Lowenstein Sandler

Client Alert

Trusts & Estates

November 29, 2018

IRS Issues New Favorable Rules on Exemptions From Gift, Estate and Generation-Skipping Tax

As of January 1, 2019, individuals can protect an additional $220,000, and married couples can protect an additional $440,000, from federal estate, gift, and generation-skipping taxes (GST)–even if they have already used up all of their current exemptions. The Internal Revenue Service has just announced that the exemptions from those taxes will increase to $11.4 million per person ($22.8 million for a married couple) for 2019.

As part of the sweeping tax changes enacted at the end of last year, the exemptions from federal estate and gift taxes were dramatically increased. For 2018, the exemption is $11.18 million for an individual ($22.36 million for a married couple). The exemption from the GST was increased to match those amounts (although, unlike the estate and gift tax exemptions, the GST exemption is not "portable" between spouses). The exemptions also increase with changes in the cost of living–which is why the exemptions are going up for 2019.

Keep in mind that the larger exemptions are scheduled to drop to their former level of $5 million (plus cost of living adjustments) after 2025. We continue to recommend that clients with sufficient means consider making gifts now to use the increased exemptions while they last. We note that 17 states continue to have their own estate tax, often with exemptions at lower levels. For example, the New York State estate tax exemption for 2019 will be approximately $5.6 million, with further cost of living increases for future years–although that exemption phases out rapidly for individuals with assets above that threshold. New York has no gift tax (with certain exceptions for gifts made before 2019 and within three years of death), so lifetime gifts can be especially helpful in avoiding New York as well as federal estate taxes.

As noted earlier, the larger exemptions expire after 2025. There has been some concern that in 2026 and afterward, the IRS might try in effect to collect gift or estate tax on tax-sheltered gifts that were made during the 2018-2025 period, when the exemption was higher (a phenomenon often referred to as "clawback"). The IRS has also just issued proposed regulations to clarify that it will not seek to collect tax on such gifts. While these regulations come as no particular surprise, they do provide certainty that you can make gifts between 2018 and 2025 that won't be subject to clawback.

The gift tax annual exclusion (the amount that you can give to an individual without any gift or estate tax consequences) remains at $15,000 per recipient ($30,000 per recipient for a married couple). In addition, you can continue to make unlimited gifts to pay for education and certain medical expenses. These are powerful estate tax reduction tools when used properly and creatively.

Finally, a U.S. taxpayer who is married to a non-U.S. citizen (regardless of whether residence is in the U.S.) must continue to keep in mind that gifts to the noncitizen spouse may be subject to gift tax, subject to an annual exclusion of $155,000 for 2019 (up from $152,000 in 2018).

Please communicate with us to discuss the impact of these changes on your estate plan.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

WARREN K. RACUSIN
Partner & Chair, Trusts & Estates
T: 646.414.6848 (NY) / 973.597.2446 (NJ)
wracusin@lowenstein.com

JOHN L. BERGER
Partner
T: 973.597.2314
jberger@lowenstein.com

MICHAEL N. GOOEN
Partner
T: 973.597.2366
mgooen@lowenstein.com

KENNETH J. SLUTSKY
Partner
T: 973.597.2510
kslutsky@lowenstein.com

ASHLEY STEINHART
Partner
T: 973.597.2520
asteinhart@lowenstein.com

JEFFREY J. WILD
Partner
T: 973.597.2554
jwild@lowenstein.com