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Q:
How can I maximize my updated lifetime exemption limits?

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In light of the recent federal tax legislation, several estate-planning techniques may be implemented to take advantage of the new stipulations.

Starting with the new sunset provisions: You should be aware that all changes to the estate tax rules that were implemented in 2018, including the new higher estate tax exemption amounts, are due to expire at the end of 2025 (if not sooner, given the potential for a different political administration or party to control Congress before then).

Recent estimates show that the increased exemption figures under the new law will lower the number of U.S. estates subject to the estate tax to approximately 2,000 (down from 5,000 under the previous code). However, there has never been a more prudent time than now to act upon the new laws, since the following planning opportunities warrant prompt consideration for their ability to lock in those key exemption amounts:

- **Make lifetime gifts:** With the gift and estate tax exemption amounts rising to $11.18 million for individuals and $22.36 million for married couples, utilizing some or all of the higher exemption amounts allows clients to make substantially more tax-free lifetime gifts. This represents an optimal way to help safeguard wealth, as well as any appreciation in value of the asset, from estate taxation. The only caveat is that lifetime gifts do not receive a step-up in basis on the death of the transfer or if the recipient sells the asset.
- **Establish a dynasty trust:** These types of trusts can potentially enable large amounts of wealth to grow free of federal gift, estate and GST (generation-skipping transfer) taxes. The maximum duration of

a dynasty trust varies depending on which state a client resides in; however, more states are permitting these trusts to last for a century or more. For example, a client who has not yet used any of his or her estate tax or gift tax exemption may transfer $8 million to a dynasty trust. Since this figure is below the exemption amount, and assuming the grantor has not previously used the exemption, there is no gift tax due upon the transaction. Furthermore, all future growth and appreciation is removed from a client's taxable estate.

• **Set up a spousal lifetime access trust:** Clients with substantial wealth and a large liquid portfolio–resulting from the sale of a business, for example–can take advantage of this particular type of trust. The spousal lifetime access trust is similar to a bypass trust, as it grants access to income for the needs of a surviving spouse. The trust is funded with a gift while the donor is still alive, as opposed to a bypass trust, which is funded by bequest when someone passes away. The benefits of this trust type are enormous and include the abilities to avoid probate court and to be taxed as a grantor trust (where the tax burden falls on the grantor). These factors effectively allow the trust to grow tax-free and provide significant asset protection from creditors.

Essentially, the new estate tax legislation is offering a limited window of opportunity for clients to lower their taxable estate by making additional gifts and setting up specific trusts that can assist with shielding substantial amounts of wealth. While the above changes are significant, it is paramount to keep in mind that the states will impose their own exemptions and limits for estate taxes. Examples? At the start of this year, New Jersey repealed its estate tax (but not its inheritance tax), while New York is still maintaining its exemption amount of $5.25 million. ●

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ABOUT JAMES L. DINARDO

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