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NP TRUSTS & ESTATES BLOG | NIXON PEABODY LLP

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What's trending on NP Trusts & Estates

November economic highlights, mistakes executors should avoid, 2019 contribution limits for 401(k)s and IRAs, a retirement round up and more. Here's what's trending in estate planning and wealth management.

Estate and Gift Planning

2019 Estate, Gift and GST tax exemptions announced by IRS

Effective in 2012, the amounts that a U.S. citizen or resident can transfer to another individual free of estate, gift or Generation-Skipping Transfer taxes (collectively, the "transfer taxes") have been set at a base amount, which is subject to an annual adjustment for inflation.

What is the transfer tax exemption for 2019?

On November 15, 2018, the IRS announced that the 2019 transfer tax exemption amount is $11,400,000 ($10,000,000 base amount plus an inflation adjustment of $1,400,000).

The tax rate applicable to transfers above the exemption is currently 40%.

What is the gift tax annual exclusion amount for 2019?

The gift tax annual exclusion allows taxpayers to make certain gifts without eroding the taxpayer's lifetime exemption amount. The gift tax annual exclusion in 2019 remains $15,000 per donee.

What payments are excluded from the annual and lifetime gift tax exemption?

A donor may exclude from his annual and lifetime gift tax exemption all gifts to his/her spouse as long as the spouse is a U.S. citizen, payments of tuition made directly to the donee's educational institution and payments for medical expenses (including medical insurance) paid directly to the donee's medical or medical insurance provider.

There is a separate gift tax annual exclusion for gifts to spouses who are not citizens of the United States: that amount is $155,000 in 2019.

Are the current high transfer tax thresholds permanent?

The Tax Cuts and Jobs Act, which was enacted in December 2017, provided that the current $10,000,000 base exemption amount for the estate, gift and Generation-Skipping Transfer taxes is effective through 2025, and reverts to the $5,000,000 base exemption amount established by the American Taxpayer Relief Act of 2012 on January 1, 2026. Both exemption amounts are subject to an inflation adjustment.

How has the federal transfer tax exemption amount changed over the years?

The transfer tax exemptions (and the highest marginal transfer tax rates) have undergone several sweeping changes in the last two decades. The exemption amounts have been fully unified only since 2011.

Since 1997, the estate, gift tax and Generation-Skipping Transfer tax lifetime exemption amounts have changed as follows:

	Estate & Gift* lifetime exemption:	GST lifetime exemption:
1997	$600,000	$1,000,000
1998	$625,000	$1,000,000
1999	$650,000	$1,010,000
2000	$675,000	$1,030,000
2001	$675,000	$1,060,000
2002	$1,000,000	$1,100,000
2003	$1,000,000	$1,120,000
2004–2005*	$1,500,000	$1,500,000
2006–2008*	$2,000,000	$2,000,000
2009*	$3,500,000	$3,500,000
2010*	$5,000,000**	***

2011	$5,000,000⁑	$5,000,000
2012	$5,120,000	$5,120,000
2013	$5,250,000	$5,250,000
2014	$5,340,000	$5,340,000
2015	$5,430,000	$5,430,000
2016	$5,450,000	$5,450,000
2017	$5,490,000	$5,490,000
2018	$11,180,000⁑⁑	$11,180,000
2019	$11,400,000	$11,400,000

Notes:
** Between 2002 and 2010, the lifetime exclusion for gifts was capped at $1,000,000.*
***In 2010, estates had the option to choose between a "no estate tax" system that afforded limited step-up in tax cost for the decedent's assets, or a $5,000,000 federal estate tax exemption with full step-up in tax cost.*
****In 2010, the GST tax exemption was $5,000,000, but the GST tax rate was 0.*
⁑ The American Taxpayer Relief Act of 2012 set a base amount of $5,000,000, subject to inflation.
⁑⁑ The Tax Cuts and Jobs Act set a base amount of $10,000,000, subject to inflation; the Act provides that the base amount sunsets and reverts to prior law effective January 1, 2026.

What does this mean for you?

The changing landscape of the federal transfer taxes has led to challenges and opportunities in estate planning. In view of the recent changes and the scheduled sunsetting of the estate, gift and Generation-Skipping Transfer tax exemption amounts, please consult with your Nixon Peabody LLP attorney about your estate plan.

— *Sarah M. Richards*

Proposed IRS regulations issued to address when lifetime exemption differs from estate exemption

The Tax Cuts and Jobs Act of 2017 (TCJA) provided for a substantial increase in the estate and gift tax exclusion amount, effective for the years 2018 to 2025. The TCJA did not specify whether taxpayers who made gifts during this eight-year period would enjoy the benefit of the higher exemption levels after 2025, or clarify other technical issues.

On November 21, 2018, the IRS issued proposed regulations that provide that there will be no "clawback" imposed upon taxpayers.

What would happen under the proposed regulations?

Under the TCJA, the exclusion amount used to compute federal and estate gift taxes increased to $10,000,00 (as adjusted annually for inflation; $11,400,000 in 2019) and will revert to $5,000,000 (as adjusted for inflation) on January 1, 2026.

The proposed regulations provide that gifts made during 2018 through 2025 in excess of the reversion amount are sheltered from the estate tax. There are other technical corrections sheltering certain pre-2018 gifts.

What is the plan for the proposed regulations?

IRS has invited public comments on the proposed regulations and has scheduled a public hearing on March 13, 2019.

The proposed regulations will not take effect until the final regulations are issued.

— Alexandra P. Crean

Estate Administration

What documents should you keep after a person's death?

If you are the personal representative or executor of a person's estate, you will need to sort through the deceased person's belongings and distribute his or her personal property to the people named in the deceased person's will or a separate personal property memorandum.

While certain items of a deceased person's belongings, such as jewelry, photographs, paintings, silverware, china and furnishings, may be more straightforward to distribute because they are items that family members would like to receive due to monetary and sentimental value, other items, such as financial statements, insurance policies, utility bills and tax returns, may be less straightforward.

What documentation should be kept?

As estate administration attorneys, we recommend that the following documents be kept:

- Original birth and death certificate (both for the deceased person and any predeceased spouse);

• Original marriage certificate, prenuptial agreement and decree of divorce;

• Original stock, bond and other asset ownership certificates;

• Income tax returns from the past three years and supporting documents (e.g., Form W-2, Form 1099, Form 1099-R, receipts for charitable deductions, etc.);

• Gift tax returns;

• Estate tax returns for a predeceased spouse;

• Check registers, bank account statements, retirement account statements, credit card statements, medical statements and utility bills for the year of death (and for any prior year for which the decedent has not filed an income tax return);

• Retirement plan documents (e.g., pension paperwork, annuity contracts, etc.); and

• Insurance documents (life insurance policy, homeowners' insurance policy/umbrella coverage, etc.).

What to do if you are unsure if a document should be kept?

As a general rule, if a document that is not named on the above list looks important, it is better to save it than throw it away. If you are unsure about whether you should keep a particular document, you should send it to your estate administration attorney who can review it and advise you on how to proceed.

How long should these documents be kept?

With the exception of birth certificates, death certificates, marriage certificates and divorce decrees, which you should keep indefinitely, you should keep the other documents for at least three years after a person's death or three years after the filing of any estate tax return, whichever is later.

What should be done with the remaining documentation?

Once you sort through the deceased person's papers and set aside the above documents, you may be left with a pile of papers. Generally, it is a good idea to shred documents that have any personal or financial information on them to lessen the risk of identity theft.

If you do not have a shredder or the volume of papers is such that it would be impractical to shred them at home, you can hire a document management company to pick up the papers and securely shred them at an offsite facility. The cost of hiring a document management company is generally a reimbursable expense of the estate.

— *Alexandra P. Crean*

Executors: avoid making these mistakes

Even the best-laid estate plan can leave an executor overwhelmed by the amount of work involved in administering an estate. An informed executor is better able to navigate this process. Listed below are common mistakes executors make.

Not keeping accurate accounting records. An estate becomes its own entity, with its own tax ID, upon the decedent's death, and should have its own bank account for financial purposes. Executors should not comingle personal funds with the estate. The executor has a duty to account for the estate's cash flow. Consider using a computer spreadsheet or bookkeeping software for larger estates as a checkbook register may not be sufficient.

Not picking up the mail. Have the post office hold the mail (or have it forwarded) so you don't miss important pieces of mail. A growing stack of mail at the decedent's residence may be an invitation to criminals and vandals that the premises are vacant and unattended.

Losing track of tangible assets. As soon as possible, take an inventory of the deceased person's assets and personal belongings to get an account of the entire estate. Having a record of these assets can help ensure that valuable items don't disappear.

Paying bills too quickly. Understand the priority of payments that need to be made. A spousal or child award, if warranted, takes priority over creditors. Paying creditors too soon, or in the wrong order, may leave insufficient resources to pay taxes, for which the executor may be liable.

Making distributions too early. Paying the beneficiaries before paying the taxes and settling with creditors may leave insufficient resources should unexpected claims arise.

Mishandling real estate. Real estate must be secured, insured and properly maintained. If the property is to be sold, obtain an appraisal and estimates for any needed repairs or improvements as quickly as possible so the property can be brought to market promptly.

Underestimating the time commitment and fiduciary responsibilities. Filing life insurance claims, opening bank accounts, picking up and sorting through the mail, overseeing the preparation and filing of income and estate tax returns and contacting beneficiaries all takes time.

Expecting the (probate) process to be quick. In Illinois, for example, a probate estate typically takes a minimum of one to two years to complete its administration. Each jurisdiction has its own set of rules so understanding your jurisdiction's probate procedures will leave few, if any, surprises.

Not managing beneficiary expectations. Executors must avoid making promises they can't keep. Understanding the administration process, overall timeframe and keeping open communications with the beneficiaries puts everyone on the same page.

Not asking for help. Seek counsel from knowledgeable professionals (i.e., estate and trust attorneys, tax accountants, real estate brokers) who are experienced in estate administration and tax matters and can provide the executor with proper guidance. The last undertaking an executor wants or needs is lawsuit.

— *Mary Ford*

Wealth Management

Market Pulse: November Economic Highlights

What's happening: highlights from the NP Investment Team

The equity markets continued on their wild ride in November with the S&P 500 climbing 3.5% in the first week of the month which was quickly followed by a 7% pullback. The chart below breaks down the key drivers of the market's action over the past few months. Please let us know if you have any questions and if you would like to discuss these issues in further detail.

Drivers	Commentary
Fed Rate Hikes	Fed Chairman Powell delivered hawkish commentary in October raising fears that the Fed will overshoot and prematurely end the current business cycle. Consensus hikes for 2019 increased from 2 to 3–4.
Weak Housing Data	Data over the last few months indicate a deceleration and NAHB Housing Index showed sharp decline in November—decline was broad based, evidence that rake hikes are starting to hurt.
Oil	WTI Oil down 30% from peak in October—while good for consumer, a headwind to energy companies and their capex budgets.
Credit Spreads	Credit spreads have widened—again increased rates are starting to hurt.
Peak corporate margins	2nd derivative concerns more in focus despite strong 3Q earnings season. Increased uncertainty around trade impacts exacerbating concerns. 2019 EPS estimates now being revised slightly lower.
Negative Corporate headlines	Apple and Facebook are big and important names that drive sentiment in the ever important FAANG sub-sector. Increased concern around Apple's iPhone

	sales/saturation as well as change in disclosures and Facebook's tensions with regulators have weighed on the market.
Weaker Global Macro data	German and Japan GDP declined in 3Q. China GDP slowed to 6.5% (expected). Yes, a few one-off hits, but the direction is slower, which only intensifies anxiety around U.S./China trade tensions.

Leaders and laggards: What's up and down in the U.S. stock market?

ECONOMIC SECTORS	NOVEMBER THROUGH 11/28/18	YEAR-TO-DATE 2018 (THROUGH 11/28/18)
Energy	-2.54%	-9.12%
Health Care	5.37%	13.12%
Consumer Discretionary	2.33%	8.41%
Information Technology	-2.22%	7.46%
S&P 500	1.18%	2.62%
Industrials	2.43%	-5.65%
Consumer Staples	0.83%	-2.73%

Stock market leadership has shifted since the September 20, 2018, high with defensive and communication services sectors outperforming while the commodity sectors, industrials, financials and technology have lagged. This is similar to the sector reaction experienced in 2015–2016 market correction as investor confidence became more fragile.

Click here for more information about NP's investment capabilities.

— NP Investment Team

2019 contribution limits for 401(k) and IRAs

The Internal Revenue Service released the annual limits for contributions to retirement plans in 2019.

401(k), 403(b), most 457s and Thrift Savings plans

The annual contribution limit for 401(k), 403(b), most 457 plans and the federal government's Thrift Savings plan increased to $19,000 for 2019.

Individuals aged 50 and over can contribute an additional $6,000 to their 401(k), 403(b), most 457 plans or the federal government's Thrift Savings plan as a catch-up payment.

IRAs

The annual contribution limit for IRAs increased to $6,000 for 2019, which is the first increase since 2013.

The additional catch-up contribution amount for individuals aged 50 and over, however, remains at $1,000 for 2019.

— *Mary-Benham B. Nygren*

Retirement round up

Discussing one's retirement plans is typically a topic of conversation among older adults but retirement planning should begin when one is a young adult and continue throughout one's working career.

Importance of retirement planning

When in your 20s, saving for your retirement is likely the last thing on your mind. There's time to think about that later, but that is not necessarily the case. The sooner retirement planning starts, the more likely you will be able to retire when and how you want.

What is the power of compound interest? Why does it pay to start saving for retirement now?
The 401(k): not your grandparent's pension plan
Just married! It's time for a financial check-up

Saving for retirement

It's no secret that one of the keys to securing your financial future is increasing your savings rate. The challenge is finding ways to do so and getting started.

How can I increase the amount I'm saving for my financial future?
Five ways couples can get ahead for retirement
Will you be ready for retirement?
IRAs: what you should know
A Roth IRA can be more useful than you think

Planning your retirement assets

A successful investment program begins with clear goals and an understanding of the fluctuation in value that is associated with the goals. With retirement investments, it is also important to maintain a longer-term perspective when evaluating performance results.

Taxable, tax-deferred and tax-free accounts: What's the difference?
How should I monitor my investments?

Retirement is on the horizon

Retirement signals a new chapter of your life. Like every other chapter in your life, you need to enter it as prepared as possible.

Retiring soon? Add these items to your to-do list
Rollovers of retirement plan and IRA distributions

Benefiting others with retirement assets

Designating a beneficiary of your retirement assets will allow someone else to receive the benefit of the retirement assets that were not used by you during your lifetime. It is also possible for you, during your lifetime, to help others start their own retirement nest egg.

Designating beneficiaries — avoiding surprises in your estate plan
Gifting via a Roth IRA

— Mary Ford, A. Christine Tshudy, Trusts and Estates Editorial Team, Jo-Ann Silva Martin

Tax-exempt organizations: federal tax status and filings are online

The IRS's online Tax Exempt Organization Search ("TEOS") allows one to determine a tax-exempt organization's federal tax status as well as review copies of the organization's filings. Specifically, TEOS provides information on:

- Tax-exempt organizations eligible to receive tax-deductible charitable contributions
- Revocation of an organization's tax-exempt status
- Copy of the IRS tax-exempt determination letters issued beginning January 1, 2014
- Copy of the organization's Form 990
- Listing of organizations that filed a Form 990-N (gross receipts less than $50,000)

This online tool is a helpful resource for those wanting to confirm an organization's tax-exempt status, review an organization's prior donation information and the like.

— *Mary-Benham B. Nygren*

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