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2021 ESTATE PLANNING RECAP

What a Year!

- Pre-COVID
  - SECURE Act
  - ABLE Act
  - TCJA 2026 Exemption Sunset

- COVID!
  - Increased Focus on Planning
  - Increased Charitable Giving
  - CARES Act

- 2020 Elections
  - Potential Changes under Biden Administration

- 2021 & Beyond
  - Proposed Tax Biden Tax Changes

Relevant Taxes

- Federal Income Taxes (including Capital Gains)
- Federal Estate, Gift and Generation Skipping Tax
- State Death/Inheritance Taxes (PA Inheritance Tax)

The PA Inheritance Tax

Rates:

0%   Spouses

4.5%Ascendants and Descendants

12% Siblings

15% All Others

0%   From child under 21 years to parents*

Planning Techniques:

- Gifts a year or more before date of death
- Life insurance

*HB 291 applies 0% from parent to child under 21 effective 2020

2017 Tax Cuts and Jobs Act

- Approved by Congress on December 22, 2017
  - Individual and pass through tax cuts “sunset” (expire) after 10 years
  - Effective 2018-2025

- Increased Federal Transfer (Estate & Gift) Tax Exemptions

- Federal Income Tax Deduction Changes

TCJA Standard Income Tax Deduction Changes

- All personal exemptions suspended
- Certain deductions eliminated or increased
- Nearly doubled standard deduction
  - MJF from $13,000 to $24,000
  - SF from $6,500 to $12,000
  - HH from $9,500 to $18,000

- TCJA Impact on Charitable Planning?
  - Still giving, just differently
  - Cluster/Clump Gifting
  - Donor Advised Funds (DAF)
  - Qualified Charitable Distributions if 70 ½

TCJA & Federal Transfer Taxes

- Estate & Gift Tax Exclusions - lifetime exemption doubled until 2026
  - $11.7 million in 2021 (40% tax rate)
    - $12,060,000 in 2022
  - $23.4 million per couple (with portability)
    - $24,120,000 in 2022
  - $15k Annual Gift Exclusion in 2021, $16k 2022
- "Unified" Estate & Gift Tax
- Portability Retained
- Step Up Basis rules remain the same
- GST mirrors Estate/Gift Tax w/o portability

Preserving Portability

- Timely File Form 706 Estate Tax Return
  - Due 9 months from DOD

- May Request Automatic 6 month extension via Form 4768

- If no 706 b/c gross estate and adjusted taxable gifts don’t exceed threshold, then Revenue Procedure 2017 allows you two years to file 706 Return for Portability Only

So What's Changed with TCJA?

- Couple can transfer $23 million+ without any Estate Tax or Generation Skipping Tax
- Many techniques unnecessary for tax reasons…BUT still necessary for personal reasons
- Switch from transfer tax-centric to income tax-centric – amending plans and existing trusts via NJSA 7710.1 UTC
- Changes to charitable planning/giving due to increased standard deduction

For the Bottom 99.9%

- Only 0.1% of estates for Americans who died in 2020 were subject to estate tax. Of the 2.8 million people who passed away, only 4,100 filed estate tax returns with only 1,900 of those being taxable estates.

- But planning still important!
    - Income tax impact—Income Tax Centric Planning
    - Asset protection
    - Creditors and predators
    - Divorce and remarriage
    - Probate

And Change is Constant!

- TCJA Doubled Exemptions Sunset in 2026
  - Scheduled to decrease to $5m as then adjusted for inflation--likely $6m + in 2026
  - IRS & Treasury Dep't issued final regs on 11/26/19 under IR-2019-189 confirming no "claw back"
    - Can gift or receive DSUE from 2018 to 2025 under high TCJA exemption prior to sunset without adverse impact.

- Potential Tax Reform?
  - Biden has promised to eliminate Trump tax cuts if elected
    - What does that look like??
  - Past Democratic Transfer Tax Proposals
    - $3.5 m Estate Tax Exemption
    - $1m Gift Tax Exemption
    - Decoupling Estate & Gift Tax
    - Eliminate Basis Step Up at Death

Federal Estate/Gift Tax Avoidance

- Transfers not subject to Federal Estate/Gift Tax
  - Bequest to Charities
  - 100% Marital Deduction—applies to same sex married couples via 2013 Windsor Decision
  - Assets beyond the decedent’s control (maybe)
- Annual Gift Exclusion
  - $15,000 per done per year (2021, to $16k in 2022)
  - UTMA/UGMA
  - 529s/529As
- Unlimited gifts for tuition and medical if paid directly to provider

Maximize Annual Gifting

- Annual Gift Exclusion
  - $15,000 per done per year (for 2021, indexed)
    - Will be $16,000 in 2022)
  - Two Children & Six Grandchildren $15kx8=90K year
  - Include Children's Spouses $15kx10=$120k year
- 529s/529As:
  - Federal Income tax advantage of 529 (& PA State Income Tax Deduction)
  - Can rollover to another qualifying relative
  - Must use for education (including private school and preschool with educational component)
  - Reduces needs based financial aid by 5.64 % value of account if owned b parent of child—50% if owned by grandparent
- Custodial account:
  - No tax advantage but flexibility
  - Get assets at age 21
  - Reduces needs based FA by 20-25% value

SECURE Act

- Setting Every Community Up for Retirement Enhancement Act
- Signed into law December 20, 2019
- Most of Act effective January 1, 2020

SECURE Act –Changes for IRA Account Owners

- Required Beginning Date for RMDs now 72 (if not 70 ½ before 12/31/19)
- No age limit for IRA contributions

*IRA owner used for simplicity: most rules also apply to participants and 401(k) plans and other types of employer and non-employer plans

SECURE Act—New Rules for Most IRA Beneficiaries

- 10 Year Rule: Entire IRA must be distributed to the beneficiary on or before December 31 of the year in which the 10th anniversary of the IRA owner's death occurs
- Annual distributions are not required

*Generally, changes do not impact beneficiaries of IRA's inherited from owners who died before January 1, 2020

SECURE Act—New Definition “Eligible Designated Beneficiaries”

- Only EDB can use life expectancy rules

- EDBs are:
  - Spouse—rules generally unchanged , i.e. rollover
  - “Minor” child (not grandchild) of owner of IRA—use life expectancy until age of majority, then 10 year rule
  - IRA Owner’s Contemporaries: Individuals not more than 10 years younger—use life expectancy
  - Disabled & Chronically individuals– use life expectancy but consider trusts

SECURE Act—10 Year Role Confusion

- Under Act, the entire inherited IRA has to be withdrawn (and taxes paid) “by the end of the 10th year” after the death of the IRA owner, quoting from Pub. 590-B. No provision of the Act mandates yearly withdrawals, only that the inherited IRA would be depleted in the 10th year.

- Then came IRS Publication 590-B (2020 Version), Example Page 12

“Your father died in 2020. You are the designated beneficiary of your father's traditional IRA. You are 53 years old in 2021, which is the year following your father's death. You use Table I and see that your life expectancy in 2021 is 31.4. If the IRA was worth $100,000 at the end of 2020, your required minimum distribution for 2021 would be $3,185 ($100,000 ÷ 31.4)”

SECURE Act—IRS Chief Counsel Clarification

Per Counsel for Tax & Employee Benefit Policy at SBA Office of Advocacy , IRS Chief Counsel confirmed example is incorrect and that clarification and updated regs on SECURE Act are forthcoming

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SECURE Act—Five Year Rule Still May Apply

- If no Designated Beneficiary, old 5 Year Rule still applies
- Includes IRA Owner's estate, non-qualifying trust, charity, or other non-individual beneficiary

The SECURE Act and RMDs

- Beginning date for RMDs now 72
    - RBD now 72 for persons not 70 1/2 before 12/31/19
    - Limits “Stretch” on Inherited IRA distributions to 10 years unless:
        - Spouse
        - Minor Child Beneficiary
            - Delays 10 year start until age of majority
            - Only applies to minor children, not all minors
        - Disabled Beneficiary
        - Chronically Ill Beneficiary
- IRS separately proposed updated life expectancy tables to adjust for longer life expectancy
    - November 2019 proposal
    - Not likely effective until 2021
- Great planning tool for charitable purposes
    - IRA v Life Insurance Example

Income Tax Planning with IRAs

- Qualified Charitable Distributions (“QCD”)
    - Great income tax strategy for persons over 70 ½ taking the standard deduction.
- Up to $100,000 per year ($200k for couple) may be transferred from IRA custodian to qualifying charity tax free
    - No deduction but doesn’t affect income taxes because amount of distribution not included in Adjusted Gross Income (AGI).
- Must be paid directly to the exempt organization. Cannot use a donor advised fund.
    - This was not part of the TCJA. It is currently a permanent rule.

Donor Advised Funds

- A contribution to a DAF allows a deduction in the current year
  - Still has a 50% AGI limit for cash gifts and 30% for appreciated assets
  - May carry forward 5 years

- Taxpayer can take as long as they want to distribute those funds from the DAF.

- Gifts of appreciated stock or assets to a DAF avoids tax on the appreciation.

- QCD from IRA cannot be made to a DAF.

- Business interests are eligible.
  - 30% AGI

CARES Act

- Coronavirus Aid, Relief, and Economic Security Act
- Most of Act effective March 27, 2020
- Response to the pandemic
- Mostly temporary changes - only in 2020
- Limited Provisions of CARES Act extended in 2021

CARES ACT Impact on Charitable Giving

- **New Charitable Deduction Available in 2020 & 2021**: Up to $300 per taxpayer ($600 for a married couple) in annual charitable contributions is available if take the standard deduction

- **60 % AIG Cap Suspended in 2020 & 2021**: 60 % adjusted gross income limitation for individuals' charitable contributions suspected in 2020
  - Can deduction up to 100% AGI not 60% cap, with 5 year carry forward

- **RMD Suspended in 2020 (but not 2021)**: But can still make QCD

Possible Biden Tax Changes under American Families Plan – Highlights

- Increase the top individual income tax rate from 37% to 39.6%;
- Tax capital gains and qualified dividends earned by individuals with income above $1 million at ordinary income tax rates (i.e., 39.6%);
- Broaden the reach of the current 3.8% net investment income tax rate to apply to the above individuals, resulting in a combined top federal capital gains tax rate of 43.4%;
- Eliminate any basis step-up for a decedent’s gains in excess of $1 million (or $2.5 million for couples when combined with existing real estate exemptions);
- Increase income tax rates for those holding applicable partnership interests (so-called carried interest) to parallel ordinary income tax rates on their income;
- Eliminate like-kind exchange gain deferral on gains exceeding $500,000; and
- Permanently extend the restriction on excess business losses.

American Families Plan—Impact E&G Tax

- Eliminate Step Up
  - Instead Death Treated as Taxable "Sale" Event with unrealized capital gains taxed less $1m per person exemption or $2.5 million for couples when combined with existing real estate exemptions
- Keep 40% Estate Tax Rate
- No Changes to $11.7 Exemption or Portability—YET!

Note: Biden administration stated tax increase proposals generally not expected to be effective retroactively but instead likely to be effective on a prospective basis beginning in 2022.

2021 Planning Considerations

- If net worth within Federal Transfer Tax Thresholds ($6m-$12m per individual)

  - Consider Lifetime Tax Planning
  - Engage in Annual Exclusion Gifting
  - Make Direct Gifts for Healthcare/Tuition
  - Very Low Applicable Federal Interest Rate for Sophisticated Planning Techniques (1.2% 7520 Rate May 2021)

- Consider Income Tax Implications
  - Plan for highly appreciated assets
  - Consider Charitable Gifting
  - IRA Conversions/Planning under Secure Act

- Charitable Gifting
  - Under CARES Act no limit to deduction in 2021
  - Qualified Charitable Distributions
  - Cluster/Stacked Gifts

2021 Planning Techniques

- Lifetime Gifts
  - Consider Disclaimers
  - Use Trust Protectors to grant GPOA
- SLATs
  - Use exemption while keeping assets available to “couple”
  - Consider ownership before funding to avoid step transaction
  - Avoid Reciprocal Trust Doctrine
  - Consider Disclaimers 9 mo wait and see or Lifetime QTIP election (October of calendar year after gift)
- GRATs
  - Move away from short term to long term
  - 99 year GRAT
  - Won’t survive term so assets included in esta
    but take advantage of low interest rate

2021 Planning Techniques Con't

- Charitable Lead Trust
  - Charity gets annuity or unitrust for 10-20 years, then remainder to bene
  - Taxable Gift of remainder at today's value assuming growth at 7520 rate
  - If asset growth exceeds 7520 rate then a win
- Installment Sale to IDGT
  - Irrev Trust Buys Appreciated Assets from Client
  - Sale (not gift) but no gain because GRAT under RR 85-13 when sold
  - Freeze to current v DOD value without a gift—gets appreciate out of the estate
  - Good strategy for philanthropic & asset will appreciate more than 7520 rate so pay gift tax on very little

2021 Planning Techniques Con't

- CRATs/CRUTs
  - Name CRUT as beneficiary of retirement plan
  - Income payable to heir beneficiary for life, remainder to charity
  - 5 years to withdraw b/c trust but trust tax free so get out tax free from plan, then incremental tax when distribution from trust to individual beneficiary
  - Mirrors "stretch" IRA
- Maximize Step Up
  - Section 1014 Swap Powers
  - Put in high basis/take out low basis
  - RR 85-13 no income tax if transaction with grantor trust
- Capital Gains Harvesting
  - Sell now while income tax and capital gain low
- Roth IRA Conversions
- Take Advantage Low Rates and Depreciated Values

Other Relevant Considerations?

- Act 72: PA Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)
  - Added to the PEF Code as a new Chapter 39
  - Approved by Governor Wolf on 7/23/2020 and is effective in 180 days on or about 1/21/2021

- Use of 529A ABLE Accounts

What are the constants in Estate Planning?

- Death
- Taxes
- Change!
    - Family Dynamic Change
    - Assets Change
    - Goals Change
    - Laws Changes
    - Socio-Politico Changes

Estate Planning is a Journey, Not a Destination

- During Lifetime: Incapacity, Long Term Care

- At Death: Passing assets and the importance of fiduciary selection

- Long After Death: Trust and Trustees

Comprehensive Estate Planning

- Identify, Understand, & Value the Assets
- Know Your Beneficiaries & Plan for their Needs
- Plan for Income & Transfer Taxes
- Know the Business & Plan for its Succession
- Plan for Retirement, Long Term Care Need, & Incapacity
- Plan for Charitable Giving
- Identify Appropriate Fiduciaries

Common Estate Planning Issues

- Second Marriage/Blended Family
- Spendthrift/Addicted/Disabled/Minor Beneficiaries
- Incapacity Planning
- Tax Avoidance
- Retirement/Long Term Care Planning
- Identifying Fiduciaries

Asset Identification

- Do you own any investment or business property? Is there a “buy/sell” agreement?
- Do you hold any oil, gas or mineral interests?
- Do you own any Intellectual Property (patents, copyrights)?
- Do you own any unique assets such as art collections, etc., and are they insured?
- Do you own any guns?
- Do you own a business or a substantial interest in a family or small business?
- Has the value of your assets significantly appreciated or declined in value?
- Do you own any real estate outside of the state in which
- you reside?
- Are you or your spouse covered by a pension, profit-sharing, stock bonu
employee stock ownership, deferred compensation, 401(k), or similar
type of plan or employment agreement?
- Do you have life insurance?

Who Gets What?

- Have you thought about who should receive your assets when you pass, and if so, is this specified in an updated Will?
- Are the beneficiary designations updated to mirror your Will?
- Have you determined how jointly owned assets may impact your intended estate beneficiaries?
- If you own a business, are the possible fluctuations in the value of the business taken into account in your planning?
- If you want to benefit charities at your death, are your charitable intentions addressed by your current plan and are the possible tax benefits maximized?

Who Are Your Beneficiaries?

- Do you have a blended family?
- Does your spouse manage money well?
- Is a beneficiary disabled or receiving public benefits, or experiencing financial hardship, a drug, gambling or other addiction problem, or marital problems?
- Do you have any special family needs, such as health problems, physical or mental handicaps, requirements to support parents, spendthrift tendencies, etc.?

Spousal Considerations

- Do you have a pre- or post-nuptial agreement?
- If you or your spouse was previously married, are there any divorce, property settlement agreements, or children from such marriage considered in your Will?
- Do you have any child support obligations or children from a prior marriage?
- Are you or your spouse a citizen of any country other than the United States of America?
- Have you and your spouse resided in a Community Property State (e.g. Arizona, California, Idaho, Louisiana, Nevada, N. Mexico, Texas or Washington, or Puerto Rico)?
- Have you and your spouse ever resided outside of the United States while married?

Younger Beneficiary Considerations

- Does your Will name guardians or any minor children you may have, or designate who is to receive funds on behalf of any minor beneficiaries of your estate?
- Do you want your children to receive their inheritance at 18 or 21, or should someone be appointed to oversee the inheritance until they are older?
- If any of your children or grandchildren is adopted, is this addressed in your Will?
- Are you saving for your children's education?

Do You Have a Plan for Your Business?

- If you own a business, do you have a realistic idea of the value?
- Do you have a succession plan in place in the event of your incapacity or death?
- If some of your family work in the business and some do not, does your current plan consider how to treat them all fairly?

Related Considerations

- Do you expect to receive an inheritance?
- Are you named as a beneficiary or trustee under any trust instruments?
- Do you hold any powers of appointments grated in a will or trust agreement?
- Do you have a safe deposit box?
- Do you want your family and fiduciaries to have access after your incapacity or death to your email or other similar digital accounts?
- Do you have debt or outstanding guarantees?
- Is anyone indebted to you?

How Assets Pass at Death

- Will/Intestacy/Trust
- Operation of Law
  - Tenants by Entireties/Spousal Community Property
  - Joint Tenants with Rights of Survivorship
  - Tenants in Common
- Contract/Beneficiary Designation
  - Bank Accounts (Joint/ITF)
  - Investment Accounts (POD/TOD)
  - Beneficiary Designations (Life Ins/Ret)

Beneficiary Designation Coordination

- Coordinate Beneficiary Designations with Estate Plan
  - Otherwise will ruin estate plan

- Ensure Beneficiary Designations are in place!
  - Contract default may not be consistent with wishes or tax advantageous

- Retirement Account beneficiary designation issues
  - Charities as designated beneficiaries
    - Ok if separate
    - Not OK if unless payout by 9/30 of year after death

- Trust as beneficiaries of Retirement Accounts
  - Separate account or age of oldest beneficiary

Lifetime Planning

- Financial and Healthcare Powers of Attorney
- Suitable agents (and alternates) and sufficient authority?
- Advance Directives or “Living Wills”
- Personal liability insurance?
- Long Term Care needs and Costs
- Long term care insurance or “self-insure”?
- Disability insurance
- If you have an existing revocable living trust agreement, is it funded?

Designating Legal Representative

- Agents under Healthcare and Financial Power of Attorney
- Advanced Directive
- Naming Guardian of Minor Child in Will
- Guardianship for Adult Child who lacks capacity
- Custodians
- Trustees

Bringing the Plan & Professionals Together

- Is the client working with:
  - A financial advisor to develop and implement a wealth plan?
  - A qualified estate planning / elder law attorney?
  - A qualified tax accountant?
  - A competent insurance agent?
  - Are the professionals working together?