
ESTATE PLANNING NEWSLETTER

May, 2019

Generous Tax Laws Change Estate Planning Landscape

The estate planning landscape in New Jersey has changed dramatically over the last two years based on new tax rules which are very generous to estates and beneficiaries. First, the **Federal Estate Tax** Exemption for decedents passing in 2019 is \$11,400,000 for each person, or \$22,800,000 for a married couple. The exemption will continue to increase each year based on the inflation index. This essentially eliminates the Federal Estate Tax for all but the very wealthy. Second, there is no **Federal Gift Tax** payable on gifts if the total lifetime gifts are less than \$11,400,000, (or \$22,800,000 per couple). Third, effective January 1, 2018, the **New Jersey Estate Tax** has been repealed. Fourth, there is no **New Jersey Inheritance Tax** on amounts passing to a spouse or descendants. Amounts passing to other beneficiaries may be taxed at 11% or more. If the Inheritance Tax will apply to your estate, it is possible to mitigate that tax by making gifts during your lifetime. The use of trusts, rather than outright gifts and bequests, can avoid the imposition of the inheritance tax.

This means that a surviving parent could pass \$22,800,000 to his or her children and grandchildren, without any Federal Estate Tax or New Jersey Inheritance Tax. To sweeten the situation,

the step-up in cost basis remains. The step-up creates a new income tax basis for assets owned by a decedent equal to the date of death value of the assets. The potential capital gain tax on assets that appreciate during lifetime is avoided. New Jersey has a reputation as a high tax state. However, for estates passing assets from parents to children, New Jersey is actually a lower tax state than Pennsylvania.

The **Pennsylvania Inheritance Tax** does not apply to amounts passing to a spouse. There is, however, a Pennsylvania Inheritance Tax on amounts passing to descendants with a tax rate of 4.5%. Again, gifts and trusts can mitigate this tax in your estate as well as the estates of your beneficiaries.

Based on these changes, many estate plans can be simplified to pass all assets outright to the surviving spouse and then, at the second death, pass all assets outright to the children. This plan is effective if all parties involved can manage money responsibly, have no potential creditor issues, are in a sound marriage and have no special needs. In many other cases, as explained below, the use of a trust is much more beneficial than outright bequests.

Establishing a Trust for Beneficiaries

Your beneficiaries (your spouse, your children, or any other beneficiary) can obtain a number of benefits by receiving an inheritance in trust rather than outright. Trusts can be very flexible. The beneficiary can be the trustee of the trust, decide how the trust assets are invested, and have the power to direct how the trust assets are distributed during the beneficiary's lifetime and upon his or her death. Alternatively, a trust can have various restrictions and a third party trustee to manage the assets for the beneficiary. Some of the benefits that a properly drafted trust can provide are:

- A trust can hold assets for minor children until they are old enough (an age you choose) to manage the assets on their own, avoiding the expense and delays of a guardianship.
- A trust can hold assets for a beneficiary who does not have the ability to manage his or her own assets in order to protect the assets from waste.
- The assets of a trust can be excluded from the taxable estate

of a beneficiary at his or her death, thus reducing estate and inheritance taxes in the future.

- A trust can provide for distributions to a beneficiary with special needs in a manner that supplements, but does not supplant, public benefits, such as SSI and Medicaid, in order to allow the beneficiary to remain eligible for public benefits without having to use up all of the assets first.
- A trust can be used to protect the assets from a beneficiary's creditors, including a spouse in the event of divorce. This can be very helpful if the beneficiary is in a high risk profession.
- A trust can be used to allow you to provide benefits to an individual during that person's lifetime and also allow you to decide who will receive the assets after the initial beneficiary is no longer living. This can be very helpful in the case of a second marriage where there are children from the first marriage. You would not have this control if assets are distributed outright to a beneficiary.

Are Gifts Limited to the \$15,000 Annual Exclusion?

The question often arises: Can I gift more than \$15,000 per year to my child? There are many misconceptions about this issue. For most people, this is now a moot point. Here is how it works.

Under the "Unified Gift and Estate Tax" system, all gifts made during lifetime and transfers made at death are taxed cumulatively. The law is designed so that one cannot simply make lifetime gifts in an attempt to reduce the size of the estate held at death and thereby defeat the estate tax.

It is best explained by an example. If a person has a net worth of \$4 million (including real estate, retirement accounts, cash, securities and virtually all other assets), then this would generally be the size of his or her taxable estate. If this person makes a gift of \$200,000 to her child, leaving \$3.8 million in her name, then her tentative taxable estate at the time of her death would be \$3.8 million. Does this mean that, if the estate tax rate is 40%, there would be a resultant \$80,000 tax savings by having reduced the estate by the \$200,000 gift? If the answer were "yes," then it would be easy to avoid the estate tax simply by making gifts before death. The correct answer is "no" because, under the Unified Gift and Estate Tax system, generally all gifts made during lifetime must be added back and included as part of the taxable estate at the time of death. In this example, the amount remaining held at death is only \$3.8 million, but the amount of

the lifetime gifts must generally be added back, and thus the actual taxable estate would still be \$4 million. One exception to this general rule is the "annual gift tax exclusion" which allows a person to give away \$15,000 per donee per calendar year, and that amount is not required to be added back into the taxable estate. More specifically, in this example, when the gift of \$200,000 is made, the annual exclusion of \$15,000 is deducted and, accordingly, the net amount of gift which is required to be added back into the taxable estate is only \$185,000. Thus, the taxable estate ends up being \$3,985,000 (\$3.8 million held at death plus the net gift of \$185,000 added back). The result is that only \$15,000 was actually removed from the taxable estate. Given that the estate tax rate is 40%, this would result in an estate tax savings of \$6,000. However, this is really only a savings if there were some tax payable to begin with.

Concern over gifting limits is a moot point for most people because every person has a lifetime gift and estate tax exemption of \$11.4 million. Therefore, most people will not pay a Federal Estate Tax. The person dying with the \$3,985,000 taxable estate would have no estate tax, because it is less than the lifetime exemption of \$11.4 million.

The bottom line is, **it does not matter** whether the gift is \$2,000 or \$50,000 or \$3,000,000, so long as the total value is less than the estate tax exemption amount of \$11.4 million.

Planning Idea for Larger Estates

The Federal Estate Tax Exemption is due to reduce by 50% in 2026. In anticipation of the change, the following planning idea should be considered:

If you are unmarried and the value of your assets is between \$5.7 million and \$11.4 million, or a married couple and the value of your assets is between \$11.4 million and \$22.8 million, it may be advisable to utilize the estate tax exemption by making large gifts before 2026. The IRS has recently issued Regulations, stating that you can use the larger exemption now and keep the full benefit even if, at the time of death, the allowable exemption has been reduced to a lower amount.

We Have Found a Permanent Home

We have outgrown our current office space. Effective May 28, 2019, we will be located at:

**4 Munn Avenue
Cherry Hill, New Jersey 08034**

This location is across the street and around the corner from our current office. We will nearly double our space and we will have plenty of convenient parking. The new location is a two-minute walk from our current location. Our phone number will remain 856-795-3535.

Planning to Pay for Long-Term Health Care

A significant concern of many families is how to pay for the potential costs of long-term care. Many parents wish to balance two competing interests. The parents wish to have proper care for the rest of their lives while also leaving an inheritance for the next generation. Careful long-term planning involving gifting is an effective way to balance these competing interests.

As background, in order to be eligible for Medicaid, the assets of a single person cannot exceed \$2,000. Additionally, Medicaid will evaluate all financial transactions which took place during the five years prior to the filing of an application for Medicaid. This is called the "five-year look-back." In order to qualify for Medicaid, there must be no gifts made during the look-back period or Medicaid will require a "penalty period" during which the applicant will receive no benefits. There are additional rules for married couples which must be considered.

The most effective planning technique to pay for long-term care is to make an "optimal" gift and then wait five years. The optimal gift is determined by preparing a projection of income and expenses for five years. The goal is to retain the amount of assets necessary so that the assets become exhausted exactly five years after the date of the gift. This projection requires several assumptions regarding both income and expenses. We can assist our clients with designing an overall plan to optimally pay for long-term care.

Real Estate Services – Why Do You Need an Attorney?

There are numerous issues to be aware of when buying or selling real estate beyond simply finding a property to purchase or a buyer to sell to. Failure to recognize these issues and take appropriate steps when entering into a real estate contract could result in problems that become very difficult and expensive to resolve later. A skilled attorney well versed in real estate matters can protect you from these problems by addressing the following issues:

Residential

- The Contract is the legal roadmap to the closing
- Asset Protection: usually this will be the largest amount you will ever pay or receive for a single asset
- Attorney review is a two-edged sword
- The home inspection:
 - What is the seller obligated to do?
 - May result in further negotiations
 - Environmental issues may arise; these could include: mold, radon, underground tanks
- Title review: are you getting what you're paying for?
- Is there any warranty?
- What does "AS IS" mean?

- Improvement modifications: were permits obtained and inspections satisfactory?
- When is mortgage financing a contingency?
- When is a house to sell a contingency?
- Tax Issues to be considered:
 - New Jersey transfer tax
 - Federal and State income tax
- Your realtor is not your attorney
- What if neither seller nor buyer has a realtor?

Commercial

- Many of the points above also apply
- An attorney must prepare the contract
- There is no attorney review after signing
- Due diligence activity is more complicated
- Warranties/representations are more detailed and precise
- Potential significant environmental issues
- Governmental approvals
- Financing complexities
- Tenant and lease issues
- Special insurance coverages

Avoid Estate Litigation

BHP assists clients with estate planning, administration, and litigation. BHP prides itself on having the training and experience necessary to create comprehensive estate plans, and to assist executors and beneficiaries with the technicalities of estate administration. When decedents or executors or beneficiaries do not retain a competent legal professional to help with these issues, the matters often end up in litigation. No one wants their matter in litigation.

It is very important to retain a competent attorney to help you with estate planning and administration. Unfortunately, we frequently see a will or power of attorney that was purchased on the internet. While it is possible that these internet documents could meet your needs, often times they do not. Many clients that need help from our litigation department could have avoided litigation if the decedent or personal representative had retained a skilled attorney to assist with their estate planning or administration. The adage "pay me now or pay me more later" frequently applies to estate planning and estate administration. Although the person saying this is often smiling, that sentiment brings no joy to the BHP litigation department.

When your estate matter ends up in litigation, there are costs to you and your family, which include time, money and peace of mind.

Time – When administering an estate where the decedent died without a will, or with a poorly drafted will, the administration takes much more time to complete. Aside from the increased duration, the estate representatives and beneficiaries are required to spend more time assisting with litigation than those situations where the will was drafted by a competent legal professional.

Money – When the decedent dies without a will, the estate administrator is required to pay an insurance company for a surety bond out of the estate assets. A will prepared by an attorney often waives the bond requirement. Some believe they are saving money by not hiring a competent legal professional to draft their will, but they are missing the fact that when they die their estate is legally required to pay this additional expense for the surety bond. The more an estate pays for legal fees and surety bonds, the less money there is to distribute to the decedent's beneficiaries.

Peace of Mind – Administration of an estate can be exhausting emotionally. When a will is drafted by a competent legal professional, there is often very little for the beneficiaries to fight about. However, when there is no will, or a will is purchased over the internet, many avoidable issues can arise, making a difficult family situation even worse. No one in the BHP litigation department has any formal training in psychology, but on a daily basis we help clients process the anguish associated with sibling disputes that occur after their parents pass away.

Please engage the services of a competent attorney to help you with estate planning and administration now so you will not need to engage the services of the BHP litigation department later.

New Jersey Inheritance Tax	
Class of Beneficiary	Tax Rate
Class "A": spouse, domestic partner, descendant, parent, step-child, mutually-acknowledged child	Fully exempt
Class "C": sibling, son/daughter-in-law	First \$25,000 - exempt Next \$1,075,000 - 11% Next \$300,000 - 13% Next \$300,000 - 14% Over \$1,700,000 - 16%
Class "D": any beneficiary who does not qualify as Class "A", "C", or "E"	If under \$500 - exempt If over \$500, first \$700,000 - 15% Over \$700,000 - 16%
Class "E": Charities and other exempt entities.	Fully exempt

Federal Estate Tax Exemption		
Year	Exemption	Tax Rate
2017	\$5,490,000	40%
2018	\$11,180,000	40%
2019	\$11,400,000	40%

Pennsylvania Inheritance Tax	
Class of Beneficiary	Tax Rate
Spouse	Exempt
Descendants & Lineal Heirs	4.5%
Siblings	12%
Other heirs, except charities and governmental entities which are exempt	15%

New Jersey Estate Tax		
Year	Exemption	Tax Rate
2017	\$2,000,000	Up to 16%
2018	None	None
2019	None	None

Federal Gift Tax Annual Exclusion	
Year	Exemption Amount
2017	\$14,000
2018	\$15,000
2019	\$15,000

New Jersey Retirement Income Exclusion*			
Year	Single	Married, Jointly	Married, Separately
2018	45,000	60,000	30,000
2019	60,000	80,000	40,000
2020+	75,000	100,000	50,000

*Applies if 62 or older or disabled AND total income is \$100,000 or less.

Single Life Table Excerpt (for RMD for Inherited IRA)					
Age	Dist. %	Age	Dist. %	Age	Dist. %
37	2.15%	55	3.38%	73	6.76%
38	2.19%	56	3.48%	74	7.09%
39	2.24%	57	3.58%	75	7.46%
40	2.29%	58	3.70%	76	7.87%
41	2.34%	59	3.83%	77	8.26%
42	2.40%	60	3.97%	78	8.77%
43	2.46%	61	4.10%	79	9.26%
44	2.51%	62	4.26%	80	9.80%
45	2.58%	63	4.41%	81	10.31%
46	2.64%	64	4.59%	82	10.99%
47	2.70%	65	4.76%	83	11.63%
48	2.78%	66	4.95%	84	12.35%
49	2.85%	67	5.15%	85	13.16%
50	2.92%	68	5.38%	86	14.08%
51	3.00%	69	5.62%	87	14.93%
52	3.10%	70	5.88%	88	15.87%
53	3.18%	71	6.13%	89	16.95%
54	3.28%	72	6.45%	90	18.18%

Long-Term Capital Gains Rates			
Tax Rate	Single Income	Married, Filing Jtly	Estates & Trusts
0%	Up to \$39,375	Up to \$78,750	Up to \$2,650
15%	\$39,371-434,550	\$78,751 to 488,850	\$2,651 to \$12,950
20%	Over \$434,550	Over \$488,850	Over \$12,950

Uniform Lifetime Table (for RMD for IRA Owners)					
Age	Dist. %	Age	Dist. %	Age	Dist. %
70	3.65%	80	5.35%	90	8.77%
71	3.77%	81	5.59%	91	9.26%
72	3.91%	82	5.85%	92	9.80%
73	4.05%	83	6.13%	93	10.42%
74	4.20%	84	6.45%	94	10.99%
75	4.37%	85	6.76%	95	11.63%
76	4.55%	86	7.09%	96	12.35%
77	4.72%	87	7.46%	97	13.16%
78	4.93%	88	7.87%	98	14.08%
79	5.13%	89	8.33%	99	14.93%

Federal Income Tax Rates						
Income Tax Rate	Single		Married, Filing Jointly		Estates and Trusts	
	2018 Taxable Income	2019 Taxable Income	2018 Taxable Income	2019 Taxable Income	2018 Taxable Income	2019 Taxable Income
10%	\$0-9,525	\$0-9,700	\$0-19,050	\$0-19,400	\$0-2,550	\$0-2,600
12%	\$9,526-38,700	\$9,701-39,475	\$19,051-77,400	\$19,401-78,950	---	---
22%	\$38,701-82,500	\$39,476-84,200	\$77,401-165,000	\$78,951-168,400	---	---
24%	\$82,501-157,500	\$84,201-160,725	\$165,001-315,000	\$168,401-321,450	\$2,550-9,150	\$2,601-9,300
32%	\$157,501-200,000	\$160,726-204,100	\$315,001-400,000	\$321,451-408,200	---	---
35%	\$200,001-500,000	\$204,101-510,300	\$400,001-600,000	\$408,201-612,350	\$9,150-12,500	\$9,301-12,750
37%	Over \$500,000	Over \$510,300	Over \$600,000	Over \$612,350	Above \$12,500	Above \$12,750

*Visit us on Facebook at "Bernetich Hatzell & Pascu LLC"! We appreciate your business and would love to hear your feedback.