FL&B FITZPATRICK LENTZ & BUBBA ATTORNEYS AT LAW

April, 2019

Re: Estate Planning and Law Firm Update

Dear Estate Planning Client or Other Advisor:

Attached is a copy of a letter that we sent previously relating to the Tax Cuts and Jobs Act of 2017 and the impact of that Act on estate planning. We thought that we should update you and discuss three specific situations where actions are recommended, and we also thought that we'd update you on some developments at our firm.

Scenario 1: Client's Assets Below Estate Tax Exemption and Plan Not Updated

As a result of inflation adjustments, the estate, gift and generation-skipping tax exemptions have now reached $11,400,000, and that means that a married couple can pass $22,800,000 Estate Tax free, provided that a Federal Estate Tax Return is filed at the death of the first spouse. In the past, many clients automatically created Family Trusts due to the then much smaller exemptions to "bypass" the surviving spouse's estate. We've seen too many situations where a client who automatically created a Family Trust (or Generation-Skipping Trust) has passed away, and the tax-planning trust is simply no longer needed or desired. So, our first point is that if you have a plan, either through a Will or a Revocable Trust, that automatically creates a Family Trust (or Credit Shelter Trust) at the first death, you should review that plan and consider having it updated because of the substantial increase in the estate tax exemption.

Scenario 2: The Very Wealthy Client

For the very wealthy client, planning remains important because when the exemptions set forth above are exceeded, the effective estate and generation-skipping tax rate is 40%. Everyone should know that the gift tax annual exclusion remains at $15,000 in 2019, meaning that each donor can give each recipient that amount without even filing a gift tax return.

More importantly, we know that on January 1, 2026, the exemption amounts set forth above are scheduled to revert back to $5,000,000 each (adjusted for inflation), and we all have to recognize (without getting political) that a liberal Democrat could win the next Presidential election and have the exemption amounts revert to where they were before ($3.5 million or even $1 million). In light of this, very wealthy individuals should be prepared (in 2025 at the latest) to make substantial gifts to use the current $11.4 million exemption effectively before it reverts to a lower number (use it or lose it). Keep in mind that gifted assets retain their basis in the recipients' hands, but gifting to the next generations, either outright or in trust, or even to a trust for the benefit of your spouse (commonly called a Spousal Lifetime Access Trust), should be considered by the very wealthy.

The IRS actually issued some Proposed Regulations recently which, if finalized, will ensure that there will not be a "clawback" effect if the donor made lifetime gifts of, say $11.4 million, but died when the federal estate tax exemption reverted to $5 million.

Scenario 3: Client is Trust Beneficiary and Trust Holds Substantially Appreciated Assets

In light of the federal estate tax exemption of $11.4 million, income tax planning has taken over as one of the primary goals in estate planning. Suppose you are the beneficiary of a trust that provides income to you for life but passes those assets on to your children or grandchildren after your passing. If that trust holds appreciated stock, there will generally be no basis step up when you die and, yet, if you had some trust interest that caused taxation in your estate for federal estate tax purposes, there would be a step up in basis and, unless your estate exceeds the above exemption amounts, there would be no estate tax. Fortunately, the Uniform Trust Act has given us the ability to modify "irrevocable" trusts, with the approval of all beneficiaries (and, in some circumstances, a Court) to grant you, the income beneficiary in this example, a taxable power of appointment which would cause inclusion in your estate and therefore step up the basis at your death.

We have been involved in several situations where we have done this kind of modification and even had one situation where there was a trust that would have otherwise been subject to generation-skipping tax. Through a minor modification to the Trust, we avoided that tax and stepped up the basis at the income beneficiary's death. In short, if you are the beneficiary of a trust that holds appreciated assets, you and the Trustee should at least look at the issue of whether the trust should be modified so that those assets can get a "stepped up" basis at the income beneficiary's death.

Law Firm Update

There are two items that we wanted to alert you to relating to FL&B. First, our estate and trust group has expanded with Rick Calabrese who is a CPA and licensed attorney with an LLM in tax. While his emphasis here will be on income and corporate tax issues, we expect him to assist the estates group on fiduciary income tax and other tax issues that we encounter on a regular basis.

Finally, you may have seen that our firm intends to move to downtown Allentown in 2020 and, although we will miss the old Schoolhouse building in Center Valley, we look forward to the move as we have simply outgrown our space. Rest assured, however, that we intend to maintain an office in the Center Valley area (as well as our current office in Easton) if that is more convenient for you as a place to meet and discuss your estate plan.

Please do not hesitate to contact us if you have any questions relating to the Tax Act, the three scenarios outlined above or our anticipated move to downtown Allentown.

Cordially,

Edward J. Lentz

James A. Bartholomew

Albertina D. Lombardi

Peter E. Iorio

Richard S. Calabrese

FL&B | FITZPATRICK LENTZ & BUBBA ATTORNEYS AT LAW

January, 2018

Re: Estate Planning -- The Tax Cut and Jobs Act of 2017

Dear Client/Colleague:

As you know, new tax laws were enacted in late December that affect the taxation of individuals, estates, corporations and pass-through entities. We wanted to summarize for you the new estate, gift and generation skipping transfer tax aspects of the law.

On December 22, 2017, President Trump signed into law the Tax Cut and Jobs Act of 2017 (the "new Act"). In 2017, the federal estate tax, gift tax and generation skipping transfer ("GST") tax exemptions were $5,490,000 per person with a tax rate on any excess of 40%. The new Act doubled the exemptions that were originally put in place in December 2010. The new Act provides that the federal estate, gift and GST tax exemptions will be $10,000,000 (indexed for inflation each year). After the inflation adjustment, these tax exemptions for 2018 are $11,180,000 for each individual. The 40% tax rate remains as to any excess.

The new Act also continues the portability provisions that were introduced in December 2010. These provisions make the federal estate and gift tax exemptions (not the GST tax exemption) "portable." Portable means that a surviving spouse may utilize the unused federal estate and gift tax exemption of his or her deceased spouse. The portability provisions allow a married couple to pass assets equal to their combined exemptions without having to establish a "Bypass" or Family Trust at the death of the first spouse. In order to preserve a deceased spouse's exemption, a federal estate tax return (Form 706) must be filed for the estate of the first spouse to die. Including portability, a married couple in 2018 now has up to $22,360,000 of exemption from federal estate and gift tax.

Due to Congressional budget rules, the provisions that double the exemptions are scheduled to "sunset" for the 2026 tax year. What this means is that without future legislative action, these exemptions will revert back to $5,000,000 (plus inflation adjustments) in 8 years. Moreover, while it is unlikely that these changes to the tax code will be repealed while President Trump is President, if he is not reelected and/or Congress changes hands, it is possible that these exemptions will be substantially lowered within the next few years.

For Nearly All Of Our Clients

In light of the above changes to the estate, gift and GST tax laws, you should review your current estate planning documents. Many of the estate plans that were previously established by us or others for married persons provide for the automatic creation of a Bypass or Family Trust at the first death. These Trusts may no longer be necessary to maximize both spouses' exemptions, because of exemption increases and the portability provision described above. Hence, your existing documents could be creating an unneeded Trust and/or reducing or eliminating the surviving spouse's share. Specifically, married couples with assets under $22,360,000 (which is the maximum 2018 combined exemption for spouses) will have to decide whether they want to create a trust for the survivor. There may be non-tax reasons for creating a trust (such as second marriage or creditor protection concerns), and in such instances, it may be desirable to create a trust regardless of the exemption amount. Married couples whose combined assets do not exceed $22,360,000 and who have "Disclaimer" plans do not need to change their plans if they decide that they do not want to create a trust for the survivor. In those disclaimer plans, which will remain increasingly popular, all assets pass outright to the surviving spouse; however, the surviving spouse has the option of disclaiming assets which would cause them to pass to a Family Trust for the survivor's benefit.

As mentioned above, the new Act also has an effect on the income tax rates for all taxpayers, curtails itemized deductions, lessens the impact of the Alternative Minimum Tax, and expands the benefits of 529 Plans. You should consult with your accountant or other tax advisor to discuss these changes. These income tax issues can have an impact on estates and trusts, and we would be happy to discuss these matters with you, especially if you are a trustee or the beneficiary of an estate or trust.

For Our Wealthier Clients

Many of our wealthier clients have made substantial gifts in the past because of concerns that the federal exemptions would be lowered. These gifts represent good planning because future appreciation is removed from the estate and there is no Pennsylvania gift tax. Those who made these gifts may wish to "top" them off because of the doubling of the available exemption; those who did not make significant gifts may wish to reconsider the potential benefits of gifting (all taxpayers should know that the gift tax annual exclusion has increased to $15,000 in 2018). Keep in mind, however, that gifted assets retain their basis whereas assets inherited at death receive a "stepped-up" basis to the date of death value.

For Everyone

Given these recent changes to the tax laws, you may wish to update your planning, particularly if you are married and your plan automatically creates a Family or Bypass Trust. We would obviously be pleased to provide any assistance you may request or answer any questions you may have about the new Act.

In the event there are significant future changes to the estate, gift and generation-skipping tax laws, we will endeavor to inform you of such changes. Also, if you would like to receive future updates via e-mail, please provide us with your e-mail address(es). To ask for e-mail updates, please contact Lorena Pors at 610-797-9000 (Ext. 393) or at lpors@flblaw.com.

We apologize for not personalizing this letter, but in the interest of getting it out relatively quickly, we decided to send a form letter. This letter is also available on our website (www.flblaw.com). Thank you and best wishes for 2018.

Sincerely,
The Estates Group at Fitzpatrick Lentz & Bubba, P.C.

Edward J. Lentz

James A. Bartholomew

Albertina D. Lombardi

Peter E. Iorio