

Trusts and Estates Group Client Alert: Estate Tax Exclusion Update

IRS INFLATION-ADJUSTED AMOUNTS FOR 2019

The IRS has released its annual inflation-indexed amounts for 2019:

1. The annual gift tax exclusion amount (*i.e.*, the amount that can be given annually gift-tax-free to an unlimited number of donees) will remain at \$15,000 per donee (or \$30,000 for a married couple who elect to split gifts for the year).
2. The annual gift tax exclusion amount for gifts to a spouse who is not a United States citizen will increase to \$155,000.
3. The lifetime Federal gift and estate tax exclusion amount will increase to \$11.4 million per person (or \$22.8 million for a married couple). The generation-skipping transfer tax exemption will likewise increase to \$11.4 million (or \$22.8 million for a married couple).

New York has announced that the New York estate tax exclusion amount, commencing January 1, 2019, will be \$5.74 million per person (or \$11.48 million for a married couple).

IRS RELEASES PROPOSED REGULATIONS ON GIFT TAX CLAWBACK

The Tax Cuts and Jobs Act (the “Act”) temporarily doubled the Federal gift and estate tax exclusion amount from \$5 million to \$10 million, indexed for inflation. Under the Act, the exclusion amount reverts to \$5 million, indexed for inflation, after 2025. The drop in the exclusion amount created a risk, under the estate tax computation procedures, that pre-2026 gifts that use up the temporarily increased exclusion amount, though shielded from gift tax, would nevertheless be taxed at death if the donor dies after 2025. Fortunately, on November 20, the IRS issued proposed regulations that, consistent with Treasury Department officials’ pronouncements over the past year, ensure that estate tax on pre-2026 gifts will not be imposed at the donor’s death as a result of the drop in the exclusion amount.

Please contact us if you wish to discuss taking advantage of the temporarily increased exclusion amount. For those clients wishing to take maximum advantage of the

temporary increase, it will be important to use up the annual inflation adjustments as well as the increased base amounts.

MARRIED NEW YORKERS SHOULD REVIEW ESTATE PLANS

New York's estate tax exclusion amount, which, as noted above, will increase to \$5.74 million next year but will remain significantly less than the Federal applicable exclusion amount, rapidly phases out for taxable estates that exceed the New York exclusion amount. Married New Yorkers should review their estate planning documents to make sure their estate plans have the flexibility to avoid the New York estate tax on the death of the first spouse.

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Please feel free to contact us if you have any questions about any of the topics discussed in this Client Alert.

TRUSTS AND ESTATES GROUP

Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any of the members of our Trusts and Estates Group.

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