

Kimball, Tiley & St. John LLP

New Tax Law Doubles Estate and Gift Tax Exemption

Kurt Rifbjerg, Esq.

January, 2018

Among the many changes brought about by the recently passed Tax Cuts and Jobs Act is the doubling of the estate and gift tax exemption currently in effect. This increase significantly impacts and simplifies estate planning considerations for the vast majority of individuals and families in California. This alert will highlight how the new law affects the exemption, what estate planning documents remain necessary under the new law, and how this law will affect your current estate plan.

The exemption for individuals in 2017 was \$5.49M (which results from the 2011 base exemption of \$5M indexed for inflation). The new law increases the 2011 base exemption amount to \$10M and after accounting for inflation, **the exemption for individuals in 2018 will be \$11.2M.** Married persons are allowed to use the exemption of their deceased spouse, if a portability election is made on the decedent's estate tax return, which effectively doubles the exemption for married couples. The new law allows for married couples, if they both die in 2018, and assuming that they have not made significant lifetime gifts, to pass \$22.4M to whomever they want tax free.

The new exemption applies to estates of people who die in 2018 through 2025. Crucially, the exemption reverts back to the \$5M 2011 base after 2025. It is uncertain whether the exemption will be subsequently extended or otherwise modified. People with estates in the \$10M-\$20M range should take note of this change in the future. While the current exemption will sunset in nearly eight years, significant planning can be done in the interim to take advantage of the exemption and reduce unnecessary expenses.

Your Current Estate Plan May Be Out of Date

Many recent estate plans and revocable trusts were designed with a \$5M individual exemption as a premise, and some were based on an even lower exemption amount if your plan was created in the 1990s or 2000s. Those plans relied on mechanisms, such as an A/B or QTIP trust, to maximize both spouses' estate tax exemptions, in an era when portability was less certain, or the marital deduction at the death of the first spouse. While these arrangements may still be appropriate for some, they probably do not make sense for most under the current exemption scheme.

Modification and amendment of your old estate plan may be very simple, while both spouses are living, at least, and will have the effect of reducing significant trust administration expenses after your death. A trust must be administered by its terms; those trusts which provide for a mandatory A/B trust split must do the split even if the estate tax avoidance reasons it was designed for are no longer present. It is not always certain that a court will grant leave to avoid funding the B trust or splitting the trust by its terms. That, in and of itself, is an avoidable legal expense if an estate plan is properly updated.

A knowledgeable estate planning and probate attorney can help people decide how to structure their estate plan to prevent unnecessary taxes and expenses which result after a person's death. Kimball, Tirey & St. John LLP's estate planning and probate attorneys routinely represent individuals, married couples, and small business owners in the creation of comprehensive estate plans, and can provide excellent representation at an affordable price.

Kimball, Tirey & St. John LLP's estate planning attorneys can help you identify and implement the best estate planning options. Feel free to contact us with any questions at (800) 574-5587.

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. While KTS provides clients with information on legislative changes, our courtesy notifications are not meant to be exhaustive and do not take the place of legislative services or membership in trade associations. Our legal alerts are provided on selected topics and should not be relied upon as a complete report of all new changes of local, state, and federal laws affecting property owners and managers. Laws may have changed since this article was published. Before acting, be sure to receive legal advice from our office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers and Legal Articles, please consult the resource section of our website.