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Planning in a Pandemic: Pertinent Pointers for Estate Planning in 2021

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Topics

- 2021 Exemptions/Rates
- Crystal Ball Gazing
- SECURE Act
- CARES Act
- Remote Notarization and Witnessing
- Illinois Trust Code
- Miscellaneous Recent Developments

2021 Exemptions/Rates

		2020	2021
1.	Estate/Gift Tax Exemption	$11.54M	$11.7M
2.	Top Estate/Gift Tax Rate	40%	40%
3.	GST Exemption	$11.54M	$11.7M
4.	GST Flat Rate	40%	40%
5.	Illinois Estate Exemption	$4M	$4M

2021 Exemptions/Rates Continued

		2020	2021
6.	Illinois Top Estate Tax Rate*	16%	16%
7.	Gift Tax Annual Exclusion	$15,000	$15,000
8.	Annual Exclusion – Gifts to Non-U.S. Citizen Spouse	$157,000	$159,000
9.	Trust/Estate Income Tax Top Rate Threshold	$12,950	$13,050
10.	Special Use Valuation – Limit on Decrease in Value of Property	$1,180,000	$1,190,000

Crystal Ball Gazing

- American Families Plan – Tax Raisers
  - Top Individual Rate – 39.6%
  - Capital Gain/Qualified Dividends – 39.6% for Taxpayers >$1M
  - No Like-Kind Exchanges for gains >$500,000
  - Step-Up in Basis of Death
    - Eliminated except for $1M (single) or $2M (married)
    - Relief for family-owned farms and businesses
    - Deemed Realization at Death for non-charitable bequests?
  - Nothing on lowering estate/gift/GST exemption or increasing estate/gift/GST tax rate

Crystal Ball Gazing

- Possible Lower Estate/Gift/GST Exemption for 2021
  - Effect
  - Planning
- Recycled Democratic Wish List
  - Lower Exemption/Higher Rates
  - Eliminate FLP Discounts
  - GRAT changes-minimum term, minimum gift
  - Demolish Grantor Trusts
  - Limit Annual Exclusion Gifts to Trusts
  - Eliminate Dynasty Trusts

SECURE Act

- "Setting Every Community Up for Retirement Enhancement"
- Effective December 31, 2019, but imposes new rules for deaths prior to that date
- Applies only to curtained defined contribution plans and IRAs – not defined benefit plans

SECURE Act (cont.)

- Required Beginning Date ("RBD") changed from 70.5 to 72
  - Qualified Charitable Distributions still begin at 70.5 – maximum is still $100k with a recapture of any QCDs made with contributions that were deductible
- You can now contribute to Traditional IRAs after age 70.5 or 72
- Types of Beneficiaries
  - Designated Beneficiary ("DB") (Individuals, See Through Trusts)
  - Eligible Designated Beneficiary ("EDB")
    - Surviving spouse
    - Minor child of participant
    - Beneficiary with disabilities
    - Chronically ill individual
    - Individual who is less than 10 years younger than participant

SECURE Act (cont.)

- Death before RBD
    - Not a DB – Five-Year Rule (same as under previous law)
    - DB – Ten-Year Rule (previously was stretch over life expectancy of DB)
    - EDB
        - Spouse – rollover or stretch over life expectancy
        - Participant's minor child – stretch over life expectancy until majority then ten-year-rule
        - Person with disability – stretch over life expectancy
        - Chronically ill individual – stretch over life expectancy
        - Individual less than 10 years younger – stretch over life expectancy

SECURE Act (cont.)

- Death on or after RBD
  - Not a DB – participant's life expectancy (same as under previous law)
  - DB – Ten-Year Tule (previously was life expectancy)
  - EDB – Same as before RBD (unless EDB is older than participant, then can use participant's remaining life expectancy)
- Issues for plans of participants who died before 2020
  - Payout schedule for IRAs inherited before 1/1/20 remains the same
  - However, when a DB dies, the next beneficiary is subject to the Ten-Year Rule (before would be DB's remaining life expectancy)

SECURE Act (cont.)

- Conduit Trusts (RMDs distributed annually)
  - If primary beneficiary is an EDB, can stretch payments similar to under previous law
  - If primary beneficiary is (1) a DB, Ten-Year Rule applies, or (2) a non-DB, Five-Year Rule applies
- Accumulation Trusts (Trustee discretion to distribute RMDs, benes must be individuals only)
  - More IRS guidance is needed, but it seems that an accumulation trust for a surviving spouse, a minor child or a 10-years or less younger beneficiary will not qualify for stretch payments even if the sole current beneficiary of the trust is an EDB
    - Works for a non-minor child using 10 year payout
  - Accumulation trust will qualify for stretch if it is for the benefit of an individual with disabilities or who is chronically ill, as long as that beneficiary is the sole lifetime beneficiary of the trust
  - Can cause income tax and GST problems

SECURE Act (cont.)

- Charitable Reminder Trusts (CRTs)
  - Five Year Rule applies but CRTs are not subject to income tax
  - IRA is withdrawn within five years and reinvested inside the CRT without income tax
  - Individual beneficiaries can then spread income tax payments over 20 years or more
  - Estate tax charitable deduction for actuarial value of remainder interest

SECURE Act (cont.)

- Miscellaneous changes
  - Penalty-free withdrawal for birth or adoption of up to $5,000
  - Waiver of penalties for Qualified Disaster Distributions up to $100,000
  - Taxable graduate or post-doc stipends may be treated as compensation for making IRA contributions
  - Kiddie tax changed back to be taxed at parents' bracket

CARES Act

- More Retirement Changes!
  - Waiver of RMDs for 2020
    - Includes RMDs that would have been required April 1, 2020 due to participant reaching age 70.5 in 2019
    - No waiver as of yet for 2021
    - If RMD was already taken, there is an option to roll the funds back into the account by August 31, 2020
  - COVID-Related Distributions
    - Penalty waived for COVID-related distributions up to $100,000
    - You or a family member are infected or economically harmed
    - Taxable income spread over three years
    - In some cases, can recontribute to IRA within three taxable year period without rollover/contribution limits

CARES Act (cont.)

- Charitable Contributions
  - Taxpayers not itemizing deductions may take a charitable deduction up to $300 for cash contributions (2020 – below the line, 2021 – above the line)
    - December stimulus package included provisions for up to $600 for married filing jointly
  - Taxpayers itemizing deductions can deduct up to 100% of AGI (previously 60%)
  - Corporations can deduct up to 25% of modified taxable income (previously 10%)
  - Does NOT apply to contributions to DAFs or supporting orgs

CARES Act (cont.)

- Paycheck Protection Program ("PPP") Loans
  - $659 billion in new and increased federally guaranteed PPP loans through the SBA for small businesses to keep workers employed
  - Businesses who keep employees on payroll through pandemic can qualify for PPP loan forgiveness
  - Two-year loans of up to $10million at 1% interest on a first-come, first-served basis
  - Loans can be used to cover payroll costs (excluding individual employee comp over $100k), healthcare benefits, mortgage interest payments, rent, utilities and interest on other debt incurred prior to pandemic
  - Forgiven amount can include principal and interest but cannot exceed the original principal amount
  - Forgiven amounts are not taxable

Remote Notarization and Witnessing

- IL Executive Order 2020-14 authorizes remote notarization and witnessing during the pandemic
    - Two-way audio video communication that must be recorded and saved by the signatory or signatory's designee for three years
    - Witnesses, notary and signatory must attest to being physically present in IL
    - Each page being signed must be shown to and initialed in front of the witnesses and/or notary
    - Signatory must email signed document to witnesses and notary within 24 hours and witnesses and notary must sign and return to signatory within 24 hours of receiving the signed document
    - Fully executed electronic copy treated as original

NEW Illinois Trust Code Effective 1/1/20

- Cite – 760 ILCS 3/101-3/1506
- Replaces Common Law on Trusts and Consolidates Acts Regarding Trusts
- Much of Law Codified-Not Changed
- Applies to:
    - Trusts that become irrevocable after 1/1/20
    - Trustee who begins acting after 1/1/20
- “Grantor Intent” Generally Controls

Mandatory Rules 760 ILCS 3/105

- Notice and Accounting to Beneficiaries Rules
- Trustee Duty to Act in Good Faith
- Designated Representative Rules
- Court's Power to Determine Trustee Compensation
- Court's Overriding Power to Act as Necessary in Interest of Equity

Mandatory Notice and Accounting to Beneficiaries Rules

- 760 ILCS 3/813
- Trustee must notify Qualified Beneficiaries (QBs) of Trust's Existence
    - Within 90 days – all notices
    - Qualified Beneficiaries – current beneficiaries of trust and beneficiaries who would receive trust property upon termination
- Trustee must notify QBs of right to receive copy of trust document
- Trustee must notify QBs of right to receive trust accountings *

Mandatory Notice and Accounting to Beneficiaries Rules

- Trustee must send annual accounting to all CURRENT Beneficiaries
- Trustee must send accounting upon termination to all recipient beneficiaries
- Trustee must notify QB of Trustee contact information, change of trustee, trustee compensation
- Procedure – send out notices immediately
- Drafting-Waive all duties/requirements in Section 813 that are NOT Mandatory

Other Important Changes in ITC

- Basis for judicial modification of trusts expanded (Article 4)
- Decanting Provisions Expanded (Article 2)
    - Can restate existing trust
    - Beneficiary can only object by going to court
    - Eliminated requirement that all current and presumptive remainder beneficiaries must be legally competent
    - Settlor can limit or bar decanting

Other Important Changes in ITC

- Trust Accountings – Statute of Limitations to object to accountings reduced from 3 years to 2 years
- Designated Representative (DR) 760 ILCS 3/307
  - A DR may be appointed to receive notices and information and act for/bind beneficiary until beneficiary attains age 30
  - DR cannot be a trustee
  - Trustee cannot appoint DR

Miscellaneous Developments - Planning Tips

- Use “Excess” Estate/Gift Exemption in 2021
  - Use it or lose it-variations
  - SLATs
    - Beware of Reciprocal Trusts
    - Appointing Property Back to Donor Spouse After Donee Spouse’s Death
- Use “Excess” GST Exemption in 2021
  - GST Nonexempt Trusts – life trusts for children
  - Retroactive GST Allocation Issues
- “Regular” Planning-Lower Interest Rates
  - Loans to Children/Grandchildren
  - GRATs
  - Sales to Grantor Trusts

Planning Tips – Avoiding "Retroactive" Decrease in Estate/Gift Tax Exemption

- Formula Gifts
- Transfer to QTIPable Trust
- Disclaimer of Transfer to Trust
    - Beneficiaries
    - Trustee
- Sale to Grantor Trust→Note Forgiveness
- Rescission

Federal Estate Tax Developments

- Deductibility of Estate/Trust Administration Expenses
    - New "Look-Through" Rule for Excess Deductions in Final Year
- Sale Between Two Grantor Trusts – PLR 202022002
- FLP Case – Nelson v. Commissioner, T.C.Memo 2020-81
- Loan or Gift? Estate of Bolles v. Commissioner, T.C.Memo 2020-71
- State Estate Tax on State-QTIP Trust from Another State
- Closing Letter User Fee – Proposed Regulation

Conclusion

- Brotherly Love – In re Estate of Siedler, 135 N.E.3d 128 (Ill.App.CT.2019)
- PCAP – Volunteers Needed
- Stay Safe – Support St. Jude!