Estate Planning SMARTS

Changes in the Law That May Affect Your Estate Plan

An update to *Estate Planning Smarts,* 4th Edition

By Deborah L. Jacobs

"When should I redo my will?" That's the question readers ask most often. Vast sums of money have been lost through missed estate planning opportunities and family battles over documents that had not been updated. Estate plans should be reviewed at least every five years, more often if there is a change in the law, your finances or personal circumstances.

Now that income tax season is over, why not put "review estate plan" on your agenda. Chapter 18 of *Estate Planning Smarts* can guide you through the factors to consider. Whether or not your documents need to be revised, you might want to tweak your current approach. Continued low interest rates and market volatility make this a good time for various estate planning strategies that benefit from one or both (see Chapters 7 and 15). This update summarizes key changes in the law since the fourth edition of *Estate Planning Smarts* was published in April 2015.

Those with universal relevance are various cost-of-living adjustments. Most closely watched are the annual exclusion and the lifetime exemption amount, both of which are discussed extensively in *Estate Planning Smarts* (see, especially, Chapters 3, 9 and 10). The annual exclusion, which is the yearly limit on how much we can each give another person without having to worry about gift tax, is $14,000 – a number that has not changed since 2013. If you exceed the limit, your gift counts against the exclusion from the federal estate and gift tax. That amount went up in 2016, to $5.45 million per person, from $5.43 million.

The following numbers, mentioned in *Estate Planning Smarts* and indexed for inflation, have gone up to the amounts indicated:

- Annual tax-free gift to a spouse who is not a U.S. citizen: $148,000 (see Chapter 4)
- Maximum total tax-free gifts received each year from foreign partnerships, foreign trusts or foreign corporations: $15,671 (see Chapter 13)
- Average annual net income tax, based on which expatriate status is measured: $161,000 (see Chapter 13)
- Amount of gain on expatriate's property exempt from exit tax: $693,000 (see Chapter 13)

Depending on your situation, these other newsworthy developments may affect the strategies covered in *Estate Planning Smarts*.

Portability. As discussed in Chapter 3, starting with deaths after Dec. 31, 2010, widows and widowers can carry over any unused exclusion of the spouse who died most recently and add it to their own, a feature that tax geeks dubbed "portability." To take advantage of this option, or "elect portability" (in legal lingo), the executor handling the estate of the spouse who died must file an estate tax return (IRS Form 706), even if no tax is due. This return is due nine months after death, with an automatic six-month extension allowed.

What's news: ***Final regulations*** on portability say that if you miss the deadline, you can get additional time, *but only if* the sole reason for filing Form 706 is to carry over what the law refers to as the "deceased spousal unused exclusion amount." (This has become known by the shorthand, "the DSUE amount.") However, that extension is not automatic; an executor must apply for it, through an expensive process that won't necessarily end in the estate's favor. So it's much better to mark your calendar and make sure the executor meets the deadline.

Basis consistency rules. In principle, the value of assets reported on the estate tax return should precisely match the basis that inheritors use to compute capital gain when they sell those same assets. In practice, it didn't always work that way. So Congress cracked down with tax law changes, during the summer of 2015, that also impose reporting requirements. ***Regulations*** are in the works. Meanwhile, there's more paperwork for executors: a new tax ***Form 8971*** that they must send to beneficiaries and the IRS, starting with estate tax returns filed after July 31, 2015, listing who is getting what.

Bad news: This form must cover most inherited assets. (A few exceptions are cash, retirement accounts and personal effects totaling $3,000 or less.)

Good news: There's no requirement to fill out Form 8971 if the only reason for filing an estate tax return is to elect portability.

For more about the importance of basis in estate planning, see Chapter 3.

Rights of same-sex married couples. When the most recent edition of *Estate Planning Smarts* went to press, it was clear that same-sex spouses were entitled to the same federal tax breaks and other rights that heterosexual spouses rely on in estate planning. In a subsequent, historic ruling in ***Obergefell v. Hodges***, the U.S. Supreme Court ruled that same-sex marriage is a constitutional right. Among other things, this gave them all the same estate planning protections when *state laws* are concerned (see Chapters 4 and 5).

State estate or inheritance taxes. The number of states with these taxes swells and shrinks with political currents. In early 2016 it dropped from 19 states to 18 (plus the District of Columbia), as Tennessee's inheritance tax was phased out.

Giving IRA assets to charity. The so-called IRA charitable rollover – an on-again, off-again rule first introduced in 2006 – has been made permanent. It allows people 70½ and older to transfer as much as $100,000 per year from their traditional IRAs to charity. The donation can count against the minimum required distribution the IRA owner would otherwise be required to take. In that case, the donor doesn't get a charitable deduction, but there's no tax on the distribution, either (see Chapter 16).

Use of Section 529 plans. Qualified state tuition programs can now be used to buy computer equipment and to pay for Internet access used primarily by the student who is the beneficiary of the plan. (Education savings plans are covered at length in Chapter 9.)

Contributions to ABLE accounts. These state-operated, tax-advantaged entities, discussed in Chapter 10, can lessen the financial burden on families of paying disability-related expenses. (The acronym "ABLE" stands for Achieving a Better Life Experience.) A change in the law eliminated the residency requirement; it is no longer necessary for the beneficiary to be a resident of the state to participate in its program.

Deborah L. Jacobs, a lawyer and award-winning journalist, is the author of *Estate Planning Smarts: A Practical, User-Friendly, Action-Oriented Guide*. This update to that book assumes that you have the fourth edition, either ***in print*** or as ***a Kindle e-book***. You can register at ***the book's website*** to receive e-mail notifications of future updates and editions.