

Tax Alert

Fall 2014

****Action May Be Required****

Below please find an overview of several significant changes to the Federal and State Estate and Gift Tax laws. The law changes affect many estate plans and warrant a review of your estate plan. If you have not recently reviewed your estate plan, you likely are not taking full advantage of these new laws.

Therefore, we strongly recommend that you review your Last Will and Testament, your Revocable Trust, your Powers of Attorney, and any additional documents that are part of your estate plan. Should you have any questions – or should you like our assistance in reviewing your estate planning documents – please do not hesitate to contact us.

The following laws were recently passed and may affect your current estate plan:

- The **Federal Estate Tax Exemption** increased to \$5.34 million per person and will increase to \$5.43 million per person in 2015.
- The **Federal Annual Gift Tax Exclusion** increased to \$14,000 per gift, annually.
- The **Maryland Estate Tax Exemption** is currently \$1 million per person and is scheduled to rise, ultimately “re-coupling” with the Federal Estate Tax Exemption by 2019.
- Maryland permits the establishment of a **Maryland-Only Qualified Terminable Interest Property Trust (“Maryland-Only QTIP Trust”)**, which, when properly funded, will defer and potentially minimize the imposition of Maryland Estate Tax. The Maryland-Only QTIP Trust has existed since 2006. Therefore, all Maryland married couples who have estate planning documents that were drafted prior to 2006 are missing this very important tax saving opportunity.

You should contact us immediately if you are a married Maryland resident and your estate planning documents were prepared prior to 2006.

- The **District of Columbia Estate Tax Exemption** is currently \$1 million per person.

You should contact us immediately if you are a married District of Columbia resident and your estate planning documents do not include provisions addressing both the District of Columbia Estate Tax and the Federal Estate Tax.

- The Federal Tax Code now allows for **Federal Estate Tax Portability**, which, when properly elected, will allow a surviving spouse to utilize his/her deceased spouse's unused Federal Estate Tax Exemption (thereby increasing the surviving spouse's gifting capabilities and/or minimizing the surviving spouse's Federal Estate Tax liability).

You should contact us immediately if you are a District of Columbia, Maryland, or Virginia resident whose spouse has passed away since 2011 and the Federal Estate Tax Portability election was not made or if a Federal Estate Tax Return was not filed on behalf of your deceased spouse's estate.

- **Same-Sex Marriages** are now recognized in the District of Columbia, Maryland, and Virginia, as well as under Federal law for estate and gift tax purposes.

You should contact us immediately if you are a married District of Columbia, Maryland, or Virginia resident with a same-sex spouse and your estate planning documents were prepared prior to 2010 for District of Columbia residents, prior to 2013 for Maryland residents, or prior to October 2014 for Virginia residents.

- Maryland revised its Financial Power of Attorney law to provide for the creation of the **Maryland Statutory Form Personal Financial Power of Attorney**. When properly drafted, this new type of Financial Power of Attorney will be better received by Maryland financial institutions than any other type of Financial Power of Attorney.

You should contact us immediately if you are a Maryland resident and your Financial Power of Attorney was prepared prior to October 2010.

Below please find a more-detailed overview of the laws discussed above. We look forward to assisting you with a review of your estate plan and working with you to maximize the benefits of the new laws.

FEDERAL ESTATE TAX EXEMPTION AND ANNUAL GIFT EXCLUSION

As of January 2014, the Federal Estate Tax Exemption is now \$5 million per person, as indexed for inflation. In 2014, with indexing, a U.S. Citizen or Resident Alien may shelter up to \$5.34 million from Federal Estate Tax (less any lifetime gifts made that were in excess of that year's Federal Annual Gift Tax Exclusion). The Federal Estate Tax Exemption will increase to \$5.43 million per person in 2015 and the Federal Estate Tax Exemption will continue to increase annually based on inflation.

Additionally, in January 2013, the Federal Gift Tax Annual Exclusion increased to \$14,000 per gift recipient, per year. Gifting is an extremely simple – yet powerful – estate planning tool that, when properly used, can dramatically decrease both State and Federal Estate Taxes paid at death.

Recommended Action: If your assets currently exceed \$5.34 million, please contact us so that we may discuss advanced estate planning techniques that will potentially decrease your Federal Estate Tax liability.

If you intend to, or would like to discuss, making gifts in excess of \$14,000 per person this year, please contact us. The end of the year is often a strategic time to make such gifts.

MARYLAND ESTATE TAX EXEMPTION AND THE MARYLAND QTIP TRUST

The Maryland Estate Tax Exemption is currently \$1 million per person. Beginning January 1, 2015, the Maryland Estate Tax Exemption is scheduled to increase as follows: \$1.5 million per person in 2015, \$2 million per person in 2016, \$3 million per person in 2017, and \$4 million per person in 2018. The Maryland Estate Tax Exemption is scheduled to “recouple” with the Federal Estate Tax Exemption in 2019.

Note that while the 2014 Federal Estate Tax Exemption is \$5.34 million per person, the 2014 Maryland Estate Tax Exemption is \$1 million per person. Therefore, until the Federal Estate Tax Exemption and the Maryland Estate Tax Exemption recouple, Maryland Estate Tax may be due, even if Federal Estate Tax is not due. However, proper estate planning can address this inconsistency.

A 2006 Maryland law addressed this issue by permitting a married Maryland individual to establish a Maryland QTIP Trust. The Maryland QTIP Trust is exempt from Federal Estate Tax in both spouses' estates and defers the imposition of Maryland Estate Tax until the surviving spouse's death. The Maryland QTIP Trust may only be established if the deceased's estate planning documents (specifically his/her Will and/or Revocable Trust) include the required language. If your assets are valued at more than \$1 million (including, but not limited to, your home, retirement accounts, brokerage accounts, and life insurance proceeds), a Maryland QTIP Trust can lead to significant Maryland Estate Tax savings.

Recommended Action: If you are a Maryland resident and your estate planning documents do not include both Maryland Estate Tax planning provisions and Federal Estate Tax planning provisions, please contact us, as all Maryland residents should ensure that their estate planning documents properly plan for both State and Federal taxes.

Remember – any Maryland estate planning documents drafted prior to 2006 do not include these very important tax-savings provisions.

DISTRICT OF COLUMBIA ESTATE TAX EXEMPTION

The District of Columbia Estate Tax Exemption is currently \$1 million per person. There are ongoing discussions regarding an increase in the District of Columbia Estate Tax Exemption, but, to date, nothing has been finalized. Therefore, District of Columbia residents must ensure that their estate planning documents are drafted in a manner that addresses both the District of Columbia Estate Tax and the Federal Estate Tax.

Recommended Action: If you are a District of Columbia resident and your estate planning documents do not include both District of Columbia Estate Tax planning provisions and Federal Estate Tax planning provisions, please contact us, as all District of Columbia residents should ensure that their estate planning documents properly plan for both State and Federal taxes.

VIRGINIA ESTATE TAX EXEMPTION

Virginia does not impose a State Estate Tax. Therefore, Virginia residents need only ensure that their estate planning documents include provisions that properly address the Federal Estate Tax.

Recommended Action: If you are a Virginia resident and your estate planning documents do not include Federal Estate Tax planning, please contact us.

FEDERAL ESTATE TAX EXEMPTION PORTABILITY

In January 2013, Federal Estate Tax Exemption Portability ("Portability") became a permanent feature of the Federal Estate Tax law. Portability, when properly elected, allows a surviving spouse to utilize his/her deceased spouse's unused Federal Estate Tax Exemption (thereby increasing the surviving spouse's gifting capabilities and/or minimizing the surviving spouse's Federal Estate Tax liability). This is a very effective means of minimizing a couple's Federal Estate Tax liability.

In order to take advantage of Portability, an affirmative election (on the Federal Estate Tax Return) is required after the death of the first spouse to die. However, the Portability rules are complex and the election must be made timely and correctly. If Portability is not properly elected, the benefit will be lost in its entirety.

In January 2014, the IRS extended the time permitted to elect Portability. The extension applies to all individuals who passed away between January 1, 2011 and December 31, 2013.

Recommended Action: If your spouse passed away between January 1, 2011 and December 31, 2013, and the Portability election was not made (or if a Federal Estate Tax Return was not filed on behalf of

your deceased spouse's estate), please contact us immediately. The Portability election must be properly filed by December 31, 2014 or it will be forever lost.

If your spouse passed away in 2014, and the Portability election has not yet been made (or if a Federal Estate Tax Return has not yet been filed on behalf of your deceased spouse's estate), please contact us immediately. The 2014 Portability election must be properly filed within 9 months of your spouse's date of death or it will be forever lost.

SAME-SEX MARRIAGES

In October 2014, same-sex marriages were legalized in Virginia. In January 2013, same-sex marriages were legalized in Maryland, and in March 2010, same-sex marriages were legalized in the District of Columbia. In 2013, same-sex marriages were also legalized under Federal law for Estate and Gift Tax purposes. As such, the estate planning techniques described above are available to all legally married individuals.

Recommended Action: If you are married and have not updated your estate plan since your marriage, please contact us to review your estate planning documents, as they likely do not include all of the relevant State and Federal tax-planning provisions.

If you were married at the time that you and/or your spouse filed a 2011, 2012, and/or 2013 Federal Estate Tax Return or Federal Gift Tax Return, but you were not permitted to file as a married couple, please contact us to discuss the possibility of amending, re-filing, and seeking a refund.

MARYLAND STATUTORY FORM PERSONAL FINANCIAL POWER OF ATTORNEY

In October 2010, Maryland amended its Power of Attorney laws and created the Maryland Statutory Form Personal Financial Power of Attorney. The new law was passed in response to the refusal or resistance of many financial institutions to accept (valid) Financial Powers of Attorney. Under the new law, if a Maryland Statutory Form Personal Financial Power of Attorney is presented to a Maryland financial institution, the financial institution's refusal to accept the document can lead to the financial institution being held responsible for the attorney fees required to enforce the Power of Attorney.

Therefore, Maryland residents should ensure that they have executed a Maryland Statutory Form Personal Financial Power of Attorney.

Recommended Action: If you are a Maryland resident and your Financial Power of Attorney was executed prior to October 2010, or if your more-recently executed Financial Power of Attorney is not the Maryland Statutory Form Personal Financial Power of Attorney, please contact us.

CONCLUSION

Whether you are impacted by these laws depends on your current estate planning documents, as well as your family and financial circumstances. Your estate plan should be regularly monitored to ensure it meets your current needs. Relocation to another state, significant variations in your net worth, and/or changes in your family composition are all events that warrant a review of your estate plan.

Finally, please remember that we advise everyone to review their estate plans and their estate planning documents no less than every 3-5 years.

To schedule an appointment to review your estate planning documents, please contact:

Jay M. Eisenberg
301.230.5223

jeisenberg@shulmanrogers.com

Patrick J. Howley
301.231.0944

phowley@shulmanrogers.com

Sarah E. Dwyer-Heidkamp
301.231.0925

sdwyerheidkamp@shulmanrogers.com

We would like to start sending our Tax Alerts electronically. Should you wish to join the mailing list, please send an email to TaxAlert@shulmanrogers.com letting us know your preferred email address(es). Thank you.