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ESTATE TAXES & PLANNING

Decedents' estates in New Jersey may be subject to federal and New Jersey estate taxes. In addition, beneficiaries inheriting from those estates may be subject to a New Jersey inheritance tax. A properly drafted Last Will & Testament with included trusts may help reduce tax liabilities. Tax laws are complex and ever changing; therefore, I recommend your Last Will & Testament, trusts, and estate plans be prepared by experienced counsel.

Potential Tax Liability

There are three distinct tax liabilities to which New Jersey decedents' estates and beneficiaries may be subject. The federal estate, New Jersey estate and New Jersey inheritance tax are the three taxes mentioned. Both the federal estate and New Jersey estate tax are imposed upon the value of a decedent's estate. The New Jersey inheritance tax is assessed against and based upon the blood relationship, if any, of the decedent to who inherits or if it is an entity inheriting under the estate. It must be noted, tax laws are complex and fluid; therefore, I recommend the use of estate attorneys and accountants in the preparation of a Last Will & Testament, trusts, estate tax returns and estate planning.

Federal Estate Tax

Passage of the Tax Cuts and Jobs Act occurred on December 20, 2017, and was signed into law on December 22, 2017. Whereas this new law was a reformation of the existing tax code affecting all aspects of the code including federal estate taxes, it does carry a "sunset" clause of December

31, 2025. At that point in time, barring any further legislation, the estate tax, and all other features of the new tax code will revert to 2017 levels (basic exclusion amount of \$5,490,000, and a top tax rate of 40%).

Most facets of the estate tax were retained in the new law; such as portability, unlimited marital deduction, Generation-Skipping Transfer (GST) tax rules, and a maximum tax rate of 40% to name a few. One of the law's immediate implementations was to increase the basic exclusion amount from an anticipated \$5,600,000 in 2018 to \$11,180,000 instead. Similar to the previous tax code this exclusion amount will continue to be adjusted annually for inflation. However the inflation index is based on 2010 prices but uses a new inflation index commonly called a "chained index." This index employs a different set of measures over time, and produces a slower rate of increase than the previous inflation index. For example, the former index would have produced a basic exclusion amount of \$11,200,000 for 2018 but the "chained index" produced the applicable basic exclusion of \$11,180,000.

As mentioned earlier, portability is retained in the new law. Portability is the concept of electing to apply a deceased spouse's unused exclusion (DSUE) amount. This is a feature available between spouses only. Portability of the DSUE is an election made by the estate of a decedent who is survived by a spouse that gives the surviving spouse the authority to apply the decedent's unused exclusion amount to their own transfers during their life and at the death of the surviving spouse.

Additionally, the Tax Cuts and Jobs Act continues the deduction for state estate, inheritance, legacy or succession taxes. It also retains many of the Generation-Skipping Transfer (GST) tax-related rules. The Act also keeps the estate and gift tax rates and exemption amounts unified. The result is a basic exclusion amount of \$11,180,000 and a maximum tax rate of 40%. In addition, the exclusion amount is to be adjusted for inflation, however, based upon the "chained index" of inflation.

Federal and New Jersey estate taxes are each due nine (9) months after the decedent's death. Those taxes are collected and due from estates with a net value (the estate's value after taking all allowable deductions) at the time of a decedent's death that exceeds the applicable exclusion. The law is actually much more complex than these statements indicate. For example, if you gave away your house while alive, but retained the right to live there,

known as a “life estate,” the value of your house will be included in your estate. There are a host of other rights which most people would not consider to be assets, which the tax laws may consider part of your estate and subject to estate tax.

Applicable exclusion amount and top tax rate refer to those amounts in effect in the year of the decedent’s death. Since these numbers change in accordance with the law people with substantial estates, I suggest exceeding \$1,000,000, should consult with an attorney and/or accountant who specializes in estate taxes. In a similar manner, executors of estates which appear to be below the applicable exclusion are cautioned to at least consult with an estate attorney or tax accountant to determine if the estate they are administering is in fact subject to federal estate tax.

Unfortunately, the “sunset” provision of the Tax Cuts and Jobs Act does pose some difficulty for long term estate tax planning. Because of this federal tax, as well as the legal and personal complexity which accompany most larger estates, every individual with (or couple with combined) net assets that might possibly exceed \$1,000,000 (including the net value of your house, life insurance, pension and all other assets) should consult with a New Jersey attorney or accountant who specializes in estate tax planning. A proper estate tax plan can range in cost from \$1,000 to \$3,000 and up, depending on the complexity and the size of the estate. However, this fee can be very cost effective in offsetting estate tax. Individuals in this asset category can face large estate tax liability which can be reduced by having a properly drawn Last Will & Testament, durable power of attorney with gift provisions, and other planning steps.

Recognizing the uncertainty of the law as it now stands, every executor should consider at least having a consultation with a tax professional to ascertain the status of the law at the time of any decedent’s death.

New Jersey Estate Tax

New Jersey estate tax law (N.J.S.A. 54:38-1 et seq.) changes were signed into law on October 14, 2016. Those changes increased the New Jersey estate tax exemption to \$2,000,000 from \$675,000. The increase only affects estates of resident decedents who have died on or after January 1, 2017 but before January 1, 2018. New Jersey’s estate tax is a complex

statute. Previously, it utilized as an exemption threshold a decedent's federal estate tax liability as if the person died on December 31, 2001. At that point in time the federal estate tax exclusion was \$675,000. However, for resident decedents who have died on or after January 1, 2017 but before January 1, 2018, this is no longer the case. For these estates it utilizes as an exemption threshold a decedent's federal tax liability for those persons who have died in that period: on or after January 1, 2017 but before January 1, 2018; limiting that exemption amount to \$2,000,000.

The most significant change to the New Jersey estate tax law applies to resident decedents dying on or after January 1, 2018. For those estates no estate tax is imposed. Bear in mind that this provision does not apply to the New Jersey inheritance tax. If an estate's value exceeds \$2,000,000 I recommend you consult with an attorney in order to assure compliance with New Jersey estate tax requirements.

New Jersey Inheritance Tax

In addition to the aforementioned New Jersey estate tax, New Jersey also has an inheritance tax. An inheritance tax means that when a New Jersey resident dies his or her assets will be taxed on the basis of who inherits those assets.

No Tax on Most Inheritances

For most estates, there will be no tax. If a decedent's estate goes to a spouse, civil union partner (after February 19, 2007), domestic partner (after July 10, 2004), child (includes legally adopted child), grandchild, great-grandchild (etc.), parents, grand-parents (etc.), mutually acknowledged child or stepchild (but not step-grandchild or their issue), no tax is due. These beneficiaries are called "Class A" beneficiaries. If a decedent leaves money to a charity, an educational institution, a church, a hospital, a library or the State of New Jersey or its political subdivisions, no tax is due. In addition, transfers of decedent's property less than \$500 are exempt from inheritance tax.

Recipients That Pay Tax

If property is given to other family members, such as the decedent's brother, sister, son-in-law or daughter-in-law the first \$25,000 is not taxed

(an exemption applies). The balance of the inheritance is presently taxed at 11% for the next \$1,075,000 and thereafter at rates that range from 13% to 16%.

All other beneficiaries (persons not included in the above definitions of family) are presently taxed at 15% for the first \$700,000 and at 16% on amounts over that figure.

Approvals Required to Transfer Certain Assets – Forms

Some assets (real estate, stocks and bank accounts) require the written consent of the director of the New Jersey Division of Taxation before they can be transferred. This consent is commonly known as a “tax waiver.” Tax waivers (or waiver) are not generally required to transfer cars, personal property such as household goods and jewelry and most employee benefits.

In most cases for decedents dying after December 31, 2001 but before January 1, 2017, leaving estates valued at less than \$675,000 to “Class A” beneficiaries (spouse, civil union partner (after February 19, 2007), domestic partner (after July 10, 2004), child (includes legally adopted child), grandchild, great-grandchild (etc.), parents, grand-parents (etc.), mutually acknowledged child or stepchild (but not step-grandchild or their issue)) may transfer bank accounts, stocks and bonds by utilizing a “Self-Executing Tax Waiver,” form L-8. Similarly, in most cases for decedents dying on or after January 1, 2017 but before January 1, 2018, leaving estates valued at less than \$2,000,000 to “Class A” beneficiaries may transfer bank accounts, stocks and bonds by utilizing the “Self-Executing Tax Waiver,” form L-8. The self-executing waiver is filed with the bank, financial institution or broker where the asset is located.

Real Estate

For “Class A” beneficiaries of decedents dying after December 31, 2001 but before January 1, 2017, leaving estates valued at less than \$675,000 the transfer of real estate can normally be effectuated by the filing of form L-9, “Real Property Tax Waiver.” Similarly, for “Class A” beneficiaries of decedents dying on or after January 1, 2017 but before January 1, 2018, leaving estates valued at less than \$2,000,000 the transfer of real estate can normally be effectuated by the filing of form L-9, “Real

Property Tax Waiver.” The L-9 form must be filed with the Individual Tax Audit Branch, Inheritance and Estate Tax office in Trenton. If a husband and wife own real estate as tenants by the entirety, the surviving spouse need not file a form L-9; the property may be transferred at any time.

Inheritance Tax

If a decedent does not leave all assets to a “Class A” beneficiary, a formal inheritance tax return will have to be filed. All of the necessary forms for filing the inheritance tax return can be obtained from the NJ Division of Taxation – Inheritance and Estate Taxes at their website: www.njtaxation.org. Once you are at their website point and left click on “Individuals;” go to “Filing Information;” at the bottom of that list you will see an option for “Inheritance and Estate Tax Information;” point and left click on that option.

In addition, their address is:

Individual Tax Audit Branch
Inheritance and Estate Tax
P.O. Box 249
Trenton, New Jersey 08695-0249

They can be reached by telephone at (609) 292-5033.

If a formal inheritance tax return is required, it is important to remember that you will need to attach a copy of the decedent’s Last Will & Testament and any amendments (codicils), a copy of the decedent’s last full year’s federal income tax return (Form 1040), and a certified check for any tax due. Formal inheritance tax returns are due *eight (8) months* after the decedent’s death. If the inheritance tax is not paid within eight months, interest will accrue and no tax waivers will be issued until payment is received. Caution: this is one (1) month earlier than the federal and New Jersey estate tax returns are due.

Who Should Pay the Taxes

A Last Will & Testament can also allow the testator to decide whether any taxes owed should be paid from the assets of the estate before distribution to the beneficiaries or whether the tax should be paid

proportionally from each beneficiary's share. This is particularly important for those individuals who are leaving property to brothers and sisters and/or nieces and nephews.

Tangible Personal Property

A Last Will & Testament may make separate provisions for tangible personal property. Tangible personal property is comprised of assets like jewelry, furniture and art. Stocks and bonds are **not** considered tangible personal property. Pursuant to New Jersey law, the Last Will & Testament may state that you will leave a list of instructions as to how tangible personal property, that is not required to be registered, should be distributed. Registered tangible personal property such as an automobile cannot be disposed of on such a list. This list, which should be kept with your Last Will & Testament, may be changed as often as you like without an attorney or witnesses. To avoid confusion, discuss with an attorney how the list should be handled to assure that the most current list is the one used.