HECKSCHER TEILLON
TERRILL & SAGER, P.C.
PERSONAL, TRUST & ESTATE LAW

(610) 940-2600
100 Four Falls, Suite 300
West Conshohocken, PA 19428

To Our Clients and Other Friends: November, 2019

We hope that this message finds you and your families well as we head into the holiday season. We are writing to bring you up to date on a number of developments in the law and at HTT&S since our last communication in February, 2019.

2020 Current Exemption and Exclusion Amounts

In 2020, the federal estate/gift tax exemption amount will increase by $180,000 to $11,580,000 per individual (in 2019 this amount was $11,400,000), reduced by prior gift tax exemption used. Therefore, for married couples, the total amount that can be given away tax free in 2020 will be $23,160,000 (assuming no prior exemption used). The generation-skipping transfer ("GST") tax exemption amount will also increase to $11,580,000 per individual, reduced by prior GST tax exemption used. These exemption amounts are indexed for inflation annually going forward, and therefore will presumably increase in future years, although as mentioned below these higher exemption amounts are set to expire on December 31, 2025. The tax on taxable transfers in excess of the exemption amounts is currently 40%.

In addition, each individual has an "annual exclusion" amount that he or she can give away to each person per year without using any of his or her gift tax exemption (certain requirements must be met for the gift to qualify for the annual exclusion). The annual exclusion amount is indexed for inflation annually. The annual exclusion amount in 2020 continues at $15,000 per person (or $30,000 per person if the donor is married and the couple elects to "split" gifts), the same amount as it is in 2019. Note that the special annual exclusion for gifts to noncitizen spouses in 2020 will be $157,000 (in 2019 this amount is $155,000). As always, payments of tuition and medical expenses made directly to the education or health care provider do not require the use of your annual exclusion amount or your gift tax exemption.

If you are interested in learning about possible gifting opportunities, or if you want to discuss how the increased exemption amounts may impact your own estate planning, please contact your HTT&S lawyer.

Tax Act Updates

In the last two client alerts (**February, 2019** and **February, 2018**) we have advised you how changes to federal income and estate tax laws as a result of the Tax Cuts and Jobs Act of 2017 (the "Tax Act") could affect your estate planning and how these changes present certain planning opportunities from an income tax perspective.

As we mentioned in our February 2019 client alert, some commentators had expressed concern about a potential “clawback” effect if a donor makes lifetime gifts at a time when the gift tax exemption amount is large (now $11,400,000 and $11,580,000 in 2020) but then dies when the federal estate tax exemption amount is smaller (for example, in 2026 when the exemption amount would be $5,000,000, inflation adjusted).

On November 22, 2019, the IRS issued Final Regulations alleviating these concerns. These rules will allow decedents’ estates the benefit of higher exemption amounts for gifts made in years in which the exemption amounts were greater. Accordingly, donors will be able to be confident that when making significant gifts using the temporarily-increased exemption amounts the benefit of such gifts will not be “ undone” if the exemption amounts are reduced in later years. Of course, if the exemption amounts are reduced in future years, and the donor has not made significant gifts in years in which the exemption amounts are higher, then the donor would not get the benefit of those increased exemption amounts (in its preamble to the Final Regulations, the IRS refers to the increased exemption as a use it or lose it benefit). Although 2026 is several years away, this has led some of our clients to accelerate their gifting agendas to ensure that they take advantage of the increased (and potentially expiring) exemption amounts.

In addition, the Final Regulations make clear that if your spouse dies and you elect to claim your spouse’s unused exemption, the amount of the deceased spouse’s unused exemption will not be reduced if the exemption amount decreases at a later date (just as the amount of the deceased spouse’s unused exemption does not increase with inflation).

As always, we would be happy to discuss how the Tax Act may impact your personal situation, or how you may be able to take advantage of these opportunities, many of which are scheduled to expire on December 31, 2025.

Powers of Attorney

On October 23, 2018, Pennsylvania enacted the Donate Life PA Act, which made significant changes to Pennsylvania’s organ donation statutes for the first time in almost 25 years. Importantly, the Donate Life PA Act sets out a hierarchy of who can make organ donation decisions if a health care agent has not been designated, or if the health care agent is unavailable.

In addition, the Donate Life PA Act distinguishes organs that are traditionally thought of in the organ donation context – hearts, lungs, livers or kidneys (“traditional anatomical gifts”) – from organs that have been donated in recent years as science has developed – hands, limbs, facial tissue or other “vascularized composite allografts.” Now, if an individual explicitly wants to donate his or her hands, limbs, facial tissue, etc., in a healthcare power of attorney or living will, this request must be made separately from a direction to make traditional anatomical gifts.

These developments highlight the fact that you should be asking yourself, **“are my financial and health care powers up-to-date?”** You should carefully consider the identity of the individuals you appoint as your agents for both health care decisions and financial decisions, as well as the power that you give those agents. We would be happy to discuss this with you in more detail.

News from HTT&S

On October 31, 2019, HTT&S celebrated its 25th anniversary. Over the past 25 years, our firm has grown from 5 attorneys to 21. Most recently, in 2019 we added three new associates: Allison Lapat, Ryan Ahrens and Chloe Mullen-Wilson. In addition, this year Michael Breslow became our newest partner. As the number of attorneys has grown, so has HTT&S's West Conshohocken office space – tripling in size from 1994 to 2019, with our most recent expansion in 2019. We hope that you will have the opportunity to see our newly-renovated conference rooms. None of this growth would have been possible without the support of our clients and friends. It has been an honor to work with you over these past 25 years, and we look forward to working with you many more years into the future.

In other exciting firm news, this year Jack Terrill became the President of the American College of Trust and Estate Counsel (ACTEC), which is a national organization of more than 2,500 trust and estate lawyers and law professors peer-elected to membership. Jack's presidency is the culmination of years of hard work, and we were fortunate to celebrate with him at ACTEC's fall meeting that took place in October in Philadelphia (the dinner at Reading Terminal Market was a particular highlight). In addition, our partner Brad Terebelo was elected to be an ACTEC Fellow at that meeting, bringing the total number of ACTEC fellows at the firm to 9.

We at HTT&S are committed to alerting our clients to significant developments through these Client Blasts. *If you would like to discuss any of this in more detail, please feel free to contact us.*