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Unified transfer tax credit up again

The amount exempt from the federal estate tax will grow to $11.58 million in 2020, up from $11.4 million in 2019. The same exemptions apply to the federal gift tax for next year. The annual exclusion from the federal gift tax remains at $15,000 per donee, with no limit on the number of such gifts that one donor may give.

—IR 2019-180

COMMENT: Should both partners of a married couple die in 2020, they could protect $23.16 million from the federal transfer tax at death

Final Regs. on estate and gift tax exclusion

In Final Regulations issued in November, the IRS confirmed that, if the amount exempt from federal transfer taxes falls as scheduled in 2026, there will be no clawback of the unified credit for gifts made before that date. Credits allowed when the gift is made will be retained in 2026 and later years in calculating the estate tax.

— T.D. 9884; 84 F.R. 64995-65000

COMMENT: The benefit applies to Deceased Spouse's Unused Exemption (DSUE) as well. For example if John dies in 2020 leaving everything to his wife Mary, she will be eligible for an $11.58 million DSUE. Assume that when Mary dies in 2027 the basic exempt amount has fallen to $7 million. Mary's total exemption from the federal estate tax would be $18.58 million ($7 million plus her unreduced $11.58 million DSUE).

SECURE Act remains on the sidelines

For estate planners, the most consequential federal legislation this year may be the Setting Every Community Up for Retirement Security Act of 2019 (the SECURE Act, H.R. 1994). The bill includes many favors for taxpayers, largely "paid for" by eliminating the "stretch" treatment for inherited IRAs. In general, the inherited IRA would have to be distributed within ten years of the owner's death, not over the beneficiary's lifetime as is allowed under current law. There is an exception for a surviving spouse, and a delay of the distribution period for beneficiaries who are minors.

Eliminating the stretch IRA accelerates the taxes on the retirement savings, shortens the deferral period, and also makes it more likely that the distributions will occur during the beneficiary's high earning years instead of being delayed until retirement when most are in a lower tax bracket.

The SECURE Act sailed through the House on a 417-3 vote, but attempts to get unanimous consent in the Senate have failed. No one has voiced an objection to eliminating the stretch IRA, the disagreements concern 529 plan provisions and special funding treatment accorded to retirement plans of certain community newspapers.

The latest idea in the House Ways and Means Committee is to attach the SECURE Act to a "skinny" tax package aimed at the tax extenders. However, the Democrats want to include expansion of the earned income tax credit and child tax credit in such a bill.

—H.R. 1994, Setting Every Community Up for Retirement Security Act of 2019

COMMENT: If the bill does not pass in 2019, it appears likely to return for consideration in 2020.

Partial SALT cap repeal proposed

The House Ways and Means Committee approved limited changes to the $10,000 cap on the deduction for state and local taxes (SALT). H.R. 5377, the Restoring Tax Fairness for States and Localities Act, would:

• boost the cap to $20,000 for tax year 2019 for marrieds filing jointly;

• repeal the cap for tax years 2020 and 2021;

• restore the $10,000 cap for tax years 2022 through 2025 (the cap sunsets in 2026 already)

• pay for the $184.5 billion cost of this limited repeal by restoring the 39.6% top tax rate.

The vote in the Committee was 24-17 along party lines. In half of the states the average SALT deduction is $10,000 or less, but in the high-tax states it was considerably more. In New Jersey, for example, the average SALT deduction in 2017 was $19,162.

A floor vote on H.R. 5377 is possible in the House before its scheduled adjournment December 20.

—H.R. 5377, Restoring Tax Fairness for States and Localities Act

Comments please

The IRS has asked for comments on a revision to Form 4768, "Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes." The announcement in the Federal Register notes that 18,500 responses are expected. Comments are due by January 27, 2020.

The Service has also asked for comments on the election to treat a revocable trust as part of an estate. Those comments are due by January 21, 2020.

— 84 F.R. 64406-64407

What did TCJA achieve?

Predicting the results of a tax bill involves a lot of guesswork, and analyzing the effects with the benefit of hindsight is not much easier.

Democrats contend that the Tax Cuts and Jobs Act of 2017 did not give much relief to the middle class. Business investment has not increased at the rates predicted, and median family income has risen only $514, not the $4,000 promised.

Republicans respond that the economy has produced 5.1 million more jobs than the Congressional Budget Office projected in 2016, before the tax bill was enacted. Real disposable income per household has averaged $2,577 during the Trump administration, compared to $1,606 during the Obama years. The U.S. economy is outperforming those in the other G-7 countries.

Collected tax revenue has increased steadily because of the growing economy, but federal spending has grown much faster. Thus, the federal deficit continues to grow.

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TI TRUST

Email: mail@ti-trust.com

Web: www.ti-trust.com

Quincy, Illinois
2900 North 23rd Street
Quincy, IL 62305
Phone: (217) 228-8060

Personal Trust

Larry E. Shepherd, CTFA
Executive Vice President
Personal Trust Group

Susan K. Knoche, CTFA
Vice President
Personal Trust Group

Deborah J. Staff
Senior Trust Officer
Personal Trust Group

Teresa F. Kuchling
Senior Trust Officer
Personal Trust Group

Diane McHatton, CISP
Senior IRA Services Officer
Personal Trust Group

Farm Management

Joseph E. Harris, II
Senior Vice President
Accredited Farm Manager
State Certified General R.E. Appraiser

Rick Edwards
Vice President
Accredited Farm Manager
State Certified General R.E. Appraiser

St. Peters, Missouri
4640 Mexico Road
St. Peters, MO 63376
Phone: (636) 939-2200

Mary A. Schmidt, CTFA
Senior Vice President
Personal Trust Group

Robin L. Fitzgibbons
Vice President
Personal Trust Group

Hinsdale, Illinois
15 Salt Creek Lane
Suite 117
Hinsdale, IL 60521
Phone: (630) 986-0900

Larry E. Shepherd, CTFA
Executive Vice President
Personal Trust Group