The interest rate for determining the present value life of estates, annuities and other term interests, which are relevant for GRATs, CLATs, QPRTs and similar vehicles, is 3.2% for February 2019. For a more detailed discussion of these estate planning techniques, see Section V of our [2018 Memorandum](#).

State developments

New York

Estate tax rate and exemption

For 2019, the New York estate tax exemption is \$5.74 million (increased from \$5.25 million in 2018). New York currently imposes an estate tax on estates with a value in excess of the exemption at a top rate of 16%. (Because the New York estate tax is deductible against the Federal tax, the effective rate of a 16% estate tax, when Federal tax is also imposed, is 9.6%.)

Potential taxation of certain gifts

- New York does not impose a state-level gift tax. However, under 2014 legislation, New York law provided that if a New York resident dies within three years of making a taxable gift, the gift will be added to the New York estate tax base, so that a New Yorker's estate will be taxed on the gift if the combined gift and estate exceeds the New York exemption. Under current law, this "clawback" provision does not apply to taxable gifts made after January 1, 2019. However, Governor Cuomo's current Fiscal Year 2020 Executive Budget includes a proposal to extend the three-year clawback provision through 2025.
- Thus, as noted above, New York residents who wish to make taxable gifts in order to use their increased Federal exemptions may wish to consider making those gifts now in order to begin the running of the three-year period (assuming that the budget proposal is enacted).

Connecticut gift and estate tax rates and exemptions and related developments

- Connecticut imposes a state-level gift and estate tax at a top rate of 12%. (Because the Connecticut estate tax is deductible against the Federal tax, the effective rate of a 12% estate tax, when Federal tax is also imposed, is 7.2%.)
- For 2019, the Connecticut exemptions are \$3.6 million (increased from \$2.6 million in 2018).
- In 2018, Connecticut enacted two conflicting bills that provide for changes to the Connecticut gift and estate tax exemptions in 2020 and beyond:
 - One bill would increase the exemptions to \$5.49 million in 2020, with no further increases.
 - The other bill would provide for a gradual increase in the exemptions, as follows:
 - 2020: \$5.1 million
 - 2021: \$7.1 million
 - 2022: \$9.1 million
 - 2023: Increased to match the Federal exemptions

The conflict has not yet been resolved.

- We recommend that Connecticut residents who wish to make a taxable gift in excess of their available Connecticut exemption contact us to determine whether it would be appropriate to postpone the gift. In addition, clients should note that the amount of their remaining Connecticut gift tax exemption may be reduced if a Connecticut gift tax was paid in prior years.
- Finally, as of January 1, 2019, Connecticut’s cap on the total combined Connecticut estate and gift tax payable has been reduced to \$15 million (from \$20 million). This cap will be relevant only for estates in excess of roughly \$130 million.

New Jersey estate tax repeal

As noted in a prior client alert, the New Jersey estate tax was repealed and eliminated entirely for decedents dying after January 1, 2018. The New Jersey “inheritance tax,” which is a tax of 11% to 16% imposed on the transfer at death of property to an individual who is not the decedent’s spouse, domestic partner or lineal ancestor or descendant, remains in effect.

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Given the increase in the Federal exemptions and the ongoing changes in state tax laws, clients who have not recently reviewed their estate plans may wish to do so now. If you have any questions regarding this alert memorandum or would like to discuss your estate plan, please contact any of the attorneys in the [Private Clients Practice Group](#).

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