

# 2019 ESTATE AND GIFT TAX CHANGES CREATE GOOD NEWS-BAD NEWS SCENARIOS

By Brian J. Hundertmark.

Estate and gift taxes always worry our clients—especially when the laws change. The numbers for many of these taxes have indeed changed for 2019, so a new-year review is wise. The amounts that are excluded from estate and gift taxes keep going up. However, if you haven't reviewed your estate planning documents, this can be a double-edged sword.

## Federal Highlights

- You can transfer \$11.4 million of your estate without tax (\$22.8 million for married couples). Transfers can be by gift, by will, or by a combination of the two. The maximum estate tax rate on the portion above this level remains at 40 percent, but the average rate paid is about 16 percent.



- The annual gift tax exclusion (the amount you can give each year without even having to report to the IRS) remains at \$15,000 per beneficiary. If you give more than \$15,000 to the same person, you have to report the gift to the IRS, but you don't have to pay any tax until you pass the \$11.4 million figure. Also, you can continue to make gifts to pay for others' education and health-related costs without any limit, if you follow the IRS procedures.

- These figures are indexed to inflation, so they should increase over the years. However, the law setting the exemption amounts sunsets in 2025 and, if Congress doesn't act, the amounts exempted from tax will drop by almost half in 2026.

## State Highlights

- In Maryland, the first \$5 million of your estate will not be taxed (\$10 million for married couples). The maximum tax rate on the portion above this level remains at 16 percent, but—as with the federal tax—the average rate is significantly less. Maryland's inheritance tax, which is assessed on amounts

given to people outside your extended family, stays at 10 percent, but the inheritance tax will be subtracted from any Maryland estate tax you pay.

- The District of Columbia's inheritance tax exemption increases to \$5.6 million (\$11.2 million for couples). The top rate stays at 16 percent.

- Virginia continues to have no estate tax.

## The Double-Edged Sword

Back when the federal tax exclusion was much lower, lawyers drafted wills with trusts designed to reduce the tax bite. Today, with much larger amounts being excluded, some of these trusts can backfire:

- They can result in the surviving spouse receiving nothing while large amounts are held for future use by the children.

- They can result in assessment of capital gains taxes at up to a 20 percent rate, even if no estate taxes are owed.

A disclaimer trust could be used to address these issues. It allows a survivor nine months after the spouse dies in which to consult with advisors to determine what course is best. The disclaimer trust avoids the risk of being locked into the terms of an old trust, but still allows for maximum tax savings.

## Time for a Look

We recommend all our clients review their estate planning documents every two to three years, or whenever there is a significant change in their circumstances or in the law.

If you already have estate documents in place, now is the time to pull them out and review them. If you haven't thought about estate planning at all, there's no time like the present to start.

You never know what life will throw at you, so it's always best to ensure that your intentions are clear, documented, and carried out.

Finally, if your estate exceeds the federal or state tax exemptions, there are still many vehicles that can be employed to minimize or even eliminate your estate tax exposure. But you need to work with professionals. Case in point: We recently reduced the tax exposure of one client by more than \$1 million – money that can now go to his children.

## ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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