UFT Welfare Fund Retiree Legal Plan

PREVENTIVE LAW GUIDE

A newsletter designed to help guide you through the legality of reality

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Reviewing your estate plan

By David Goldfarb, Esq.

There have been numerous changes in the federal and various state estate tax laws. An estate plan that was designed four or five years ago may not be the best plan today. Below is a summary of some of these recent changes.

The federal estate tax disappeared at the end of 2010. There was much speculation about what Congress would do about the federal estate tax after that.

On December 17, 2010, President Obama signed a law that reinstated the estate tax for estates of decedents dying in 2010 and simultaneously expanded the exemption from estate and gift taxes on a temporary basis.

At the beginning of 2013, these changes were in large measure made permanent. Today, every person has an estate and gift tax exemption up to $5.43 million (this is indexed for inflation and increases most years). That is, a person can leave or give away that amount without incurring any estate or gift tax.

The estate tax rate on large estates is now 45% and also applies to what is called the generation-skipping transfer tax, which is a tax imposed on large gifts and estates that skip a generation. In other words, if you give or leave a large sum of money to a grandchild outright or in trust (in order to avoid having it taxed twice when it goes to a child and then a grandchild), the government would impose an additional tax. The exemption for the generation skipping transfer tax is the same as it is for the federal estate and gift tax – currently $5.43 million or $10.86 million for a married couple.

The new tax law also created a concept called "portability." Under the previous law, gifts or money left to a spouse who is a U.S. citizen were not taxed. However, the spouse could end up with a taxable estate since the deceased spouse's exemption was lost.

Under the new estate tax law, spouses can essentially combine their estate tax exemptions, letting married couples make gifts or have estates that are twice the exemption without owing tax.

So if a person dies and has an unused exemption, the surviving spouse may take advantage of the unused exemption as long as the executor makes an election on the decedent's federal estate tax return allowing the surviving spouse to do so. This "portability" could be lost if the spouse remarries (portability does not apply for the exemption for the generation skipping transfer tax).

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Reviewing your estate

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This new concept of portability, to some degree, might lessen the need for what were called Credit Shelter Trusts in estate plans. Under that concept, an amount was left in a trust that used up the first to die's tax exemption. The trust provided income and certain other benefits for the surviving spouse, even though it used the first spouse's tax exemption. Some Credit Shelter Trusts based on formulas might in fact be bad planning because of the changes in the tax exemptions.

Many states have also updated their estate tax laws. For example, New York state's new law went into effect on April 1, 2014. The exemption under the New York state law will rise as follows:

For Decedents Dying:

4/1/14-3/31/15 . . . .$2,062,500

4/1/15-3/31/16 . . . .$3,125,000

4/1/16-3/31/17 . . . .$4,187,500

4/1/17-12/31/18 . . . .$5,250,000

For all subsequent years, the exemption will be indexed for inflation so that it will equal the exemption from Federal Estate Tax. New York state did not enact portability for its estate tax. Therefore, for New York purposes, Credit Shelter Trusts or other planning techniques might still be necessary for larger estates.

New York state has what is called a "cliff." Under that concept, if the taxable estate exceeds 105% of the exemption amount, the entire estate (as opposed to just the amount over the exemption) is taxed. This can result in a jump to a hefty tax by an estate that is just a small amount over the exemption.

There is possible planning to avoid this. For example, a formula for a small charitable donation in a Will can end up saving a large tax. Some attorneys are calling this kind of provision in a Will a "Santa" clause.

For years prior to 2014, a way to reduce New York estate tax was to make gifts during lifetime. Under the law enacted in 2014 through the end of 2018, gifts made within three years of death are added to the New York taxable estate to determine the New York estate tax.

There are some other issues to consider in estate planning, depending on the state where you live. The U.S. Supreme Court, in United States vs. Windsor, held that the federal Defense of Marriage Act (DOMA), which did not recognize valid same-sex marriages for purposes of federal law, violated the Equal Protection Clause of the Fifth Amendment, and now same-sex spouses wherever married are entitled to all federal benefits previously only available to opposite sex spouses.

This will affect estate planning because (as previously mentioned) there is no estate tax for transfers between U.S. citizen spouses; this opens up a number of planning opportunities.

Depending on your state's laws on same-sex marriage, there will be varying effects on state estate tax laws. In New York, the Marriage Equality Act grants same-sex couples the right to marry and provides them with equal treatment compared to opposite sex married couples.

Another important consideration in estate planning is whether it is important to avoid probate. This is often accomplished by including beneficiaries on most assets or putting assets into revocable living trusts.

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Credit & Loans...

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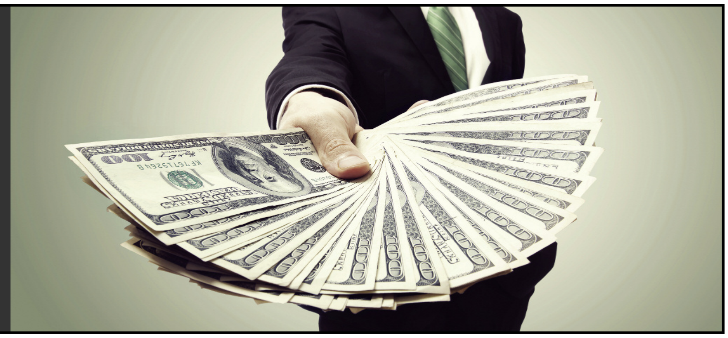

Most businesses require the use of credit to purchase materials, have inventory on hand and pay expenses while waiting for customers to pay their bills. Without credit, the economy would not be able to operate effectively.

Credit is the ability to borrow money, in the form of a loan or pre-approved line of credit. A loan is usually for a defined amount to be borrowed and defined period of time with a defined interest rate.

A line of credit allows you or the business to purchase something now with the promise to pay for it later. The amount that you can borrow can vary up to the maximum approved amount of credit.

The better your credit history/credit score, the easier it is to borrow money and receive a lower interest rate.

Common forms of pre-approved credit are business lines of credit and credit cards.

Whether you borrow money via a loan or pre-approved line of credit, you must pay interest to the lender for the privilege of using their money.

Types of loans

1. Secured Loan: A secured loan involves putting up collateral to secure the loan. A common type of secured loan is when you pledge an asset as collateral to guarantee the repayment of the loan.

If you don't repay the loan, the lender can take or keep the asset that you pledged as collateral. Common examples of this type of secured loan include a home purchase mortgage, home equity line of credit or an auto loan.

There is another type of collateral for a secured loan, which is when you give the lender a personal guarantee for a loan to a business or someone else.

In this instance, if the business or other person defaults on the loan, you are held personally liable for repayment of the loan. This type of loan is frequently used for start-up businesses or those businesses without a credit history.

2. Unsecured Loan: An unsecured loan is one that is not secured by a specific type of collateral or asset. The most common form of an unsecured loan is a credit card, which does not require the borrower to put up a specific asset as collateral.

The lender relies on the borrower's overall ability to repay the loan. However, the interest rates tend to be higher because the loan is unsecured and the lender is taking a greater risk by lending without collateral.

FICO Credit Score

Since lenders are relying on you or your business's ability to repay a loan, most lenders rely on the borrower's FICO credit score and credit history.

There are numerous factors considered in the FICO credit formula, but the largest single factor for individuals is your prior credit history.

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These trusts were often popular in states where probate could be difficult or drawn out (such as Florida). They were also used when people held real property in multiple states (like vacation homes) that could necessitate probate in multiple states.

In states like New York where probate had, until recently, been relatively straightforward, it had been less urgent to avoid probate. However, because of cutbacks in staffing of the probate courts and delays in the process, people may want to reconsider whether it is important to use revocable trusts to facilitate the transfer of property upon death.

In light of a variety of legal changes (especially in estate tax laws), now is a good time for individuals and couples to review their estate plans and consult with their attorney regarding their trusts and wills.

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On-time payment of credit is very important to maintaining a high FICO score. Additionally, the total amount of outstanding credit and number of credit types (such as multiple credit cards, etc.) has a significant effect on your score. A business FICO score of 450 is good. A personal score of 710/720 is average and a score of 750+ is considered good.

Review your credit score
With all of the issues with identity theft and data breaches with major businesses, everyone should review their credit scores on a regular basis. There are three firms that provide credit scoring: Transunion, Experian and Equifax.

To receive your free annual credit score and report, visit ***annualcreditreport.com*** or call toll-free **877-322-8228**. You can also write to **Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5282**.