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THE E.P. EXPRESS

FOS's Estate Planning Newsletter

An ounce of prevention. . .

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CELEBRATING 60 YEARS

PLAN NOW FOR POTENTIAL FUTURE REDUCTION OF LIFETIME TAX EXCLUSION

As described in this issue's *Estate and Gift Tax Exclusion Portability: Big Tax Savings For Spouses,* the 2022 lifetime federal estate and gift tax exclusion is $12.06 million per person and $24.12 million for married couples. Since the exclusion is indexed by inflation, as of now, these numbers will increase each year through 2025. January 1, 2026, however, is another matter.

Absent new federal legislation, the federal lifetime exclusion will revert to $5 million per person (adjusted for inflation) on January 1, 2026 (around $7-8 million in 2026 or $14-16 million for married couples) at current inflation levels.

This is because, in 2017, Congress temporarily increased the exclusion to $10 million per person, adjusted for inflation, through December 31, 2025. The intended reversion back to $5 million (adjusted by inflation) has raised many issues and created the opportunity for important estate and gift tax planning.

For example, a person might make completed gifts before December 31, 2025 that would fall within the lifetime exclusion ($12.06 million in 2022 and $12.92 million in 2023) when made. What are the tax implications if that person dies on or after January 1, 2026, when the exclusions revert to $5 million, and the deceased's prior gifts exceed that amount?

Would these completed gifts be "clawed back" into the deceased's estate and be subject to tax?

And what if a gift is not completed until after the exclusion lowers in 2026, such as a gifted promissory note that matures in 2027? Or if the decedent retained a life interest in gifted property? Would these gifts lose their tax exclusion status?

In 2019, the Treasury Department released final rules creating "anti-clawback" rules for completed gifts made between 2018 and 2025 that were free of gift tax when made.

These rules, however, did not distinguish between gifts which are not completed by January 1, 2026 or in which the donor has not relinquished all interest, and gifts which are fully completed by that date and in which the donor has no interest.

Plan Now, cont. on pg. 2

ANNE HECHE TRAGEDY HIGHLIGHTS NEED FOR ESTATE PLANS

Anne Heche's death was a tragedy on many levels.

The divorced actress left behind a son, Atlas, aged 13 and his half-brother, Homer, aged 20. Aside from her family's bereavement, her death left her estate in chaos.

Heche, like too many of us, apparently had no formal will or trust.*

As a result, Heche's adult son, Homer, petitioned the court to appoint him administrator of her estate and to appoint a third-party guardian for his minor brother, Atlas.

Most states have laws as to who has priority to be appointed an administrator (i.e. in Wisconsin, Personal Representative), where there is no will.

Administering an estate, especially where assets may not be organized or itemized, is a heavy burden for anyone.

The burden would be even heavier for an unseasoned 20-year-old.

This is particularly true for Heche's estate, which will likely be named a defendant in multiple lawsuits over the single car crash which resulted in her death.

While the crash may have been a surprise, Heche's eventual death was foreseeable, as it is for us all.

Heche could have saved her grieving family uncertainty, frustration, and money, by creating a formal estate plan.

Heche could have named a trusted and financially knowledgeable person as administrator or trustee, acted to avoid probate, and established a distribution schedule for her children to receive funds from her estate.

Instead, in 2011, when Heche and her ex-husband were dating Heche, via

Anne Heche, cont. on pg. 3

ESTATE AND GIFT TAX EXCLUSION PORTABILITY: BIG TAX SAVINGS FOR SPOUSES

Individuals have a lifetime federal estate and gift tax exclusion - amounts which will not be taxed upon a person's death.

The 2022 exclusion is $12.06 million per person and $24.12 million for married couples.

The exclusion, which is indexed for inflation, is scheduled to increase in 2023 to $12.92 million per person and $25.84 million for married couples.

Amounts over the exclusion are subject to an estate/gift tax of 40%.

Most people don't pay estate taxes because the exclusion is so high. What happens to a decedent's unused portion?

An unmarried person's exclusion cannot be carried over to another person.

For married couples, however, "portability" allows the deceased spouse's unused exclusion ("DSUE") to carry over to the surviving spouse.

This is particularly important for those spouses who own all their property jointly, such that when one spouse dies, the surviving spouse automatically becomes the property's sole owner.

It is equally important where both spouses' estate planning documents convey their property to each other at death.

Transfers between spouses at death are not subject to the federal estate tax. But when the surviving spouse dies, that estate is taxable, subject to exclusion and portability rules.

So, assume you have an estate worth $20 million, and that upon your death in 2022, your $20 million estate passes to your spouse, whose own estate is worth $2 million.

A Federal Estate Tax Return will be required, and your spouse will receive your $20 million federal estate tax free.

When your spouse dies, the spouse's $22 million estate will be subject to tax.

However, the spouse will have your carryover estate tax exclusion of $12.06 million, if portability was elected at your death, plus the spouse's own exclusion (depending on the exclusion amount in the year of death and whether any was used).

Under current law, with portability, your spouse's estate would then have no federal estate tax if you both die in one of 2022, 2023, 2024 or 2025.

Starting in 2026, the current exclusion amount is expected to "roll-back" to $5.0 million per person, increasing for inflation thereafter and in our scenario would result in estate tax being paid. Huge potential savings under current law.

These savings, however, do not automatically occur. Portability must be formally elected.

Generally, the estate of the first spouse to die must file an estate tax return, and elect portability on that return, within nine months of the first spouse's death. If needed, the estate can apply for a six-month extension.

Tax Savings, cont. on pg 3

Plan Now, cont. from pg. 1

The Treasury Department has now issued proposed final rules clarifying that the "anti-clawback" rules apply only to completed and fully relinquished gifts, and that incomplete or interested gifts will be subject to the lower exclusion.

The proposed rules create an 18-month lookback which, absent exceptions, provides gifts can be generally clawed back even after a person relinquishes their full interest in a gift, unless the interest was relinquished over 18 months before the donor's death.

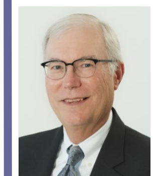
This proposed rule creates inconsistency among types of transfers, as there is a similar pre-existing 3-year-rule applying to certain types of transfers as well.

Both rules attempt to curtail abusive transfers where a donor of property fails to part with transferred property.

The proposed rules do contain a *de minimus* provision, under which clawback will not occur if the value of the taxable part of a transfer, determined as of the date it was

Plan Now, cont. on pg. 3

FOS's ESTATE PLANNING ATTORNEYS



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Allan T. Young

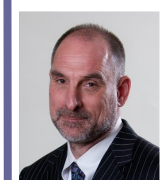
A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

Al is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is a past Chair of the Wisconsin Bar Association's Taxation Section.

Al is a former Chair of the Milwaukee Bar Association's Taxation Section.

Al is a member of WICPA's State Tax Committee and the Waukesha County Estate Planning Council.



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Gregory J. Ricci

Greg worked at the Big 8 Arthur Andersen accounting firm before joining FOS. He is a CPA.

Greg served on the Board of the Wisconsin Bar Association's Taxation Section.

He also served on the American Bar Association's Fiduciary Income Tax Committee.

Greg is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is also a member of the Milwaukee Estate Planning Forum.

FOS Attorney

Jamie B. Barwin

Jamie is a CPA and an attorney who joined FOS after practicing law in both Michigan and Illinois.

Jamie worked in Big 4 accounting firms in the areas of taxation, audit and mergers & acquisitions.

Jamie has significant legal and accounting experience working with high net worth families and individuals.

SHOULD YOU SELL YOUR PROPERTY NOW OR LATER?

Estate plans are primarily known as the means to distribute your property upon your death to your chosen beneficiaries.

Estate planning, however, does not end with the drafting of a will, trust and related documents.

Estate planning is a continuing process which extends beyond the questions of "who gets what" from your estate.

One important issue involves the capital gains taxes which can accrue from the sale of property such as real estate or stocks.

Let's say, for example, that you are a single person thinking of selling your primary residence, in which you have lived for many years, perhaps for a smaller residence.

Let's also say that you bought the house for $100,000, you put another $100,000 in capital improvements into it over the years, and the house is now worth and can be sold for $500,000.

If you sell your house now, you would be subject to long term capital gains tax on $300,000, the difference between the sales price of $500,000 and your adjusted basis of $200,000 (the purchase price plus capital improvements).

If you are single, you have a personal residence exclusion of up to $250,000 of that gain, which we will assume you qualify for ($500,000 if you file a joint return with your spouse).

So, $50,000 of the gain, assuming no other capital losses, would be taxable to you as a result of the sale.

Capital gains taxes vary by income, but in 2022 long-term rates can go as high as 20%.

Let's also say that alternatively you would not mind keeping the house until you die.

Then, your daughter, who loves the house and would like to live in it, could inherit the home as part of her share of your estate.

Assuming no other capital improvements and the house's value remains stable, when your daughter inherits the house after your death, her adjusted basis would not be $200,000, as you have during your life.

Instead, her adjusted basis would be $500,000, the home's value at your death.

That is because those inheriting most types of property of a decedent receive a "stepped-up basis."

This means that their basis is the value of the property at the time they inherit it.

In that case, if your daughter sells the inherited home after a few years, she would only have to pay tax on the amount received for the home over $500,000.

A significant tax savings.

These savings are even bigger for Wisconsin married couples who realize a *double* step-up in basis.

In other words, they receive a full increase to date of death value, after the death of *each* spouse.

Whether you hold or sell your property, of course, should not be guided solely or, depending on your circumstances, primarily by tax considerations.

Nonetheless, whether to sell property now or hold it until later is one example of the complexities of and continuing long-term planning required for an effective estate plan.

Your FOS estate planning attorney can help you understand the tax and other implications of the alternatives available to you.

That will help you be confident in the estate plan which you create.

Plan Now, cont. from pg. 2

made, is 5% or less of the transfer's total value.

The proposed rules also confirm that the rule does not apply to charitable and marital deductions, as those are not subject to the exclusion in the first place.

Fully utilizing the current exclusion amount comes with uncertain risk that should be considered.

Your FOS attorney can inform you of these planning opportunities as well as the risks.

Tax Savings, cont. from pg. 2

Notably, in July 2022, the IRS issued a new revenue procedure (Rev. Proc. 2022-32), allowing the portability of a deceased spouse's unused exclusion to be elected under certain circumstances as long as five years after death.

Portability is one of many issues involved in a comprehensive estate and probate planning process.

Your FOS estate planning and probate attorney can work with you on a plan to minimize estate and other taxes.

Anne Heche, cont. from pg. 1

email, allegedly named him as Atlas' guardian and administrator of Heche's estate, directing him to "raise" and "giv(e)" her assets to her children.

Her ex-husband now claims he should be administrator of the estate. The email did not comply with California's statutory will attestation requirements.

Relations between Homer and his ex-stepfather are strained, which would complicate any estate administration.

While Homer has been appointed administrator, this is only the beginning.

Estate administration can be difficult under the best of circumstances. Don't be like Anne Heche. Create and/or update your estate plan today.

*Anne Heche's email to ex James Tupper from 2011 with her 'final wishes' is revealed | Daily Mail Online; Anne Heche died without will, son Homer seeks control of estate (pagesix.com)

*Picture from CNN.com

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IN THIS ISSUE

DON'T FORGET ABOUT GIFTING THIS HOLIDAY SEASON

As described in this issue's *Estate and Gift Tax Exclusion Portability: Big Tax Savings For Spouses,* individuals have a lifetime federal estate and gift tax exclusion, consisting of amounts which will not be taxed upon a person's death.

Amounts over and above the exclusion amount will be taxed at a rate of 40%.

The 2022 exclusion is $12.06 million per person and $24.12 million for married couples.

The lifetime exclusion will be increased for 2023 to $12.92 million per person.

The lifetime exclusion is double that figure for married couples.

While these amounts seem huge, it could be easy to chip away at these exclusions through gifts made to family, friends, and charities throughout your life.

For example, amounts gifted during one's lifetime over an allowable amount reduce a person's remaining lifetime exclusion dollar-for-dollar.

This could reduce the lifetime exemption in a way adversely affecting your estate's federal estate tax liability.

So how can you make gifts during your lifetime that don't eat away at your lifetime exclusion?

For qualified medical and educational expenses, you can gift their payment, without using your annual or lifetime gift and estate tax exclusions, by *directly* paying qualified expenses on behalf of another.

For most other gifts, you can avoid the lifetime exclusions in 2022, by keeping your gifts to each person at or below $16,000.

The $16,000 annual exclusion applies to each gift to each individual recipient.

As a result, you can gift $16,000 to as many different individuals as you want without reducing your lifetime exclusion.

In addition, the $16,000 maximum applies to each person making a gift, even to the same recipient. Accordingly, your spouse can double your impact by each giving $16,000 to the same person.

The annual gift tax maximum is scheduled to increase to $17,000 for gifts made in 2023.

Annual gifting up to the statutory maximum is an often overlooked but a tried-and-true method of passing wealth to others without tax consequences.

A planned giving program may be a good path for individuals wanting to reduce their estates without also using their lifetime gift and estate tax exclusion.

Your FOS estate planning attorneys can help you set up such a program. They can provide you with information even if you just wonder what tax impact your contemplated gifts will have.

So, as the holiday season approaches, remember your $16,000 annual exclusion and gift, gift, gift!