



## 2016 PRIVATE CLIENTS GROUP ANNUAL CLIENT UPDATE

November 2016

Dear Clients and Friends:

We now have a new President-Elect. Although we cannot be certain what the new Trump Administration will seek to change in the federal tax laws, we do know that during the campaign season President-Elect Trump expressed these intentions with regard to federal estate, gift and income taxes:

### Individual Income Tax:

- Lower the top income tax rate from 39.6% to 33% and eliminate the additional tax on net investment income and the Medicare Tax
- Repeal the Alternative Minimum Tax (AMT)
- Increase standard deduction amounts
- Cap itemized deductions
- Increase the tax on carried interests from a maximum 20% to a maximum 33%

President-Elect Trump's plan for the estate, gift and generation-skipping transfer taxes is far less clear. His tax plan on his official website states verbatim:

The Trump Plan will repeal the death tax, but capital gains held until death and valued over \$10 million will be subject to tax to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed.

There is no further detail on the website about how this plan might be implemented, whether the gift tax will remain in place, or even whether the capital gains tax on appreciated assets will be imposed at death or when the beneficiaries later sell the inherited property. We will have to wait to see what the new President and Congress propose with regard to these taxes and whether any repeal would be immediate or phased-in over a multi-year period such as was the case when President Bush's administration repealed the estate and generation-skipping taxes in 2001.

While these various tax changes may be on the horizon, and could be enacted in some form in 2017, retroactive to January 1, 2017, it is too soon to tell what kind of priority President-Elect Trump and his administration will place on making these changes and whether Congress will be willing to implement them. We will, of course, keep you posted as to any major developments in the federal tax laws which may affect your estate planning. If you have any concerns that a particular potential change may impact your estate plan, you should contact your Cummings & Lockwood attorney as soon as possible.

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## **IRS Proposes Regulations to Restrict Estate and Gift Tax Valuation Discounts for Family-Owned Businesses and Entities**

As reported in several prior annual updates, we have long been expecting the IRS to issue regulations restricting discounts for certain asset transfers to family members and/or trusts for their benefit. The proposed Regulations have now been issued. As posted in our website alert earlier this year, on August 2, 2016, the IRS proposed major changes to the Regulations under Section 2704 of the Internal Revenue Code affecting how interests in family-held entities are to be valued when transferred among family members. If made final, the proposed Regulations would dramatically impact the discounts customarily applied by appraisers to value these interests for gift, estate and generation-skipping transfer tax purposes. Although some of the changes could go into effect as early as December of this year after a public hearing is held on December 1, 2016, it is more likely that they would become effective no earlier than January 1, 2017. If the process is delayed beyond January 20, 2017, when President-Elect Trump takes office, it is not clear if the proposed Regulations would be implemented by the new Administration at all in light of the Trump Tax Plan calling for the elimination of the estate tax and presumably the gift tax as well.

The Internal Revenue Code generally requires property subject to gift, estate and generation-skipping transfer tax to be valued at the price a "willing buyer" would pay for the property. Such hypothetical buyer would not be willing to pay a price equal to the proportionate share of the liquidation value of a family entity if the buyer would not have the power to liquidate his or her interest. Consequently, appraisers traditionally have applied discounts, including discounts for lack of control and lack of marketability, to value interests in family owned entities to reflect the restrictions and delays that a willing buyer of the interest would have in trying to effectuate a conversion of the interest to cash.

The proposed changes to the regulations would require that certain restrictions typically included in normal business organizational documents be disregarded for family-owned entities for purposes of gift and estate tax computations. Essentially, the proposed regulations would require that fair market value be determined without regard to these important factors if the transfer occurs between family members (or trusts for their benefit). Rather, the IRS is proposing that for intra-family transfers, liquidation value should be the value for estate and gift taxes rather than fair market value. The use of the traditional method for determining fair market value would still be acceptable for transfers between non-family members in most circumstances.

Discounts can dramatically reduce the amount of estate tax payable at death and/or the gift tax consequence of gifts or sales to family members or transfers to grantor retained annuity trusts, techniques commonly employed by estate planners to achieve substantial transfer tax savings. The transfer of a minority interest in a family entity allows a taxpayer to take advantage of the market forces which drive down the fair market value of minority interest gifts or sales to family members, facilitating the transfer of wealth to future generations tax-efficiently.

If you are contemplating or are in the process of transferring interests in a family-held entity (corporation, limited liability company, partnership or other business entity) to family members or trusts for family members and the use of minority interest discounts to determine fair market value would be applied by your appraiser, you should assume that such discounts may no longer be available as early as December of this year. Accordingly, you should consider whether such transfers can be effectuated prior to the date when the proposed Regulations become final. If you have questions about how the proposed new Regulations may affect your family's estate planning, please contact your Cummings & Lockwood attorney as soon as possible.

### **Estate, Gift and GST Tax Exemptions and Exclusions in 2016 and Beyond**

The amount exempt from estate and gift taxes is \$5,000,000 indexed for inflation (set at \$5,450,000 for 2016 and expected to increase to \$5,490,000 for 2017) and the taxes remain unified so that the entire exemption can be used during lifetime, or, if unused during lifetime, at death. The GST tax exemption also is now \$5,000,000

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indexed for inflation (\$5,450,000 for 2016 and expected to increase to \$5,490,000 for 2017).

Despite inflation increases, the annual exclusion from gift tax, i.e. the amount that an individual can give to any number of people each year without using lifetime gift exemption or incurring a gift tax, remains at \$14,000 per donee and is scheduled to remain at \$14,000 in 2017. The amount an individual can give to his or her non-US citizen spouse per calendar year is \$148,000 in 2016 and is expected to increase to \$149,000 in 2017.

## **IRA Distributions to Charity**

In December 2015, Congress and the President made permanent the ability of certain taxpayers to transfer up to \$100,000 annually from their IRA account directly to charitable organizations without first having to recognize the distribution as taxable income. Although this has been permissible in years past, prior to 2015 Congress continually renewed or extended the law to allow these tax-free distributions. It is important to note that such tax-free charitable distributions can only be made by those age 70½ or older, cannot exceed an aggregate of \$100,000 in a calendar year, and cannot be made to donor-advised funds, supporting organizations, or private foundations.

## **Connecticut Probate Court Fee Changes - Again**

As we reported last year, the Connecticut Budget Act passed in 2015 included changes to the Connecticut "probate court fees" for the settlement of estates.

All estates of Connecticut decedents must pay a fee to the Treasurer of the State of Connecticut which is calculated on the value of the greater of the Connecticut gross or taxable estate and collected by the probate court. Until June 30, 2015, the fee was capped at a maximum of \$12,500. Effective July 1, 2015, the cap on this fee was removed and the rates used to calculate this fee were increased to a maximum of 0.5% of the Connecticut taxable estate. (Although the fees for estates of \$2,000,000 or less remained the same, estates in excess of \$2,000,000 became subject to higher fees as of July 1, 2015.) Effective July 1, 2016, the cap on this fee was reinstated, albeit at a higher level. The maximum fee for the settlement of a decedent's estate is now set at \$40,000.

Historically, this fee has been more of a tax than a fee as it has been charged on the Connecticut gross or taxable estate whether the assets of the estate fell within the jurisdiction of the probate court or not. It may very well be possible that a challenge of the fee or future legislation will limit the application of the fee to probate property. If that were the case, clients who have successfully transferred most or all of their assets to their Revocable Trusts prior to death may be able to avoid or at least reduce the fee. To be clear, as of right now there is nothing a Connecticut resident can do to avoid or reduce the fee due at death. However, there is no downside to planning for the possibility of a change in the fee structure by moving most or all of one's assets to a Revocable Trust before death.

## **New Connecticut Power of Attorney Law**

On October 1, 2016, the Connecticut Uniform Power of Attorney Act, enacted in 2015, became effective. The new Act expands the scope of powers that can be granted under a Power of Attorney, provides greater oversight of agents acting under the authority of a Power of Attorney and provides more flexibility in designing Powers of Attorney and determining how and when they may be used. In addition, according to a set procedure, the new law requires the acceptance of Powers of Attorney by banks and other institutions to ensure they are not arbitrarily rejected. While Powers of Attorney signed before October 1, 2016 remain effective, if you would like to learn more about the new Power of Attorney Act or would like to review and update your Power of Attorney documents, please contact your Cummings & Lockwood attorney.

## **Florida and Connecticut Both Adopt Fiduciary Access to Digital Assets Legislation**

In 2016 both Florida and Connecticut adopted versions of the Uniform Revised Fiduciary Access to Digital Assets Act. Florida's law became effective July 1, 2016, and Connecticut's law became effective October 1, 2016. This

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means that in both states individuals can now provide that their fiduciaries acting under a Power of Attorney, a Trust or a Will have access to their email, online accounts, electronically stored documents and media (such as photos, videos and music) as well as social media accounts and virtual currency. The law in both states also now provides that such assets can be disposed of by a Will or Trust in much the same way as tangible personal property assets. Equally important, the new law allows residents in these states to prohibit access to any such assets if they are ever incapacitated or after their deaths as well. You may wish to review your preferences with regard to your digital assets with your Cummings & Lockwood attorney if you have any concerns in this regard.

## **New Jersey Repeals Estate Tax But Not Inheritance Tax**

On October 14, 2016, Governor Christie signed a new law repealing New Jersey's estate tax effective January 1, 2018. For deaths in 2016, the estate tax remains in effect with a \$675,000 exemption, and for deaths in 2017 the estate tax remains in effect with a \$2,000,000 exemption. New Jersey did not, however, repeal its inheritance tax, which is a separate tax, with a maximum 16% rate, on inheritances if the recipient is not the spouse, ancestor or descendant of the decedent.

## **Review and Current Status of New York Estate Tax Laws**

In 2014 New York made significant changes to the New York estate tax laws. As a result, New York continues to have no state gift tax and New York's estate tax exemption continues to rise. New York's maximum estate tax rate remains at 16%. The estate tax is now essentially a cliff tax, however, in that the exemption is phased out for taxable estates that exceed the exemption amount, and taxable estates that are more than 105% of the exemption amount will be taxed in full as if no exemption existed. This means that any estate in excess of the exemption amount available for that estate by more than 5% will face a tax on the entire estate and not just the amount that exceeds the exemption. The New York estate tax exemption amount is currently \$4,187,500 and is scheduled to increase to \$5,250,000 on April 1, 2017.

## **Cummings & Lockwood LLC Services**

While the purpose of this letter is to inform our trusts and estates clients and friends about new developments in the transfer tax and estate planning laws, we also want to remind you that we are available to assist you and your family in many areas of your personal and professional lives. Whether representing individual clients, collaborating with family offices, serving as outside counsel to family businesses or establishing private foundations, Cummings & Lockwood attorneys offer a full suite of legal services to meet our clients' diverse needs, as well as deliver personal, responsive service and thoughtful advice to help them reach their goals.

### **Trusts and Estates Services**

Cummings & Lockwood's trusts and estates attorneys provide innovative strategies and solutions to preserve, enhance and transition our clients' wealth. Our services include estate planning, estate settlement, trust administration, charitable giving, and business succession planning, as well as the representation of beneficiaries and fiduciaries.

### **Residential & Commercial Real Estate Services**

Cummings & Lockwood's real estate attorneys provide a variety of services in connection with owner-occupied residences, vacation homes and family compounds, and commercial real estate holdings, including residential and commercial property acquisitions and sales, mortgages, re-financings and foreclosures, 1031 exchanges, construction projects, environmental and land use matters, commercial and retail leasing, real estate developments, real estate tax appeals and REIT transactions.

### **Corporate and Finance Services**

The Firm's corporate and finance attorneys provide experienced advocacy in myriad business transactions and engagements, ranging from straight-forward to complex. Our services include advice and structuring of mergers and acquisitions, loan transactions, equity financing, hedge fund and venture capital investments, formation of

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corporate entities and joint ventures and advice on corporate governance and taxation.

## **Litigation and Dispute Resolution Services**

Our litigation attorneys routinely assist our clients with litigation and dispute resolution matters on a variety of subject matters and claims, including fiduciary and probate litigation, tax disputes, business and corporate entity litigation, real estate litigation and employment law.

## **In Closing**

In closing, with a new President taking office on January 20, 2017, we know there is a significant possibility of federal tax law changes. We also remain cognizant that changes in state laws, taxes and fees can have as much or more of an effect on our clients, their estate plans and their families than federal tax laws and policies. We will, as always, endeavor to keep you informed of any major developments in future updates. Don't forget to check our website: [www.cl-law.com](http://www.cl-law.com).

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In this Update, we have deliberately simplified technical aspects of the law in the interest of clear communication.

Under no circumstances should you or your advisors rely solely on the contents of this Update for legal advice, nor should you reach any decisions with respect to your personal tax or estate planning without further discussion and consultation with your advisors.

In accordance with IRS Circular 230, we are required to disclose that: (i) this Update is not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this Update was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by such materials; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.



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