



PLANNING FOR CHANGE

ESTATE PLANNING & NEW TAX LAWS

**Senior Living Foundation
of the American Foreign Service**

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Tools in Estate Planning

- Powers of Attorney
- Living Will/Advance Medical Directive
- Titling of Property
- Wills
- Trusts
- Gifting
- Life Insurance

General Durable Power of Attorney

- Power to undertake any action relating to your assets that you could do personally
- Effective immediately or effective in the event of disability (“Springing”)
- Avoids guardianship proceedings
- Null/void upon death

Advanced Health Care Directive or “Living Will”

- Establishes individual preferences
 - ◆ **Use of Oxygen**
 - ◆ **Nutrition/Hydration**
 - ◆ **Pain Management**
 - ◆ **Organ Donation: driver’s license is best**
- Identifies individuals to make health care decisions for you if you are unable to do so.
- Null/void upon death

Titling of Property

- Overrides the will
- Examples:
 - ◆ **Joint ownership (with survivorship)**
 - ◆ **Transfer on death and pay on death accounts**
 - ◆ **Revocable or irrevocable trust**
 - ◆ **Insurance**
 - ◆ **Retirement accounts**
 - ◆ **VA and DC permit Transfer on Death Deeds (not yet permitted in MD-Bills proposed/Bills defeated).**

Wills

- Effective at death
- Funeral and other arrangements
- Specific bequests
- Appoints an Executor and outlines Executor's duties
- May appoint Guardian for minor children
- May establish trusts
- Without a Will - state law applies as to distribution of assets and care of children

Main Types of Trusts

- Testamentary
 - ◆ **Established by your Will**
 - ◆ **Assets do not avoid probate**
 - ◆ **Accounting requirement**

Main Types of Trusts

- **Inter Vivos**
 - ◆ **Established during your lifetime**
 - ◆ **Assets in trust avoid probate**
 - ◆ **Revocable vs. Irrevocable trusts**
 - ◆ **Comes in many forms**

Estate Taxes after the Tax Cuts and Jobs Act

- Transfer between spouses who are U.S. citizens are tax-free
- Qualified Domestic Trust must be established for non-U.S. citizen spouse
- Current Federal Estate Tax “Exemption” amount:
 - ◆ **Approximately \$11.2M/individual**
 - ◆ **Approximately \$22.4M/married couple with election of portability**
 - ◆ **Current tax rate – 40%**
 - ◆ **Sunsets in 2026 – reverts to \$5.6M/person and \$11.2M/married couple-adjusted for inflation annually**

Portability

- January 2013, Congress passed American Tax Relief Act of 2012 (“ATRA”) – made Portability “permanent”
- A surviving spouse can use deceased spouses (unused) exemption for his/her gift or estate tax purposes
- Must file a tax return upon death of first spouse to reserve right to “elect” portability

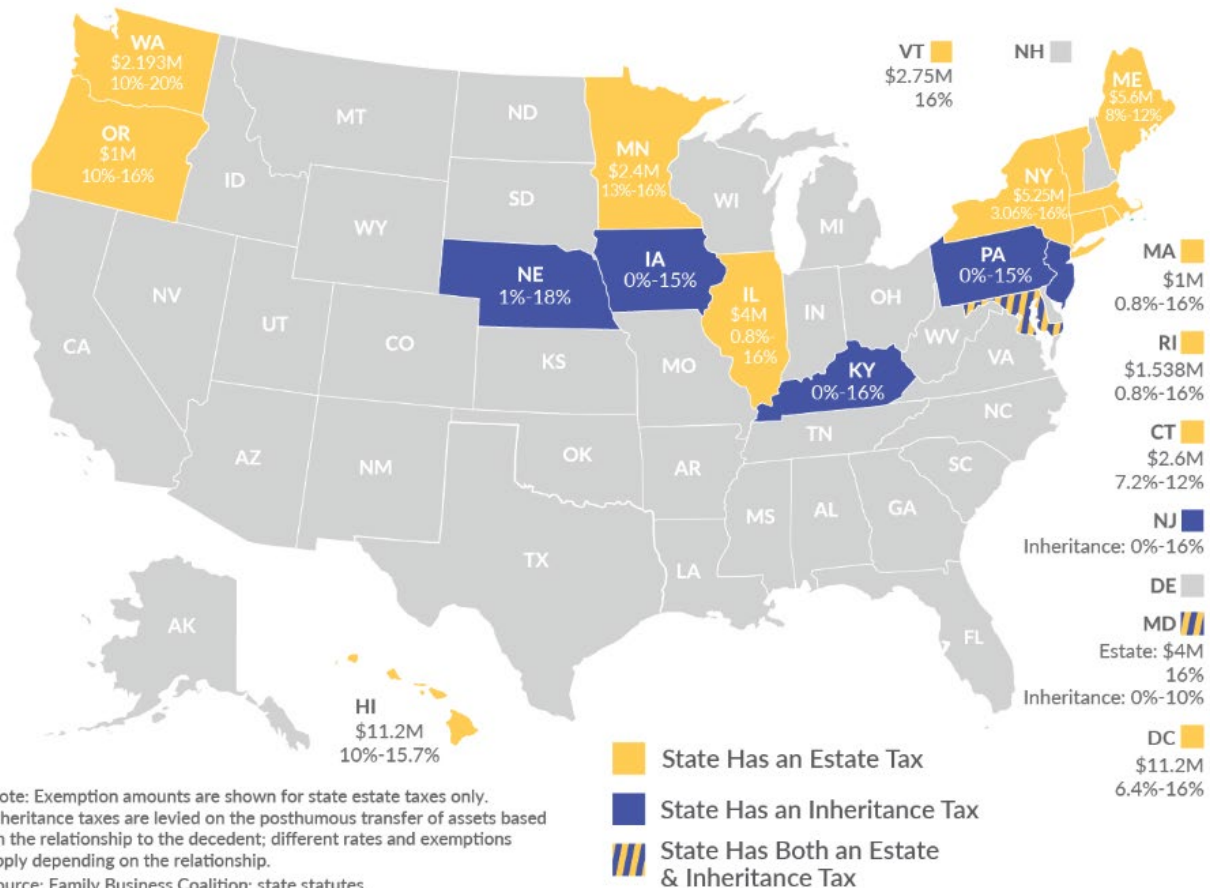
Review Existing Trusts After Tax Act of 2018

- Review Family Trusts funded by formula
- Federal Exemption amount jumped significantly-could impact prior planning efforts/expectations
- Many trusts are worded to fund family trust with full amount of exclusion (very different result with \$11.2M exclusion vs. \$3.5M for example)

Estate and Inheritance Tax

Does Your State Have An Estate or Inheritance Tax?

State Estate & Inheritance Tax Rates & Exemptions in 2018



“Separate” State Estate Taxes

- Several states and the District of Columbia have their own state estate tax
- Virginia – **no estate tax**
- Maryland - **\$4M in 2018; \$5M in 2019 – adopting portability in 2019**
- District of Columbia – **As of 9/5/2018, \$11.2M reduced to \$5.6M (retroactive to 1/1/2018) – no portability in DC**

Inheritance Taxes

- Approximately 6 states have their own inheritance tax which is normally paid by the recipient
- Virginia – no inheritance tax
- Maryland – **10% - payable by collateral (non-lineal) heirs**
- D.C.– no inheritance tax

Federal Gift Taxes

- Lifetime exemption of \$11.2M (tied to overall “exemption”).
- Annual gift exemption of \$15K per individual (\$30K if spouse joins in gift)
- Unlimited number of gifts to different individuals
- Annual transfers to a non-U.S. citizen spouse are tax-free up to \$152,000 in 2018 (adjusts annually)

Spousal Rights for Foreign Service Spouses

- **Foreign Service Benefit Default Rules:** Unless otherwise provided by court order or spousal agreement, a Former Spouse (“FS”) of a FSPS or former FSPS is entitled to both pension and survivor benefits, unless waived, if the following conditions are met:
 - 1) the FS divorced participant after February 15, 1981;
 - 2) Before commencement of payments of any benefits, the FS did not remarry before age 55; and
 - 3) FS was married to FSPS or former FSPS for at least 10 yrs., and during at least 5 of such years, the participant was a member of the Foreign Service.

Spousal Rights Generally

- **Spousal Elective Share for Decedent dying on or after 12/1/2017:**
 - ◆ Cannot disinherit a spouse without their consent in Virginia
 - ◆ Surviving spouse may make a claim against estate regardless of whether any provision for the spouse is made in a decedent's will or if the decedent dies intestate (without a will);
 - ◆ Six months to file from date of probating will or qualification of an administrator
 - ◆ Moves from “support” based theory to an “economic partnership” theory.
 - Old Model: looked only at Deceased spouses assets
 - New Model: looks at both spouses assets
- Takes into account length of marriage – 15 year “earn in” period
- Maximum elective share is 50% of all marital assets (sliding scale based on length of marriage).
- No longer matters if children or no children are living.
 - ◆ Can waived by writing
 - ◆ Statutory rights are barred by desertion or abandonment
- **Virginia's Omitted Spouse Statute**

Gifting Strategies

- Cash, appreciating/appreciated property
- Uniform Gifts to Minors Act/Uniform Transfers to Minors Act
- Medical expenses/tuition
 - Unlimited yearly if gifted directly to educational or health care institution
- Installment sales or loans
- Charitable giving

Estate Planning in a Low Interest World

- Low interest rates favor certain strategies
 - ◆ Grantor Retained Annuity Trust (GRAT)
 - ◆ Charitable Lead Annuity Trust (CLAT)
 - ◆ Installment sale
 - ◆ Low-interest family loan

Intra-Family Loans

- ◆ Historically Low (but rising) Applicable Federal Rate, published monthly by the IRS
- ◆ Short-term Rate: loans with terms < 3 years;
- ◆ Mid-term Rate: loans with terms >3 years, but <9 years;
- ◆ Long-term Rate: loans with terms >9 years

Annual AFRs for October 2018

| Short-Term | Mid-Term | Long-Term |
|------------|----------|-----------|
| 2.55% | 2.83% | 2.99% |

Upcoming Changes in Estate Planning

- Inherited IRA – proposed changes in distribution requirements
- New IRS regulations – elimination/reduction of discounts for interfamily transfer of business interests

When to Review an Estate Plan

- Major life events
 - ◆ **Inheritances**
 - ◆ **Career changes**
 - ◆ **Move out of state**
 - ◆ **Birth of a child**
 - ◆ **Marriage, Divorce, Death**
- Tax law changes
- Significant changes in values of assets
- Every 5 years

Questions?

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