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Planning for Clients Who Might Have a Taxable Estate

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PLANNING FOR CLIENTS WHO MIGHT HAVE A TAXABLE ESTATE

By

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I. INTRODUCTION

A. In General

As advisors, if we knew when clients were to pass away, who was to survive them, the assets included in their taxable estates, and what the tax laws would be at the time of their deaths, we could all design perfect estate plans. We could also advise clients, with absolute accuracy, when and how to make lifetime gifts to minimize taxes and best effectuate their non-tax objectives. Of course, we cannot know any of these things, so we must simply do the best we can with what we have. In many cases, doing so requires building flexibility into the client's estate plan in anticipation of potential changes to the tax laws or a client's family or financial circumstances.

B. Overview of Materials

This paper discusses how to design and implement "core" estate plans that become effective upon a client's death, such as Wills and revocable trusts, in light of fluctuations to the transfer tax exemption amounts. This paper also explores how to design and implement gifting strategies for clients who might have a taxable estate. Above all, this paper is designed to leave the reader with practical examples of how to add value to client relationships by providing creative and proactive solutions.

The remaining portions of this paper are organized to do the following:

- Part II establishes a framework by discussing the new planning environment that has emerged as a result of substantial increases to the transfer tax exemption amounts.
- Part III explains how advisors can generally place clients into one of three groups based on projected net worth—(i) clients who are *unlikely* to have a taxable estate, (ii) clients who are *likely* to have a taxable estate, and (iii) clients who *might* have a taxable estate.
- Part IV analyzes core estate planning alternatives for clients who might have a taxable estate, including portability, bypass trusts, and disclaimer-based planning.
- Part V analyzes lifetime gifting strategies for clients who might have a taxable estate, including creative uses of a client's lifetime gift tax exemption.

¹ Certain sections of this paper originally appeared in a paper authored by Jeff Chadwick and John Bergner in 2020 entitled, *Optimizing Lifetime Gifts*, and presented at the Southern Federal Tax Institute, the Hawaii Tax Institute, the ABA Tax Section, and the Tulsa Estate Planning Forum, among others. Additionally, Certain sections of this paper originally appeared in a paper authored by Jeff Chadwick in 2024 entitled, *Planning for Clients Who Might Have A Taxable Estate*, and presented at the Dallas Bar Association, among others.

- Part VI offers a few concluding remarks.

C. Paper Disclaimers

This paper is not intended to be a definitive resource for any one particular planning technique. Rather, it is intended to provide an overview of potential estate planning strategies, with references to more comprehensive resources. This paper is not intended to be, and should not be construed as constituting, the author's opinion with regard to any specific case or transaction or the author's legal or tax advice with respect to any specific case or transaction. The forms included in this paper are for illustrative purposes only and may not be appropriate for any particular client or for use in any particular case or transaction. These forms should be used only by competent counsel as illustrations for potential solutions in specific circumstances.

II. PLANNING IMPACT OF RECENT TRANSFER TAX CHANGES

Before considering specific strategies, advisors must understand the current estate planning landscape, including how the transfer tax exemptions have increased substantially in recent years. In fact, as the number of taxable estates has steadily dwindled advisors must often focus on minimizing income taxes, rather than transfer taxes. The paragraphs below discuss this new paradigm in more detail, including how potential changes in the political landscape may impact transfer tax laws moving forward.

A. Increased Transfer Tax Exemptions, Portability, and Lower Transfer Tax Rates

Recall that in 2000:

- The basic exclusion amount from federal gift and estate taxes (the "BEA") was \$675,000 per person;
- The generation-skipping transfer ("GST") tax exemption amount (the "GST Exemption") was \$1,030,000 per person;
- The maximum estate and gift tax rate was 55% (with an additional 5% surtax on the value of certain large estates);
- The GST tax rate was 55%; and
- The BEA not used by a deceased spouse was lost and could not be used by the surviving spouse.

A series of tax law changes in 2001, 2010, and 2012 increased the BEA and GST Exemption while also decreasing the transfer tax rates.² In 2024, as a result of the Tax Cuts and Jobs Act of 2017 ("TCJA"):

- The BEA is \$13,061,000 per person;
- The GST Exemption is \$13,061,000 per person;

² Specifically, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and the American Taxpayer Relief Act of 2012.

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