

Estate Planning Maintains Importance In Face of NJ Estate Tax Repeal

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New Jersey currently imposes two types of death taxes – the estate tax and the inheritance tax. The state's current estate tax exemption is \$675,000, the lowest in the country.

On October 14, 2016, Governor Christie signed into law new legislation that repeals the New Jersey estate tax for those dying on or after January 1, 2018, and increases the estate tax exemption to \$2 million for those dying between January 1, 2017 and December 31, 2017. The inheritance tax in New Jersey will continue in force following the January 1, 2018 effective date of the estate tax repeal.

Inheritance tax is levied on property passing to beneficiaries other than: (1) a spouse or civil union partner of the decedent, (2) grandparents, parents, children, grandchildren, or other lineal descendants, or (3) a State, political subdivision or non-profit organization. Thus, the New Jersey inheritance tax will continue in effect for property passing to siblings, nieces and nephews, and non-related individuals at rates ranging from 11% to 16%.

It is a misconception that the repeal of New Jersey's estate tax means that estate planning and will preparation will be simplified, or that New Jersey residents will no longer need to plan for their estates, and it is important not to buy into that line of reasoning.

Although New Jersey's estate tax is scheduled to be eliminated at the start of 2018, the federal estate tax will remain in force. The federal estate tax exemption (currently \$5,450,000 per person) and federal estate tax rates (which currently top off at 40%) have a history of being adjusted. In fact, it is likely we'll see changes to the federal estate tax at some point after the 2016 presidential election.

Such changes may range from either complete repeal (on the one extreme) to a continuation of the federal estate tax with a reduced exemption and increased tax rates – potentially up to 65% for ultra-large estates. Thus, for residents of New Jersey with substantial assets, federal death tax planning continues to be important. In addition, just as the federal government has a history of adjusting the rules concerning estate tax and exemptions, New Jersey may well follow suit as well. With a forecasted budget deficit of over \$1 billion and a new governor in place prior to full repeal, we can likely expect more tax law changes in New Jersey in 2017 or 2018.

Tax planning is just one of the many facets of estate planning. Importantly, a will sets forth to whom assets shall pass. In the absence of a will, a decedent's assets pass in accordance with the New Jersey

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intestacy statutes, likely not yielding desirable results. In addition, will planning with trusts continues to be an integral component of estate planning, not just for death tax savings but for preservation and management of assets, planning for minor and disabled children, asset protection, Medicaid planning and charitable planning. Further, appointment of fiduciaries is accomplished by a will including appointment of guardians for minor children.

Finally, since the federal estate tax exemption has spiked in recent years, we have witnessed a corresponding rise in estate litigation and controversy matters arising from inadequate (or a complete lack of) planning. Estate litigation and controversy are expensive, exacting both financial and emotional costs on families and often resulting in incurable rifts within families. These risks can be minimized or eliminated with proper planning.

For additional information or to schedule an estate planning consultation, please contact one of the authors of this Alert – Laurence E. Funder, Jo Ann Gambale and Nita S. Vyas.