

THE 2023 HECKERLING INSTITUTE ON ESTATE PLANNING: KEY TAKEAWAYS

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The Heckerling Institute on Estate Planning recently reconvened in-person in Orlando, Florida after two years of a “virtual only” option due to the pandemic. “Heckerling,” as it’s commonly referred to, is the premier conference for estate planning professionals to hear from legal, tax and other experts on a multitude of topics impacting the latest strategies in estate planning.

Pendleton Square team members attended the 2023 Heckerling conference and heard presentations on a range of topics such as planning for the “middle rich,” recent tax rulings, SECURE Act updates, new and proposed IRS regulations, and the Corporate Transparency Act. Following are some items from Heckerling that will likely impact estate planning in the coming years:

Planning for “Middle Rich” Clients

Several commentators placed an increase focus on planning for “middle rich” clients (which we view as having a net worth of between \$7 million and \$25 million), considering the upcoming reduction to the lifetime exemption amount. While the Tax Cuts and Jobs Act of 2017 temporarily doubled a person’s lifetime gift and estate tax exemption to \$10,000,000 (adjusted annually for inflation, now almost \$13,000,000), the exemption amount will revert to the original amount in 2026 (adjusted for inflation, likely to around \$7,000,000). Presenters at Heckerling were not optimistic that the current Congress would pass legislation extending the increased amounts past 2026.

Pendleton Square's Takeaway: Considering the anti-claw back guidance provided by the IRS in 2019, planners and clients can feel confident that gifts made to irrevocable trusts prior to 2026 will qualify for the increased exemption amount, and not be retroactively subject to gift or estate tax. Individuals looking to use their exemption and fund trusts prior to 2026 should consider a trust-friendly jurisdiction without a state income tax, such as Tennessee.

New IRS Guidance

In 2022, the IRS issued helpful Internal Revenue Code guidance, including with respect to the estate portability election and also regarding payout requirements for some inherited IRAs under the Secure Act of 2019. Under Rev. Proc. 2022-32, the IRS extended the period for an estate to elect “portability” of a deceased spouse’s unused exemption from 2 years to 5 years. And, of particular interest to non-spousal beneficiaries of inherited IRAs, the IRS clarified in Notice 2022-53 that, while required minimum distributions must be taken annually during the new 10-year period, relief would be provided to any beneficiaries that failed to take a required distribution in 2020 or 2021.

Pendleton Square's Takeaway: The additional time for an estate to elect portability can be helpful for a surviving spouse to avoid a serious tax hit. In some cases, particularly when a corporate executor is not used, the estate administration may be delayed, and the portability election not made within the first two years. In other cases, the surviving spouse may incorrectly believe their wealth to fall under the estate tax threshold, only to be proven wrong by a later valuation of assets. Lastly, clarification of the Secure Act’s impact on IRA distributions, whether rightly determined or not, certainly allows for more strategic estate planning.

The Corporate Transparency Act

The Corporate Transparency Act, or CTA, was enacted on January 1, 2021, and was intended to bring the United States more in line with its international counterparts in combatting money laundering. At a 10,000-foot level, the CTA requires a “reporting company” to disclose information on its “beneficial owners” to the U.S. Financial Crimes Enforcement Network (FinCEN). The law becomes effective January 1, 2024, with a compliance deadline of January 1, 2025, for existing companies.

Pendleton Square's Takeaway: While trusts are excluded from the definition of “reporting company,” a qualifying entity held in trust may be required to file information on the trust’s grantor, beneficiaries, and trustees. This will, of course, have implications for high-net-worth families establishing LLCs and other entities in their trusts for investment or management reasons. Pendleton Square continues to monitor CTA-related developments to determine its impact on clients, particularly from a privacy standpoint and in the directed trust context.

Given the inherently customized nature of estate planning and wealth preservation, each person will be impacted differently by the above topics. Pendleton Square encourages its clients to meet periodically with their estate planning team to ensure their plan remains structured to achieve both short and long-term financial goals considering any recent developments. The knowledgeable team of trust experts at Pendleton Square is also available to discuss how the above issues may impact your estate plan.



About the author:

Derek Church is an attorney and President and Chief Operating Officer of Pendleton Square Trust Company, LLC. Nothing in this article should be construed as providing legal or tax advice regarding your specific situation.
