When to Update Your Estate Plan

Estate planning isn't just for the rich and famous. Many people mistakenly think that they don't need an estate plan anymore because of the latest tax law changes. While it's true that the Tax Cuts and Jobs Act (TCJA) provides generous estate tax relief, even for well-to-do families, the need for estate planning has *not* been eliminated. There are still numerous reasons to develop a comprehensive estate plan and regularly update it.

How the Estate Tax Has Evolved

Several recent tax law changes, including certain provisions of the TCJA, may help you shelter all or a large portion of your estate from estate and gift tax.

At the turn of the century, the unified estate and gift tax exemption was a mere $675,000. It was increased to $1 million in 2002, while the top estate tax rate was 55%. Then legislation gradually increased the estate tax exemption to $5 million for 2011, indexed annually for inflation, and lowered the top estate tax rate to 35%. (There was a one-year moratorium on federal estate tax for people who died in 2010.)

Along the way, the unified estate and gift tax exemptions were severed and then reunified, as they remain under current law. Therefore, any amounts used to cover lifetime gifts erode the remaining estate tax shelter.

Notably, subsequent legislation also created and then preserved a "portability" provision. This allows the estate of a surviving spouse to use the unused portion of the deceased spouse's exemption. So, it effectively "doubled" the $5 million exemption for married couples to $10 million.

Starting in 2018, the TCJA officially doubled the estate exemption per individual from $5 million to $10 million, with annual indexing for inflation. For 2019, the exemption is $11.4 million for an individual or $22.8 million for a married couple. However, these provisions are scheduled to expire after 2025. For 2026 and thereafter, the law will revert to pre-2018 levels, unless Congress takes further action.

Why Estate Planning Still Matters

Given the dramatic increase in the unified estate and gift tax exemption over the last 20 years, there's a common misconception that federal estate planning is a concern of only the wealthiest individuals. But here are four valid reasons for people with estates below the unified exemption threshold to devise a plan — or revise an existing plan to take advantage of current tax law.

1. Family changes. Most mature adults have created a will. Some also have set up trusts to maximize each spouse's exemption and protect assets from creditors and spendthrift family members.

However, circumstances change over time. Is your old list of beneficiaries still complete and accurate? You may need to update your will and estate plan to reflect births and (unfortunately) deaths and divorces in the family.

Who's listed as the executor of your estate? The executor is the quarterback of your estate planning team. Maybe your children were minors when you originally drafted your plan, and now your grown children may be better suited to serve as executors than your aging parents.

Carefully select your executor and successor (to serve as a backup executor in case the appointed executor predeceases you or is otherwise unable to fulfill the duties). To prevent problems after you die, consider meeting with the successor to iron out any potential problems and discuss the challenges that must be met. Even if your first choice is still on board, you may periodically want to "check in" and review matters.

Your estate plan also may need an overhaul if you've divorced, especially if you've remarried and your new spouse has children of his or her own. Along the same lines, one or more of your children may have divorced, requiring adjustments to your estate plan. The need to update your plan could even extend to pets that need care if you should unexpectedly pass away.

2. Changes to assets and liabilities. It's a good idea to review your estate plan any time there's a significant change in the value of your estate, including the value of any business interests, real estate or securities you own. A major increase or decrease in the value of one asset could cause you to rethink how your holdings will be allocated among your beneficiaries. Similarly, the sale or purchase of an asset may require adjustments to your plan.

3. Change in residence. State law generally controls estate matters. Therefore, the state where you legally reside can make a big difference. The differences may range from the number of witnesses required to attest to a will to the minimum amount a spouse must inherit from an estate. Furthermore, the legal state of residence may affect other estate planning documents besides your will, such as a power of attorney, living will or advance medical directive.

If you're moving to another state, or you've already moved, meet with a local estate planning advisor to review your current plan and determine whether changes are needed. This is especially important when you have a substantial estate for tax purposes. Sometimes, an old home state may assert that a person didn't change his or her legal residence and continue to pursue state death tax obligations.

4. Estate tax changes. If you haven't updated your estate plan since the TCJA passed, it's worth checking in with your estate planning advisor to ensure your plan reflects current tax law. The wealthiest individuals may still set up complex estate planning strategies to shield their estates from federal estate tax. But simple trusts may still be used to protect assets from creditors and guard against spendthrift family members.

Also, beware that the estate tax provisions of the TCJA are in effect only through 2025 — and there are no guarantees the current estate tax levels will remain in effect until then. Congress could change the law again before 2026 — or make it permanent.

Moreover, the federal tax law changes don't provide protection on the state level. So, it's important for your estate plan to take any applicable state death taxes into account.

Time to Update

Too often, well-intentioned taxpayers create an estate plan, including a will, and then stick it in a drawer or safe deposit box where it gathers dust. This can potentially leave a legacy of estate tax complications and frustrations for your family members when they can least afford it, financially and emotionally. To ensure your final wishes are kept and your assets are preserved, work with us to devise a flexible, comprehensive plan and then review it on a regular basis.

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