

Tax Reform Brings Estate Planning Opportunities and Risk

Capitalize on the Changes and Avoid the Traps



Arthur S. Bernstein

By: Richard S. Bernstein, CEO & Abraham M. Mora
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On December 22, 2017, President Trump signed the *Tax Cuts and Jobs Act* into law. This landmark legislation delivers \$1.5 trillion dollars of tax cuts in various areas, including business entities, individual tax and estate and gift taxes. **While a goal of the Act was tax reform and**

simplification, the law creates a number of estate planning opportunities and traps.

The law instantly increases the gift and estate tax exclusion from \$5,490,000 in 2017 to approximately \$11,200,000 starting on January 1st. Accordingly, married couples will be able to shield more than \$22,000,000 from federal estate tax. **However, these transfer tax cuts are not permanent, and will revert to pre-enactment levels as of January 1, 2026, the sunset date.** Additionally, there is risk that a new Congress or President could roll back these reductions before the sunset date.

The temporary increased gift exemption provides a limited opportunity to transfer a tremendous amount of wealth to the next generation. **For individuals with large estates,**

the amounts transferred to beneficiaries can be significantly leveraged by using life insurance, discounts and other advanced estate planning techniques. In fact, no prior estate tax planning technique was eliminated under the law. High net worth individuals should be looking to take advantage of this opportunity before the law sunsets.

The new law also exacerbates some traps already imbedded into many existing wills and trusts. Traditionally, estate planning documents use a formula clause tied to the estate tax exemption. For example, many plans were designed so that the family trust, primarily for the benefit of the children, receives first the formula exemption amount of \$5,490,000 of assets, and the marital trust receives the remainder of the estate. Overnight, the family trust, which may or may not include the spouse as beneficiary, is now designated to receive the first \$11,200,000 of assets, which may constitute the entire estate. Needless to say, documents should be analyzed to determine whether these and other automatic formulas are still desirable. The generation skipping exemption has also been increased to \$11,200,000. Many individuals have documents with formula generation skipping exemption gifts, which

may no longer be appropriate. Some individuals may not even recall or understand the implication of these provisions and the dramatic change to beneficiaries as a result of the change in law.

This article hits on the “tip of the iceberg” concerning the changes to the estate tax system, let alone the overall tax reform. **Now is the time to catch up with your advisors.**



Abraham M. Mora

Abraham M. Mora is head of the West Palm Beach office of the law firm of Arnold & Porter Kaye Scholer LLP. He has extensive experience involving complex estate planning, including change of domicile, generation-skipping trusts, personal residence trusts, family limited partnerships and private foundations.

Richard S. Bernstein, CEO of Richard S. Bernstein & Associates, Inc., West Palm Beach, is an insurance advisor for high net worth business leaders, families, businesses, municipalities and charitable organizations. An insurance advisor to many of America's wealthiest families, he is a writer, trusted local and national media resource and expert speaker on estate planning and health insurance. You may contact him at 561.689.1000, e-mail him at rsb@rbernstein.com or visit his website at www.rbernstein.com to schedule a confidential consultation.



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