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Estate Planning Update October 2016 - New Jersey to Repeal Its Estate Tax

On October 14, Gov. Christie signed a new law that will remove New Jersey from the top of the list as one of the worst states in which to die, and that may give pause to many New Jersey residents seeking to establish their domicile elsewhere. With the new law, New Jersey decedents who die during 2017 will not be subject to New Jersey estate tax unless their taxable estates are greater than \$2,000,000. Beginning with deaths occurring on January 1, 2018, the New Jersey estate tax is repealed. Those New Jersey decedents dying in 2016 with estates exceeding \$675,000 will remain subject to New Jersey estate tax. Further, the federal estate tax will continue to apply to estates greater than the federal exemption amount, currently \$5,450,000 and scheduled to increase each year based on inflation.

The genesis of the new law is the need to replenish New Jersey's Transportation Trust Fund, and its main tax, an increase of the gas tax by \$.23 per gallon, will be used to maintain New Jersey's transportation infrastructure. The changes to New Jersey's estate tax law are one of the compromises being made in exchange for the increased gas tax.

Although the New Jersey estate tax is on its way out, New Jersey continues as one of six states to impose an inheritance tax on transfers from a decedent to a beneficiary. The New Jersey inheritance tax is based on the relationship between the decedent and the beneficiary receiving assets from the decedent. Qualifying charities and Class "A" beneficiaries are exempt from the inheritance tax. Class "A" beneficiaries include a spouse or civil union or domestic partner, lineal ancestors, descendants, and stepchildren. The rate of tax imposed on transfers to other individuals depends on the "Class" assigned to that beneficiary. The inheritance tax excludes the transfer of certain retirement benefits and life insurance paid directly to a beneficiary or trust, but is imposed on gifts/transfers that occur within three years of death.

The new law will have no impact on nonresidents who own real estate or tangible personal property in New Jersey. Nonresidents are not subject to New Jersey estate tax but are subject to New Jersey inheritance tax. The new law makes no change in the taxes to which nonresidents are subject. If a nonresident plans to leave New Jersey real estate to someone other than a qualifying charity or other Class "A" beneficiary, the nonresident should explore planning opportunities to convert the real estate to intangible personal property, such as an interest in a partnership or limited liability company, which would not be subject to New Jersey inheritance tax.

The estate tax repeal does not eliminate other issues to consider during the planning process. New Jersey death tax waivers are still required to transfer certain bank accounts, brokerage accounts, and securities of a New Jersey resident after death. Obtaining tax waivers is becoming a major administrative issue in New Jersey and can substantially delay access to cash and transferring inherited assets to the rightful beneficiaries. Because the tax waiver requirements do not apply to assets held in a decedent's revocable trust, creating and funding a revocable trust is a strategy that should be evaluated during the estate planning process.

If your estate plan includes a bequest tied to the New Jersey estate tax exemption (or the amount that could pass free of federal or state estate tax), you may wish to revisit your plan to be sure it continues to carry out your wishes. It is important to keep in mind, however, that while estate taxes may have played a significant part in creating an estate plan that involves trusts, other factors – such as second marriages, young or disabled beneficiaries, death tax liens, or creditor concerns – continue to justify the importance that trusts play in a solid estate plan.

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