

Winter 2018

Borteck & Czapek, P.C. Attorneys At Law

- ✓ Gift Tax Returns
- ✓ Tax Cuts and Jobs Act of 2017
- ✓ New Jersey Estate Tax Repeal
- ✓ New York Estate Tax Exemption
- ✓ Current Firm Contact Information
- ✓ Update Your Contact Information

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GIFT TAX RETURNS

As you begin preparing your annual income tax return, please consider the fact that you may also need to file a Federal gift tax return (Form 709). The need to file a gift tax return is triggered by a number of events, including, but not limited to, the following:

- In 2017 you transferred to any recipient (other than your spouse) cash, securities or other property the total value of which exceeds \$14,000.
- In 2017, you created and funded an irrevocable trust.
- In 2017, you transferred funds to an existing irrevocable trust (*i.e.*, a trust created before 2017).
- In 2017, you made a premium payment for a life insurance policy that is owned by a trust.
- You “split gifts” with your spouse (*e.g.*, you gave \$28,000 to an individual and wish to attribute one-half of the gift to you and one-half to your spouse).
- You need to apply your generation-skipping transfer (GST) tax exemption. This is especially important if your goal is to ensure that a trust remains exempt from the generation-skipping tax. To do so, each year you are required to file a Federal gift tax return, reporting contributions to the trust in that year and applying a portion of your generation-skipping tax exemption to cover the contributions that were made.

We are reminding you because the stakes of failing to apply your generation-skipping exemption on a timely basis can be extremely costly. If you apply this exemption on a timely-filed gift tax return, then you need only utilize such portions of your GST exemption as is necessary to cover the contributions that were made to the trust last year (typically, an amount equal to life insurance premium payments). If, on the other hand, you do not make a timely allocation, then to fully exempt the trust from the generation-skipping tax, the GST exemption would have to be applied against the full value of the trust at the time of death (inclusive of the life insurance proceeds that were received by the trust). Therefore, it is critical that you make sure that each year your gift tax returns are filed on a timely basis.

Federal gift tax returns are due on April 15, 2018. If you apply for an extension of time to file your 2017 personal income tax return (Form 1040), you can specifically elect to file the gift tax return (Form 709) after April 15th along with your personal income tax return.

If you would like us to prepare your 2017 gift tax returns, please call at your earliest opportunity. In order to ensure timely preparation of your returns, please provide us with the dates, amounts and recipients of any calendar year 2017 gifts as soon as possible.

If your accountant will be preparing your gift tax returns, we will be pleased to assist in any way; please do not hesitate to contact us. At a minimum, if your accountant is to prepare the returns, it is our suggestion that we review the return and the allocation of generation-skipping tax exemption before the return is filed.

Please let us know if you have any questions or would like our assistance.

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TAX CUTS AND JOBS ACT OF 2017 (TCJA)

As you are no doubt aware, the Senate and the House of Representatives reconciled and passed the Tax Cuts and Jobs Act of 2017 (TCJA). President Trump signed the Act into law on December 22, 2017. A majority of the changes focus on Federal income taxes for individuals and corporations; these changes are summarized below. However, there are some significant changes in the Estate, Gift and GST tax laws.

The following is a summary of the changes in the realm of **federal estate, gift and generation-skipping transfer tax**:

- The Federal Estate and Gift Tax Exemption is increased from its 2017 level of \$5.49 million per individual to \$11.2 million (with adjustments for inflation). This increased amount is in effect for decedent's dying after 2017 and before 2026¹, and for gifts made during that same time period.
- The GST Tax Exemption is also raised to \$11.2 million (and indexed for inflation) effective for all gifts made to a "skip" person after 2017.
- Married couples still have the ability to "port" any unused estate and gift tax exemption of the first spouse to die to the surviving spouse. (Note that "portability" does not apply to GST Tax.)
- The Act retains the "stepped-up" basis for assets transferred at the death of an individual.
- The tax rate on transfers in excess of the exemption remains at 40%.
- The annual gift tax exclusion will continue to be available, and increases from \$14,000 (in 2017) to \$15,000 per recipient (beginning in 2018).
- The Act considers elementary and secondary school expenses of up to \$10,000 as qualified expenses for qualified tuition programs (*i.e.*, 529 accounts).
- As with the estate tax, the gift tax rate on transfers in excess of the annual exclusion and the lifetime exemption will remain at 40%.
- Most estate planning with respect to charitable giving will not be affected by the Act.

While immediate action is not necessary, we strongly urge you to review (and potentially revise) your estate plan(s) in light of these changes. Many clients have estate plans that make transfers at death to individuals based upon the size of your Federal Estate or GST exemption. These transfers can be materially altered by these

¹ Due to rules that set limitations on legislation that would increase the federal deficit, these changes expire after 2025 and revert to the 2017 amounts.

tax changes if the amounts are determined by formulas based upon the old exemptions/exclusions, and may result in shares of your estate passing in a manner inconsistent with your intentions. Accordingly, if your plan contains substantial differences between the marital share and the residual share, it is very important for you to contact us to review the plan and implement any necessary changes.

In addition, gifting strategies should be reviewed as a result of the large increase in the lifetime gift exemption. Some of the techniques presently used (*i.e.* qualified residence trusts, irrevocable life insurance trusts and grantor retained annuity trusts) may become less useful for those individuals for whom the new exemptions will always be greater than his/her assets. However, clients should also keep in mind the possibility that the estate, gift and generation-skipping tax exemptions may be reduced under a future president or Congress or after 2025 when they are scheduled to sunset.

The major focus of the Act is with respect to **federal income taxes**. We urge you to consult with your accountant and other tax advisors to determine how the Act affects you and to discuss strategies to minimize tax exposure. The majority of the changes went into effect as of January 1, 2018, giving little opportunity to effect any strategies prior to the enactment of this legislation. Some of the most notable changes are:

- The top tax rate for individuals was reduced from 39.6% to 37%
- Thresholds at which top rate takes effect have been increased. For individuals, the threshold moved from \$418,400 to \$500,000 and for married individuals filing jointly from \$470,700 to \$600,000.
- Net investment income tax of 3.8% and top preferential tax rate for qualified dividends and long-term capital gain remains unchanged. The top rates on ordinary investment income decreases slightly as a result of the reduction in the top tax rate from 39.6% to 37%.
- The standard deduction will be roughly doubled (to \$25,000) while the personal exemption is eliminated.
- State and local income tax (SALT) deductions (which includes real estate tax) are limited to \$10,000. This will have a significant effect on residents of high-tax states such as California, New Jersey and New York.²

² Please note that California and New York have already begun legal action against the Federal government on the basis of their citizens being denied their 14th Amendment right to Equal

- Mortgage interest deductions are restricted to the interest on loans up to \$750,000 (a decrease from the current loan amount of \$1 million). This applies only to new mortgages taken out after December 15, 2017.
- Home equity loan interest will no longer be deductible, even for existing loans.
- The Act suspends deductions for all miscellaneous itemized deductions.
- There is a modest increase to the alternative minimum tax (AMT) exemption amount.
- The percentage limitation for cash contributions to public charities has been increased from 50% of adjusted gross income (AGI) to 60% of AGI.
- There is now a deduction of up to 20% of qualified business income from flow-through entities such as partnerships, S Corporations, LLCs, etc.
- The Child Tax Credit will increase to \$2,000 for qualifying children.
- The Pease Provision, which was the income based limitation on certain allowable itemized deductions, has been suspended.
- The top tax bracket for corporations has been reduced from 35% to 21% and corporate AMT has been eliminated.

Again, we urge you to contact your accountant and/or tax advisor(s) to discuss how these changes affect you and to explore options for the reduction of taxes.

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Protection under the law due to the disparate effects of the SALT limitations in high-cost, highly-density, highly-taxed states. It is possible that other states, such as New Jersey, will join in the action.

NEW JERSEY ESTATE TAX REPEAL

As we informed you in the Winter 2017 Bulletin, the New Jersey legislature has also revised the estate tax. Because it is such a meaningful change in the law, it is worth repeating here:

On October 14, 2016, Governor Christie signed into law new legislation that repeals the state's estate tax. This law was part of a legislative compromise that included, among other things, a \$.23/gallon gas tax increase and a modest decrease to the state's sales tax. The estate tax repeal would be effective as of January 1, 2018; a New Jersey resident who dies on or after that date will not be subject to New Jersey estate tax. In the interim, beginning on January 1, 2017, the current estate tax exemption (\$675,000) would increase to \$2 million.

Unfortunately, the law does not eliminate the state's Inheritance Tax, which is levied upon bequests to individuals who are not "Class A" beneficiaries. A decedent's spouse, civil union/domestic partner, parents and descendants are all Class A beneficiaries; bequests to these individuals are not subject to Inheritance Tax. However, a decedent's siblings, daughter-in-law, son-in-law, nieces, nephews, cousins, friends, etc. are all Class C or Class D beneficiaries who *are* subject to the Inheritance Tax (at rates ranging from 11% to 16%).

Since the enactment of the new law, many estate planners have weighed in on the likelihood that the repeal will be permanent. Although no one can predict the future, especially not in the recent/current political climate, a majority of commentators believe the repeal will be repealed and/or "frozen," such that New Jersey will have *some* type of estate tax in place. This "chatter" has increased since Philip Murphy, a Democrat, was elected governor in November. Of course, we will continue to update you as to any legislative proposals and/or changes.

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NEW YORK ESTATE TAX EXEMPTION

As a reminder, the New York state estate tax remains unchanged. The current New York estate tax exemption is \$5,250,000. As of January 1, 2019, the exemption will be \$5,000,000 with an index for inflation (*i.e.*, approximately \$5,500,000). The significant discrepancy between the federal and New York estate tax exemptions means that even taxpayers who are no longer subject to federal estate tax still need to plan for the New York estate tax.

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CURRENT FIRM CONTACT INFORMATION

After more than nine years at our location in Livingston, New Jersey, Robert D. Borteck, P.C. moved (1½ miles down the road) to a beautiful new office suite in Florham Park, New Jersey. In addition, the firm was restructured such that Christine Socha Czapek³ became an equity partner in the firm. The new firm – Borteck & Czapek, P.C. – commenced business as of December 1, 2017.

The firm will continue to specialize in matters relating to estate planning, administration of estates and trusts, estate and trust litigation, expert witness service in tax, probate and trust related litigation, guardianships and tax and business planning for entrepreneurs, professionals and closely held businesses.

Please make a note of our updated contact information:

Borteck & Czapek, P.C.
25B Hanover Road
Suite 240
Florham Park, NJ 07932

Our telephone and fax numbers, e-mail addresses and website remained the same.

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³ The “Cz” is pronounced like a “Ch” – “Cha-Peck”.

Update Your Contact Information

It remains important for us to have your most recent contact information. If you have moved in the past several years, or have changed your phone number or e-mail address, or for any other reason believe we may not have all of your updated contact information, please contact us to provide same. Simply give a call or send an e-mail to one of our capable assistants with your new/current info:

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Phone No. - 973-994-2050 extension 104

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Similarly, as we work to update our communication systems, if you prefer to receive communication from us (like these bulletins) in e-mail form, we ask that you make sure we have your current e-mail address. Again, simply contact Anabela Pinto or Krystal Hernandez (via e-mail) and provide us with that information.

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We wish you and yours a very happy and healthy new year!

We look forward to working with you in 2018.

***Disclosure Required Under IRS Circular 230:** Borteck & Czapek, P.C. informs you that any tax advice contained in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding federal tax-related penalties or promoting, marketing or recommending to another party any transaction or matter addressed herein.*

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