

ESTATE PLANNING CLIENT ADVISORY

Spring 2019

The Law Office of Robert H. Eardley, P.A. is pleased to provide this *Estate Planning Client Advisory – Spring 2019*.

Estate Tax Update and Recent Developments: In late 2017, Congress enacted legislation which affected the federal estate tax system as well as many other taxes. Most significantly, the 2017 Tax Act temporarily increased the estate, gift and GST tax exemptions to over \$11 million apiece. However, the increases expire at the end of 2025 and revert to the \$5 million base unless Congress enacts interim legislation.

Exemptions Increased to \$11.4 Million: The baseline exemptions are adjusted annually for inflation. For gifts and deaths occurring in 2019, the January 1st adjustment increased the 2018 exemptions by \$200,000 to \$11.4 million.

Annual Tax-Free Gifting Amount Remains at \$15,000: The baseline tax-free gifting amount is \$10,000 and is adjusted periodically in increments of \$1,000. For 2019 gifts, the tax-free amount remains at \$15,000.

Democratic Presidential Frontrunners & Their Estate Tax Proposals: Unquestionably much tax law will be affected if Democrats gain control of the White House and Congress in 2020. Below we highlight the estate tax positions of several Democratic frontrunners:



1. **Bernie Sanders.** Senator Sanders' proposal reduces the estate tax exemption to \$3.5 million and imposes a graduated tax rate of 45% to 77%. According to Sanders: *"the fairest way to reduce wealth inequality, invest in the disappearing middle class and preserve our democracy is to enact a progressive estate tax on the inherited wealth of multi-millionaires and billionaires."*

2. **Beto O'Rourke.** According to *Bloomberg*, if elected, one of O'Rourke's first acts as President would be to repeal much of the 2017 Tax Act. He believes this is necessary since the U.S. is now controlled by *"princes and princesses, kings and queens..."* However, O'Rourke has no specific tax proposals.

3. **Kamala Harris.** California Senator Kamala Harris intends to reverse the portions of the 2017 Tax Act that *"benefit the rich."* However, she has no specific proposals.

4. **Elizabeth Warren.** Senator Warren's signature proposal is an annual 2% tax on those with a net worth in excess of \$50 million and an additional 1% for those with \$1 billion. The tax would require the annual valuation of all assets including accounts, business interests, real estate and art.

5. **Cory Booker.** *FoxBusiness* reports that Senator Booker's proposal is to *"combat mass wealth inequality, which would be paid for making 'common sense reforms' to federal estate and inheritance taxes, and by restoring the 2009 estate tax law."* The 2009 law provided a \$3.5 million exemption and a 45% tax rate.

PLANNING POINTER – WATCH THE ELECTIONS: *If a Democratic sweep occurs, very likely significant estate tax increases will be enacted. Therefore, we recommend that individuals with a net worth in excess of \$3.5 million monitor the legislative landscape and be prepared to take tax-savings steps if necessary.*

Buying a New Home? Property Taxes Lower in Collier than Lee: If you are thinking of buying a new home in Lee County, we recommend you *"run the numbers"* – since Lee County imposes significantly higher property taxes than Collier County.

For example, according to the tax calculator available on the Lee County Property Appraiser's website, a \$500,000 home purchased in 2019 in Lee County will pay an annual tax of \$7,576. However, a \$500,000 Collier County home will pay just over \$5,400.

2019 Naples Daily News Article: The Sunday March 3rd edition of the *Naples Daily News* featured an article Robert authored entitled *Avoiding Probate and Court Guardianship – The Revocable Trust*. The article explains the various benefits and uses of a Revocable Trust. The article also addresses the creation and proper *"funding"* of the Trust, the parties involved, relevant tax issues and other matters. For a complimentary print copy or PDF, please contact Julie Yamin at (239) 216-1819 or julie@swflorida-law.com.

End of Life Regrets – Don't Wait: We all have regrets – and often these relate to past mistakes. However, a study by several Cornell psychologists entitled *"The Ideal Road Not Taken"* sheds light on this long-standing assumption. The study reports that 76% of respondents identified their biggest life regret as unrealized hopes, dreams and aspirations rather than past mistakes. The study's main author, Professor Tom Gilovich, notes: *"[i]n the short term, people regret their actions more than inactions...[b]ut in the long term, the inaction regrets stick around longer."*



In light of the foregoing, writer Diana Bruk of *msn.com* suggests: *"[s]o learn that language you've always wanted to study...[w]rite that book that's been tinkering around in your head for years...[d]on't leave it for tomorrow."*

Snowbird State Tax Update: Many states have massive debt issues yet continue policies which exacerbate this predicament – such as seeking to tax Florida residents who have northern seasonal residences. As emphasized in prior *Estate Planning Client Advisories*, Florida residents with a seasonal home in a northern state must regularly monitor their Florida tax residency status.

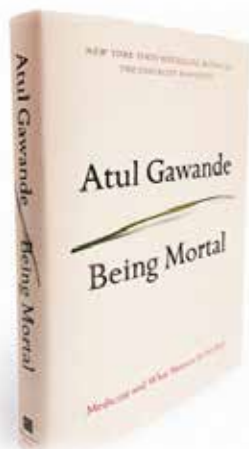
The 2017 Tax Act limitation of the state and local income tax (“SALT”) deduction to \$10,000 is one of the biggest factors affecting northern state budgets. In 2018 alone, nearly 11 million taxpayers had \$323 billion in non-deductible state and local taxes. For states which impose high taxes, the \$10,000 SALT cap is another impetus for folks to domicile in Florida. In fact, a feature article in *The Wall Street Journal* reports that New York Governor Andrew Cuomo initially blamed the state’s population exodus – and hence the state’s current \$2.3 billion deficit – on the cold weather. He later backtracked and admitted the obvious: “*People are mobile [a]nd they will go to a better tax environment. That is not a hypothesis. That is a fact.*”

Earlier this year, major news outlets, including *The New York Times*, *CNBC* and *Fox News*, ran feature stories on New York’s non-residency tax audit system. In particular, between 2010 and 2017 New York conducted 3,000 non-residency audits, collected \$1 billion in tax, and won more than half of its audits. *Fox News* reports that New York’s success rate is increasingly attributable to “high tech tools that include tracking phone records, social media, and even veterinary and dental records.” The *CNBC* piece notes that auditors routinely review the location of important personal items such as artwork, wedding albums, family photos, safe deposit boxes, and jewelry, and also examine refrigerators and dresser drawers, to determine whether New York or Florida serves as the primary home.

PLANNING POINTER: *We anticipate cash-crunched northern states will increasingly adopt sophisticated audit techniques and expand the scope of audits. Therefore, it is increasingly important to be vigilant to maintain a secure Florida tax residency status.*

Book Recommendation – *Being Mortal: Medicine and What Matters in the End*: *Being Mortal* by Dr. Atul Gawande, a Professor of Surgery at Harvard Medical School, is well worth the read. I (Robert) read it several years ago upon a client’s recommendation and it opened my eyes to a number of end-of-life care issues. One reviewer says it well:

“Medicine has triumphed in modern times, transforming birth, injury, and infectious disease from harrowing to manageable. But in the inevitable condition of aging and death, the goals of medicine seem too frequently to run counter to the interest of the human spirit. Nursing homes, preoccupied with safety, pin patients into railed beds and wheelchairs. Hospitals isolate the dying, checking for vital signs long after the goals of cure have become moot. Doctors, committed to extending life, continue to carry out devastating



procedures that in the end extend suffering. Gawande...argu[es] that quality of life is the desired goal for patients and families [and] offers examples of freer, more socially fulfilling models for assisting the infirm and dependent elderly...to demonstrate that a person’s last weeks or months may be rich and dignified.”

Eliminate Income Taxes for Your Heirs: A valuable “loop-hole” exists to eliminate income tax on an appreciated asset – hold the asset until death. This is one of the few giveaways in the tax code. Specifically, the recipient of a gifted asset (e.g. stock) takes the same income tax position – or “basis” – as that of the benefactor. However, the beneficiary of an inherited asset takes a new basis equal to the asset’s fair market value at the benefactor’s date of death. “Basis” denotes the value from which the IRS determines gain or loss upon the sale of an asset.



EXAMPLE: *Sheriff Taylor owns stock in Mayberry RFD Productions he purchased for \$100,000 and which is now worth \$500,000. If he gives the stock to his son, Opie, and Opie then sells the stock, Opie will have \$400,000 in capital gains. If, however, Mr. Taylor holds the stock until his death and bequeaths it to Opie, Opie takes it with a \$500,000 basis and can promptly sell it and pay no income tax.*

Don’t Forget The Basics – An Up-to-Date Estate Plan: According to *Forbes*, 64% of Americans do not have a Will – including more than half of those aged 55 to 64. Of those surveyed, 60% “simply haven’t gotten around to making one.” So who has been so shortsighted as to fail to have a Will?: Abraham Lincoln, Aretha Franklin, Bob Marley, Howard Hughes, Jimi Hendrix, John Denver, Martin Luther King, Jr., Pablo Picasso, Prince, and Sonny Bono.

PLANNING POINTER: *If it has been more than 5 years since your estate plan was last reviewed, it is advisable to contact us to schedule a review to ensure all remains in order.*

Words of Wisdom: *Jesus answered him, “Truly, truly, I say to you, unless one is born again he cannot see the kingdom of God.”...Now Jesus did many other signs in the presence of the disciples, which are not written in this book; but these are written so that you may believe that Jesus is the Christ, the Son of God, and that by believing you may have life in his name. John 3:3; 20:30-31.*

Robert H. Eardley, Esq.

Direct: (239) 591-6776

Email: robert@swflorida-law.com

Debra L. Phillips, A.A., Estate Paralegal

Direct: (239) 849-5931

Email: debra@swflorida-law.com

Julie K. Yamin, M.B.A., Administrative Paralegal

Direct: (239) 216-1819

Email: julie@swflorida-law.com