



ESTATES UPDATE 2017

By David Adler



The year in Trusts and Estates was highlighted by a significant increase in the Federal Estate Tax exemption...

The year in Trusts and Estates was highlighted by a significant increase in the Federal Estate Tax exemption along with procedural changes in New York State with respect to Probate and Administration forms.

Taxation

The Tax Cuts and Jobs Act of 2017, has raised the Federal Estate Tax lifetime exemption to \$11,180,000 per person in 2018. The exemption had been \$5,490,000 in 2017, and was scheduled, under prior law, to be set at \$5,600,000 this year. The new law virtually doubles the anticipated prior exemption amount, while leaving other facets of estate tax law largely unchanged.

As per prior law, the concept of portability continues to apply, in that a surviving spouse may acquire the first spouse to die's unused exemption amount, to a new maximum of \$22,360,000. Portability must be formally elected by the executors on the estate tax return of the first spouse to die (form 706). Thus, even if no estate tax is due at that level, such election and filing must occur.

The Annual Federal Gift Tax exclusion, which had been \$14,000, in 2017, is now \$ 15,000. Both the estate

tax exemption and gift tax exclusion are indexed for inflation and will contain moderate increases on a yearly basis. The new federal exemption amount also applies to lifetime gifts and generation skipping transfers. The top tax rate remains (40%) forty percent.

A key component of the new law is that is set to sunset after the year 2025. After that year, the exemption amount will again revert to what it would have been this year, which was \$5,600,000 plus inflation adjustments.

This increase in the Federal Estate Tax exemption amount does not in any way impact upon the New York State exemption amount. The New York State Tax exemption is \$5,250,000 and applies to individuals dying on or after April 1, 2017 and before December 31, 2018. After that date, the state exemption amount will be indexed for inflation but will not adopt the new federal guidelines as a benchmark. As such, the New York State Estate Tax threshold will remain less than half of the present (until 2025) Federal Estate Tax threshold. Portability does not apply for state tax purposes.

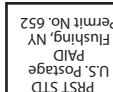
Overview

The recent increase in the Federal exemption amount coupled with the much

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lower state exemption amount creates the need for new awareness and flexibility in estate planning. The use of prior Credit Shelter formula provisions may create vast and unintended disparities in transfers of assets between spouses and children. Further, a focus on reducing state estate tax assumes a more prominent rule. The sheltering of the state exemption amount exclusively becomes a consideration. The opportunities for high net worth individuals to shift wealth to multiple generations is magnified. The time parameters of the new law must also be anticipated.

Finally, the allocation of traditional estate tax deductions (i.e. commissions, legal fees, accounting fees) will need to be reconsidered, as said deductions may no longer be needed for the large benefits they served on federal estate tax returns. If no federal tax is required, these deductions may either be taken on the New York State estate tax return or the federal estate income tax return (fiduciary return 1041) where they may now be more valuable. Fiduciary income tax rates are generally significantly higher than state estate tax rates.

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New York State

The Chief Administrative Judge has approved new forms for Probate and Administration Proceedings, as of April 2, 2018. The Petition in both proceedings now contains an affirmative declaration that the fiduciary is not a convicted felon nor is he/she otherwise ineligible, pursuant to SCPA § 707 to receive letters. In the Probate Petition said declaration is on page 1 Section 1.(d). In the Administration Petition, said declaration is on page 1, at the end of Section 1.

SCPA § 707 governs eligibility to receive letters, and excludes infants, incompetents felons, non- domiciliary aliens acting alone(or with no foreign guardian status), and those unfit for the office. The statute itemizes certain aspects of unfitness as substance abuse, dishonesty, improvidence, and want of understanding. The Court maintains discretion to find others ineligible, including those unable to read and write in the English language.

Queens County

Our seminar last year focused on various aspects of Trusts Practice from basic definitions and structure, to disclaimer trusts, and life insurance trusts. We thank Moderator and Surrogate Peter Kelly, and speakers Richard Kerins and David Schoenhaar for their excellent presentations. Disclaimer trusts continue to offer a high degree of flexibility necessitated by the new tax law, as options are preserved at the state and/or federal levels.

Further, we wish to acknowledge three outstanding additions to the Surrogate's Court during the past year. James Becker was designated Chief Clerk, Lisa Sconzo was appointed to the Law Department as Court Attorney/Referee, and Linda Kim was named Junior Court Attorney. We wish them well in their tenure here. Enjoy the summer!

Editor's Note: David N. Adler is a Past President, 1998-1999, of the Queens County Bar Association and is the Chair of the Surrogate's Courts, Estates & Trusts committee.

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