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Affairs of Estate

Tax reform may make you rethink your perpetuation plan.

As the reality sets in of all that was and was not included in the generational tax reform legislation that was signed in December, one thing is clear: this is a terrific time to reconsider your agency perpetuation and estate plans.

As you are probably aware, the legislation doubled the lifetime exemption from gift or estate tax to $11.18 million per person or $22.36 million per couple. What you may not know is this is a "use it or lose it" benefit, as the exemption is slated to decrease back to the pre-2018 level ($5 million per person or $10 million per married couple) in 2026. So what can you do to take advantage of this windfall?

First, dust off your business succession plans, which may be sitting on your shelf, because, well, let's face it, no one likes to think about winding down or dying. And you should be considering whether this might be the right time to gift some of your ownership interests (or other assets) to the next generation. Failing to take advantage of this tax-advantaged window would be a lost opportunity, especially when planning sooner generates significant additional tax benefits by removing both assets and their appreciation from your estate.

For those who take full advantage of the increased cap before 2026, you need to prepare to navigate the potential uncertainty should the exemption cap revert to 2017 levels. Worst case: the estate tax ultimately would be calculated on the remaining estate plus the extra amount gifted during this window. Proper planning can minimize or eliminate this potential consequence.

For those implementing a gifting strategy now, this allows you to make gifts as tax efficient as possible. A number of techniques allow discounting of the transferred assets so you can "stuff" the $11.8 million or $22.36 million (or some lesser amount) with the most value possible. To take advantage of these discounting opportunities, you should look for assets you own that are ideal for discounting. One of the most ideal is interest in closely held businesses, such as privately owned insurance brokerages.

If you have children or other potential heirs who have joined the firm and you transfer minority interests in the firm to them, those interests can—if properly structured—qualify for a minority discount as well as a lack of liquidity discount. These combined discounts can be as high as 40%-45% of the current fair market value. A $1 million interest transfer could be valued at as low as $550,000 for calculating the gift tax exemption. Use of such discounting strategies allows you to get the most bang for your buck from your tax exemptions, and interests can be transferred outright or in trust.

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There are many advantages to using trusts to hold business interests and other assets, including asset protection and centralized management. Many do not want their children to receive assets outright immediately, or sometimes ever, because they are worried the child will not know how to manage them or may lose them for some reason. Keeping the assets in the family line is another common concern. Trusts address all of those issues and can be tailored with great specificity to suit each person's concerns and personal situation.

In addition to these benefits, some jurisdictions—Delaware, South >>

REGULATORY NEWS

Parker v. Webster County Coal regarding discrimination against older workers who get disability benefits. Contains other reforms as well. For example, insurance commissioner must develop drug formulary by Dec. 31, 2018, and evidence-based treatment guidelines by Dec. 31, 2019; benefits for permanent partial disability shall be paid for 780 weeks, which can be extended for medical need; denials may be brought to administrative law judge; and time frames for filing cumulative trauma claims are set at two years from date physician tells employee injury is work related or five years from last injurious exposure to cumulative trauma. The law increases allowable attorneys fees, increases average weekly wage ceilings and adds calculation for disability benefit offset when injured worker returns to light duty, among other monetary and definitional changes. Bevin expected to sign at press time. **insurance.ky.gov/**

NEW HAMPSHIRE Commissioner Roger Sevigny plans to retire in June after 16 years with the Insurance Department. No successor named by press time. » Insurance Department launches new features on NHHealthCost.org, including side-by-side comparisons of cost and quality of healthcare facilities for dozens of common medical procedures, tests and surgeries, including costs for physicians, staff, hospital, outpatient facility, and additional treatments. **nh.gov/insurance**

NEW YORK Issues new FAQs on cyber law that include HMOs in the Public Health Law and subject them to Department of Financial Services examination authority. They will be treated same as other health insurance carriers in the state. That includes cyber-security plans as well as authorization and prior approval for forms they use and rates they charge in New York. **dfs.ny.gov**

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» Dakota, Nevada and Florida, for example—allow the trust settlor or others selected by the settlor to retain certain powers over trusts created there. Additionally, trusts can be structured to avoid state income tax, which is a significant benefit.

Because the current 40% estate and gift tax rate is now not significantly higher than the maximum combined federal and state income tax rates, you must do proper income tax planning at the same time as your estate planning. Assets you hold at your death will receive a "step-up" in value to the property's value at your date of death. So if your children or other recipients of assets at your death want to sell the assets they receive from you soon after receipt, there will be little to no income tax on those assets. In deciding what to transfer and what to give away, it may make sense to hold on to highly appreciated assets so they receive a stepped-up basis of their fair market value at your death.

The recent changes to the individual income tax laws are also important elements of current estate planning. There are certain planning techniques that can be considered to offset the loss of the state and local tax (SALT) deduction for individuals. In high-tax jurisdictions, the loss of the SALT deduction can lead to significant increases in personal income tax. The use of multiple trusts to hold real property and increased charitable gifting can help to mitigate additional income tax liability.

One technique that combines estate and income tax planning is "upstream planning," which involves using your extra gift exemption to create a structure that will benefit your children and future generations but will be included in a senior generation family member's (say, your father's) estate. If your father's assets are minimal, the inclusion in his estate of the value of your gift will not cause any estate tax liability for him. But the inclusion will allow the tax basis of the assets to be stepped up to the fair market value at the time of your father's death.

The bottom line is that there are many unique planning opportunities out there now to use for the transfer of your assets and succession of your business interests. Now is the time to jump on this!

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NAIC Tweaking Model Law for Short-Term Health Plans

The National Association of Insurance Commissioners' Regulatory Framework Task Force plans to update its Accident and Sickness Insurance Minimum Standards Model Act to address the Trump administration's proposed changes to the allowable duration of short-term health plans. The current model law addresses non-major medical coverage that is limited to 90 days. The NAIC plans to complete revisions of the model act by the end of the year.

Head of NFIP Moves to IBHS

Roy Wright moved in April from head of the National Flood Insurance Program to the Insurance Institute for Business & Home Safety, where he was named president and CEO. He succeeds Julie Rochman, who is retiring at the end of June.

NFIP Wins Funding Through July

The National Flood Insurance Program won funding through July 31 in the $1.3 trillion omnibus spending bill passed by Congress in March and signed by Pres. Trump. NFIP, however, was decoupled from federal government funding, which runs through Sept. 30. The bill also included separate funding for flood risk mapping, which received $262.5 million, an $85 million increase from last year, and flood mitigation, which received triple the average authorization over the past 15 years. The separate date of NFIP funding expiration could signal Congress's intent to grapple with the program's reform outside of the government budget process.

REGULATORY NEWS

TENNESSEE Bureau of Worker Compensation launches online filing system that lets attorneys and self-represented litigants file and review legal documents electronically. TNComp is modeled after PACER platform used in federal court system. **tn.gov/commerce/section/insurance**

TEXAS Division of Workers Compensation sets workers comp interest/discount rate of 5.58% for April 1 to June 30 quarter. Rate based on Treasury constant maturity rate for one-year T-bills plus 3.5%. **tdi.state.tx.us**

VERMONT Gov. Phil Scott signs captive insurance law that includes regulatory changes for branch captives and syncs premium tax payment date with state's annual filing date for annual reports—March 15—a two-week extension. H. 694 also clarifies that reinsurance premium taxes don't apply on loss portfolio transfers to a captive taking on risk previously held by the parent in a self-insurance arrangement. Risk retention groups have a reporting change under the updated law, as well. RRGs must now automatically provide records of their annual determination of board director independence to the insurance commissioner. Previously, those records were provided only if requested. » Approves overall workers comp rate decrease of 3.7% in voluntary market and 7.6% in assigned risk market. Department of Financial Regulation directed National Council on Compensation Insurance to remove surcharge on assigned risk due to better experience data, resulting in additional premium relief of 6.7% in assigned risk market. Of note, log-hauling industry gets 24% rate reduction, partly due to new merger with contract trucking class. **bishca.state.vt.us**