

2020 ESTATE PLANNING UPDATE

Author(s): Hannah A. Shakin, Jeanette M. Salkin, William H. Davis

Discover what you need to know about the recent legal updates and a host of tax changes for 2020 in Trainor Fairbrook's 2020 Estate Planning Update.



2020 Estate Planning Update Highlights:

- SECURE Act increases the age at which required minimum distributions begin and eliminates stretch payout distributions for most non-spouse beneficiaries of inherited IRAs.
- Federal gift and estate tax lifetime exemption is increased to \$11.58 million per person in 2020.
- New California law makes organ donation the default choice.
- Time to revisit whether existing Credit Trust or Bypass Trust works with your income tax planning.
- California legislature has proposed a bill to impose a state gift and estate tax.

FEDERAL DEVELOPMENTS

The SECURE Act

The Setting Every Community Up for Retirement Enhancement Act of 2019 - better known as the SECURE Act - was signed into law on December 20, 2019. This is the most far-reaching retirement act in decades. Key provisions of the law include:

- Increasing the required minimum distribution (RMD) age from 70 ½ to 72 for all retirement accounts subject to RMDs.
- Eliminating the age limit (previously 70 ½) for making contributions to a qualified retirement account, as long as the owner has earned income.
- Eliminating the stretch payout of RMD over the life expectancy of a non-spouse beneficiary of an inherited IRA and replacing it with a maximum ten year payout period.

Elimination of the stretch payout for inherited IRAs has far reaching consequences for beneficiaries of inherited retirement accounts. This new rule applies to all beneficiaries of retirement accounts, excluding surviving spouses, minor children, disabled beneficiaries, chronically ill beneficiaries and beneficiaries not more than ten years younger than the account owner. The effect of this change is that non-spouse (or other eligible beneficiaries) must withdraw all funds from an inherited retirement account within ten years of inheriting it (and pay the income taxes associated with the retirement account).

Those individuals who have significant amounts of wealth in qualified retirement plans (IRAs, 401(k)s, etc.) are encouraged to consult with our estate planning attorneys and with their own investment advisors to review the impact of this law on their estate planning.

Gift and Estate Tax Exemption and Planning Opportunities

For 2020, the federal gift/estate tax exemption is \$11.58 million per individual (increased from \$11.4 million in 2019) or \$23.16 million for a married couple. Taxable gifts in excess of the foregoing, whether made during lifetime or at death, are taxed at a flat rate of 40%.

Under current law, the foregoing exemption, as indexed for inflation, will sunset December 31,

2025, and unless Congress takes action, the gift /estate tax exemption will revert to prior levels beginning January 1, 2026 (\$5 million, indexed for inflation from 2010 to 2026).

Clients have less than six years to take advantage of the temporary increase in the federal gift/estate tax exemption (\$11.58 million). Those who wish to do so should consider accelerating their gift plan rather than waiting until 2025 for a number of reasons:

- Early use of the exemption permits any future appreciation on the gifted property to be transferred to lower generations without a gift or estate tax on the appreciation.
- Congress could enact legislation to reduce the exemption prior to 2026, and some techniques involve multiple years to implement.

The increase in the federal gift/estate exemption to \$11.58 million for an individual and \$23.16 million for a married couple creates both opportunities and complexities for clients. Some clients may wish to utilize their exemptions before the scheduled reversion to prior levels and should promptly consult with our estate planning attorneys to discuss the planning techniques that may best achieve their goals.

Annual Gift Tax Exclusion

For 2020, the annual gift tax exclusion amount will remain at \$15,000 per donee (or \$30,000 per donee for married couples who elect to split gifts). Gifts that do not exceed the annual exclusion amount will not count against an individual's \$11.58 million lifetime exemption.

By way of reminder, payments of certain qualified education and medical expenses, including tuition payments and health insurance premiums, also qualify as tax-free gifts if made directly to the provider.

CALIFORNIA DEVELOPMENTS

Organ Donation in California

California has taken steps to boost California's low rate of organ donation. On January 1, 2019, AB 3211 went into effect. Organ donation is now the default, and unless an individual has

specified otherwise in his or her Advance Health Care Directive, upon death, organs, tissue, and parts may be donated for transplantation, therapy, research and education. Individuals can specify exceptions or cross out any of the choices in the general donation clause of their Advance Health Care Directive.

Time May be Right to Revisit Credit Trusts/Bypass Trusts

If you are a Surviving Spouse and beneficiary of a Credit Shelter Trust or Bypass Trust (also called Trust B or Trust C), you may want to evaluate whether such trust still achieves its purposes as drafted. Many of these trusts were designed to save estate taxes on the surviving spouse's death. As the estate tax exemption has increased, this goal may no longer be relevant. Instead, there may be income tax advantages to modifying the trust through the new California decanting statute or through court order.

A Potential California Estate Tax

A new bill, California SB 378 has been submitted to the California legislature to impose an estate tax of 40% on the net value of a deceased person's estate in excess of \$3.5 million with a credit for all federal estate taxes paid with respect to the estate. If passed by the legislature, the bill will appear on the 2020 California ballot.

Recommended Action

In light of the significant changes to the laws summarized in this Bulletin, the attorneys in the Estate Planning Department of Trainor Fairbrook recommend that you contact us if you have questions concerning how these changes may affect your estate plan, or if you wish to update your estate plan, or to create an estate plan for the first time.

On March 4, 2020, Trainor Fairbrook Attorney Hannah Shakin will host the first of four Estate Planning Seminars we have planned for 2020.