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April 26, 2019

Dear Clients and Friends:

Last year brought no significant changes to the federal tax code, though in 2018 taxpayers certainly felt the impact of the Tax Cuts and Jobs Act of 2017 (the "2017 Act"). The year 2018 did provide us with important IRS pronouncements, state law changes and other developments that clients should be aware of as part of their estate planning.

### **Federal Estate, Gift and GST Tax Provisions**

In 2019, the lifetime applicable exclusion amount for federal estate, gift and GST tax purposes is \$11.4 million (an increase of \$220,000 from the 2018 levels), representing the basic lifetime exclusion amount of \$10 million plus post-2011 inflation adjustments. This increased exclusion amount and future inflation adjustments will affect beneficiaries under Wills which include disposition formulas tied to the federal or state exemption amounts. Clients with such Wills should consider whether current and future changes to the transfer tax exemption amounts will distort the intended disposition of their estates.

The gift tax annual exclusion for 2019 remains unchanged at \$15,000 per donee – or \$30,000 per donee for married couples who elect to split gifts. The expanded annual exclusion for gifts to a non-U.S. citizen spouse in 2019 is \$155,000 (an increase of \$3,000 from 2018).

### **Preserving 2017 Act Benefits Through Large Gifts**

Certain parts of the 2017 Act, including the increased transfer tax exemptions, are scheduled to lapse at the end of 2025 (the so-called sunset provision). As a result, in 2026 the basic exclusion amount will revert to \$5 million (though the post-2011 inflation adjustments remain in effect). Because of the sunset provision, some individuals may wish to make large gifts (that is, gifts in excess of the pre-2017 Act \$5 million inflation-adjusted exemption amount) before 2026 that lock in the benefit of the increased exemption.

In 2018, the IRS provided good news for those considering such large gifts. New proposed regulations confirm that gifts shielded from gift tax by the \$10 million inflation adjusted exemption amount won't be retroactively subjected to gift or estate tax when the 2017 Act provisions lapse. The proposed regulations thus remove the concern that gift tax

previously avoided might be clawed back if the donor makes additional taxable gifts or dies after 2025.

Given that IRS pronouncement, should you make a large gift that locks in the benefit of the increased exemption? The answer is probably no, unless your estate is likely to exceed the post-sunset, \$5 million inflation-adjusted exemption amount (or twice that amount if you are married). Even then, your pre-2026 gifts must exceed the \$5 million inflation-adjusted exemption amount to get any advantage from the temporarily expanded exclusion. State gift and estate taxes also must be considered.

Those able and inclined to make a large gift can use several estate planning vehicles to enhance the gift's tax benefits or moderate the financial impact on the donor. If you are married, you can fund a trust which benefits your spouse for life (thus indirectly benefitting you) and eventually passes estate tax-free to your children. Generation-skipping trusts (which save estate taxes for your children) and grantor trusts (which permit you to pay the trust's income taxes without gift tax consequences) further increase the tax savings to future generations.

### **New York Estate Tax Developments**

New York's estate tax exclusion for decedents dying on or after January 1, 2019 and before January 1, 2020 is \$5,740,000.

While New York does not have a gift tax, gifts made within three years of death are included in the calculation of the New York estate tax. This provision of law actually lapsed on January 1, 2019, but was reinstated effective as of January 16, 2019 and will apply to gifts made on and after that date and before January 1, 2026.

### **Connecticut Estate and Gift Tax Developments**

Prior to the passage of the 2017 Act, Connecticut amended its estate and gift tax statutes to bring them more in line with their federal counterparts. Under this 2017 legislation, the Connecticut exemptions were to match the federal exemptions in 2020 and future years. In early 2018, Connecticut passed legislation to address the unexpected effects that the 2017 Act would have caused to the Connecticut transfer taxes in 2020.

The 2018 statute provides that the Connecticut exemptions will increase in stages (to \$3,600,000 in 2019; \$5,100,000 in 2020; \$7,100,000 in 2021; and \$9,100,000 in 2022), until they match the federal exemption amounts in 2023 and future years. As a result, the Connecticut exemption amounts will increase (due to inflation adjustments or new federal legislation) or decrease (for example, if the sunset provision of the 2017 Act takes effect in 2026) based on changes to the federal estate and gift tax exemptions amounts.

## **New Jersey Estate Tax Developments**

New Jersey's estate tax (which piggybacked on the federal estate tax) does not apply to the estates of individuals dying on or after January 1, 2018. New Jersey residents should take note, however, that the state's old inheritance tax, which predated the state's estate tax, is still in force. As a practical matter, the inheritance tax will have limited effect, since it does not apply to bequests made to spouses, descendants, or charities. It is relevant, however, to clients leaving significant amounts to more remote relatives (*e.g.*, siblings; nieces and nephews; cousins) or persons not related to them by blood or marriage.

### **Conclusion**

The professionals at the Firm look forward to opportunities to address your questions about this letter, other recent developments and estate planning strategies.

Sincerely,

DAVIDSON, DAWSON & CLARK LLP