

ARE TRUSTS STILL IMPORTANT?

June 25, 2017



With very few estates now being subject to an estate tax, is there still a need for trusts?

Trusts have played a major role in estate planning since the reemergence of the estate tax in 1916, and the introduction of the generation skipping tax in 1986. Since 2002, however, the estate tax exemption has been at least \$1,000,000 and risen gradually almost every year since, resulting in fewer and fewer estates having to pay taxes. And now, thanks to the “Tax Cuts and Jobs Act of 2017” signed into law by President Donald Trump, the individual estate tax exemption has more than doubled to \$11,180,000 for 2018 (and will increase each year through the end of 2025). With portability, a married couple has an exemption of twice that amount.

While trusts may have less utility as estate tax avoidance tools, they still allow for a multitude of non-tax-related benefits. More and more, planners are setting up trusts for

asset protection, for privacy reasons, to care for special needs beneficiaries by adding spendthrift, addiction and disabilities provisions or simply to avoid the time and expense of probate.

But the primary reason that trusts have historically been established is to ensure that wealth provides for heirs and is maintained for future generations. A trust allows a Grantor to control how wealth is distributed, and to place conditions on its receipt – this has the dual purpose of providing for loved ones and their descendants, while at the same time protecting them from the outside world and themselves. Grantors can also include trust language encouraging the beneficiaries to live useful and productive lives, which may include restrictions on distributions should they fail to do so. In sum, trusts remain the primary tool by which a person can establish an enduring legacy for their family.

With all the above reasons that continue to exist for establishing a trust, do not forget the proverb “all good things...” Ultimately, unless Congress acts prior to 2026, the increased estate tax exemption will revert to the 2017 level (adjusted for inflation). So, the utility for trusts as an estate-tax avoidance tool may be back before we know it – stay tuned.