An Estate Planner's View of the New Tax Law Changes

By

Stephan J. Lipskis, Esquire

At the end of 2017 Congress passed the **Tax Cuts and Jobs Act** (the "TCJA"), which was signed into law by President Trump on December 22, 2017. This new law represents the most significant change to the U.S. Tax Code in three decades. This change necessitates a review of many taxes to which you may be subject, including income, estate, gift, state, local, and capital gains taxes, because the TCJA touches all of these areas. Generally, an individual should review his or her estate plan every 3-5 years; the TCJA means that **2018 should definitely be a year you review your estate plan**.

Below are some of the key estate planning issues that I am discussing with clients in light of the new law, as well as some other recent law changes that should be considered during your review:

Impact of Increase in Estate and Gift Tax Exemption. Under TCJA, the exemption from tax on wealth transferred via gift or bequest has been doubled, which means that the amount an individual can pass tax-free is over 11 Million Dollars and the amount a couple can pass tax-free is over 22 Million Dollars. The exemption amount has fluctuated over the years, so this historically-high exemption means that there is an opportunity for wealthy individuals to transfer wealth tax-free, but that opportunity may disappear after the current presidential administration ends. Additionally, the high exemption amounts mean many individuals should focus on income tax, rather than being overly concerned with estate and gift taxes.

Planning Charitable Giving Under New Deduction Amounts. The TCJA significantly increases the standard deduction, which means that fewer people will be itemizing their deductions on their tax returns. Accordingly, those clients who are on the borderline for itemizing their deductions may find that modifying the manner in which they donate to charity can have tax benefits.[1] "Bunching" charitable donations intended for several years into a single year can yield a better tax result than donating consistently over several years. Fortunately, there are tools available to technically bunch the donations into a single tax year, while not modifying the amount received by the charity each year.

Reviewing the Use of Business Entities. For many years so-called "pass-through" entities such as LLCs, Partnerships, and S Corporations were used primarily for asset protection, business planning, and estate tax planning, but with less consideration of the income tax ramifications. The TCJA changes the manner in which these entities are taxed and therefore may necessitate the dissolution of these entities to minimize tax burden. The individual implications of the new law vary based on the individual taxpayer's tax rate, the nature of the business, and other factors. Additionally, the use of Family Limited Partnerships as an estate tax planning tool seems likely to be preserved despite being threatened under previously proposed regulations.

[1]See McCambridge, R. and Rooney, P. (2018). *Did the Tax Overhaul Create a Spike in Donor-Advised Funds? Well, It's Complicated... - Non Profit News | Nonprofit Quarterly*. [online] Non Profit News | Nonprofit Quarterly. Available at: https://nonprofitquarterly.org/2018/02/07/tax-overhaul-donor-advised-funds-spike-daf/ [7 Feb. 2018].

Reconsidering Available Income Tax Deductions. The TCJA radically reduces the deductions available to most people. This reduction, when combined with the increase in the standard deduction, means fewer will itemize and those clients who have counted on itemizing deductions to mitigate their tax burden may need to rework their budget. Fortunately, important deductions such as the medical expense deduction and the home mortgage interest deduction were retained. These deductions can be critical for budgeting the cost of long-term care, medical procedures, downsizing, and many other changes in life.

Non-TCJA Changes to Review. There are numerous changes in the laws related to estate planning in the last decade that should be considered in reviewing an estate plan. These changes range from major changes to Virginia's General Durable Power of Attorney and Advance Medical Directive statutes, to how to successfully protect an inherited IRA account from potential creditors.

This abbreviated list of the many recent legal changes does not address the many non-legal changes in clients' lives that necessitate modification of estate planning documents, such as the disability or incapacity of a loved one.

The author and the entire Trust and Estates team at Poole Brooke Plumlee PC are available to assist you in reviewing your documents to make sure they are optimized for the current laws. We specialize in helping our clients and their families plan for all the stages of life. At a consultation we will address your questions about how the TCJA impacts your plan, review your existing estate plan, and address new estate planning that may be needed for you or your children.

Please contact our Trust and Estate Group Coordinator, Amy Popp, at 757-552-6072 to schedule a meeting. Also be sure to let Mrs. Popp know if you would be interested in attending an exclusive seminar discussing the recent law changes.

Mr. Lipskis is an Estate and Elder Law attorney at Poole Brooke Plumlee PC licensed to practice in all Virginia Courts and in the United States District Court for the Eastern District of Virginia. His practice includes all facets of trusts, estate planning, estate administration, and elder law.