FISHER & SAULS P.A.
ATTORNEYS AT LAW
an occasional newsletter for our clients • February 2018

Below is a summary of recent federal and state law changes and other items of note that may impact our clients' current estate plans.

FEDERAL TAX LAW CHANGES

The Tax Cuts and Jobs Act signed into law on December 22, 2017 (the "Act"), includes significant changes to the federal estate, gift, and generation-skipping transfer (GST) tax laws. In addition, certain income tax changes made by the Act may also affect estate and trust planning.

Federal estate and gift tax exclusion and generation-skipping tax exemption amounts have doubled. Under the federal estate and gift tax laws, transfers at death and transfers during life for less than the value of what is transferred ("gifts") are subject to federal estate or gift taxes. Each person who is a U.S. citizen or resident is allowed a lifetime exclusion amount that can be used to either shelter transfers made during life or at death from federal gift and estate taxes. The Act almost doubled the estate and gift tax exclusion, for a person dying on or after January 1, 2018, to $11.18 million per person ($22.36 million for a married couple). That amount will continue to adjust for inflation in future years.

The GST tax is an *additional* transfer tax on "generation-skipping transfers" (a transfer to a person who is at least two generations younger than the transferor) made either during life or at death. A separate GST exemption is available to shelter GST transfers. Under the Act, the GST exemption amount has also increased to $11.18 million per person and will also continue to adjust for inflation.

The increases in the estate and gift tax exclusion and the GST exemption "sunset" as of December 31, 2025, and those amounts will revert to the current levels of $5.6 million ($11.2 million for a couple), adjusted for inflation, as of January 1, 2026.

The Act's increases in the estate and gift tax exclusion amount and GST exemption provide the opportunity to consider additional lifetime gifting while the increases are available.

The increases may also have unintended consequences for estate plans that include formula provisions setting apart the estate tax exclusion amount ("unified credit amount") or GST exemption amount because those amounts are now significantly larger. We encourage clients to consult with us to determine whether the Act's increases in the exclusion and/or exemption amounts may necessitate a change to existing estate planning documents.

Increased Limit on Cash Gifts to Charity. The Act increases the income-based percentage limit on the deductible portion of *cash* gifts to public charities and certain other charitable organizations from 50% to 60% of the giver's adjusted gross income. To the extent qualifying cash gifts in any year exceed the increased limit, the unused portion of the deductible amount is carried over and may be used during the next 5 tax years. This provision is applicable for tax years beginning after December 31, 2017 and before January 1, 2026.

Section 529 Plans Are Expanded. Section 529 plans allow the tax-free accumulation of education savings. Gifts to 529 plans are "present interest gifts" that qualify for the annual gift tax exclusion (see below). Under pre-Act law, funds in a 529 plan could only be distributed income tax free for qualified higher education expenses. Under the Act, 529 plans may now also make distributions to pay elementary and secondary school expenses up to a maximum of $10,000 per student per year. This may provide additional lifetime gifting opportunities for the benefit of grandchildren or other younger generation family members.

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OTHER FEDERAL TAX LAW ITEMS OF NOTE

Gift Tax Annual Exclusion Increased. The federal gift tax laws provide, in addition to the federal estate and gift tax exclusion amount, an exclusion of a limited amount of "present interest" gifts made to a donee each year. And, if the total gifts made in any year to the donee do not exceed the annual gift tax exclusion amount, no gift tax return has to be filed. While not a change made by the Act, the gift tax annual exclusion increased, as of January 1, 2018, to $15,000 per donee ($30,000 per donee for gifts made by a married couple).

Charitable IRA Rollover Unchanged. Generally, any distribution out of an individual retirement account ("IRA") is includable in the taxable income of the IRA owner, whether the funds are distributed to the owner or to another recipient at the owner's direction. That includes a distribution out of an IRA to a charity. The Charitable IRA Rollover exception to this rule, permitting taxpayers age 70 ½ or older to make outright transfers directly from their IRA to a qualified charity without having to include the amount of such transfer in their income, was not changed or eliminated by the Act. A Charitable IRA rollover transfer also "counts" as part of the IRA owner's required minimum distribution ("RMD"), thereby reducing (or eliminating, if the charitable IRA rollover is more than the taxpayer's RMD for that year) the amount the IRA owner must take out of their IRA and report as taxable income. With the Act's increase in the personal exemption, many taxpayers may no longer be able to deduct their charitable gifts. The Charitable IRA Rollover provides an opportunity for those age 70 ½ and older to make meaningful gifts to charity and save income taxes.

STATE LAW CHANGE

Florida Digital Assets Act. As our online presence and activities (financial, social, work, leisure, creative) have expanded, the need to assure those acting on our behalf during our lifetime or at our death will be able find and access our digital assets, information and accounts has grown. Without proper authorization, an agent under a durable power of attorney (DPOA), legal guardian, personal representative, or trustee (hereafter "fiduciary") that accesses certain digital information may be breaking the law or be at risk of arrest or a civil action. The Florida Digital Assets Act gives fiduciaries the authority to access, control, or copy digital assets. It also provides the owners of digital assets and information the ability to plan for the management and disposition of those assets in the event of incapacity or at death.

The most cost effective and efficient way to give your fiduciaries the required authority to access your digital assets is to include a provision in your Will, Trust, and DPOA granting that authority to them. We encourage our clients to consult with us to determine if a "digital assets access" authorization provision should be included in their estate planning documents.

And, to best assure your fiduciaries will be able to find and access all of your digital assets we encourage you to maintain a digital asset inventory with passwords. We have posted a suggested digital assets worksheet on our website at http://www.fishersauls.com/WTE.htm, or, if you cannot access it by computer, please call our office.