


**Estate/Gift Tax Planning
and the
Tax Cuts and Jobs Act of 2017**

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Agenda

- Reminder re Pennsylvania Taxes
- Recently signed Federal tax act
- Planning (tax and **non-tax** goals)
 - Estate Planning Basics (Revocable)
 - Asset **Preservation** and **Protection** Goals
 - Estate Tax Planning (Irrevocable)
 - Benefits of an Entity in Estate Planning

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STATE TAXES

- Income and Capital Gains
 - Personal and fiduciary income tax rate, 3.07%
 - Capital gains rate, 3.07%
 - Corporate net income tax rate, 9.99%
- Inheritance
 - 0.0%, spouse and charity
 - 4.5%, issue, spouse of child, surviving spouse of child provided spouse has not remarried, parents (except if child < 21) & grandparents
 - 12.0%, siblings (adopted or half-blood)
 - 15.0%, any other heir

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Tax Reform

- "Tax Cuts and Jobs Act"
 - On Wednesday, 12.20.2017, passed by
 - U.S. Senate (51-48; AZ Senator John McCain absent) and
 - U.S. House (224-201)
 - On Friday, 12.22.2017, signed by President Trump
 - Official title, "To provide for reconciliation pursuant to titles II, and V of the concurrent resolution on the budget for fiscal year 2018."
 - Also known as Reconciliation Act of 2017 or RA2017

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Effective and Expiration Dates

- Effective date for most provisions, 1.1.2018
 - Exception: 2017-1040, Sch A, medical expenses, 7.5% threshold, not 10% under current law
- Permanent vs Temporary ("Sunset") provisions
 - "Chained CPI" indexing - permanent
 - Business tax reform provisions - permanent
 - Individual income tax provisions - end after 2025
 - Estate and gift tax provisions - end after 2025
 - Provisions subject to "sunset" required under Byrd Rule, related to the reconciliation process which allowed passage by US Senate by 51 votes

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Goals of Tax Reform

- From the Campaign Trail
 - Simplify Tax Code
 - Grow American economy with changes to corporate tax code
 - Tax relief for middle class
 - Not to add to debt or deficit

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Goals of Tax Reform

- On 4.26.2017: 2017 Tax Reform for Economic Growth and American Jobs; The Biggest Individual and Business Tax Cut in American History (1 page)
- Presented by
 - Treasury Secretary Steven Mnuchin
 - National Economic Council Director Gary Cohn
- Plan included tax cuts to be paid through economic growth (i.e., revenue neutral) and minimum of 3% growth per year

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Goals of Tax Reform

- On 9.27.2017, Unified Framework for Fixing Our Broken Tax Code (9 pages), to serve as template for tax-writing committees
- Product of "Gang of Six", including House Speaker Ryan, Senate Majority Leader McConnell, Committee Chairs Brady (House Ways & Means) and Hatch (Senate Finance), Treas Secretary Mnuchin and NECD Cohn
- Tax relief for middle class and businesses (esp. small), end incentives to transfer US jobs/capital overseas and "postcard" tax filing for majority

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PRE RA2017

- The American Taxpayer Relief Act of 2012
 - Signed by President Obama on 1.2.2013
 - \$5m exemption amount, indexed for inflation
 - Lifetime Estate and Gift Tax Exemptions
 - 2017: \$5,490,000 (\$10,980,000, if married)
 - 2018: \$5,600,000 (\$11,200,000, if married)
 - 2018 Annual Gift Tax Exclusion (indexed): \$15,000
 - Maximum rate of 40% and Portability
- Predecessor Tax Acts:
 - 12.17.2010 – 2 year extension of Bush Tax Cuts
 - 5.23.2003 – Bush Tax Cuts, 2 of 2 (sunset)
 - 6.7.2001 – Bush (43) Tax Cuts, 1 of 2 (10 year sunset)

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RA2017, E&T

- Transfer Tax provisions sunset after 12.31.2025
- Gift Tax exclusion amount and rate
 - Lifetime - \$11,180,000* (married, \$22.360m) and 40%
 - Annual exclusion amount, \$15,000
- Estate Tax exclusion amount and rate
 - Single, \$11,180,000* (married, \$22.360m) and 40%
- GST Tax exclusion amount and rate
 - Single, \$11,180,000 (married, \$22.360m) and 40%
- Post sunset, \$5,000,000, indexed

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RA2017, Indexing

- Indexing for inflation has been changed to the "chained CPI" approach which uses the Department of Labor Chained Consumer Price Index for All Urban Consumers ("C-CPI-U")
- Pre RA2017 used the Consumer Price Index for All Urban Consumers ("CPI-U")
- C-CPI-U will move more taxpayers into higher brackets over time compared to prior CPI-U
- IRS to publish revised 2018 inflation adjustments
- Chained CPI does NOT sunset

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RA2017, E&T

- "Clawback", i.e., a prior gift, covered by the then available gift tax exclusion amount, might result in estate tax if donor's available estate tax exclusion amount has decreased between the gift and donor's death
- New Section 2010(g)(2) adopts regulations to prevent estates of taxpayers who die after 2025, and have made gifts using the increased exclusion amount, from owing estate tax on prior lifetime gifts

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RA2017, E&T

- Income tax rates (4) for Estates and Trusts
 - 10%, 24%, 35% and 37%
 - Taxable income over \$12,500 at 37%
- No change to AMT exemptions for estates/trusts; slightly less increases due to C-CPI-U indexing
- Income tax basis of decedent's property is valued at fair market as of date of death, i.e., "step up in basis" remains
- 20% deduction for pass-through entities available to estates and trusts

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RA2017, Income Tax

- Seven (7) Rates
 - Bush (43) (%): 10, 15, 25, 28, 33, 35 and 39.6
 - RA2017 (%): 10, 12, 22, 24, 32, 35 and 37
- Individual AMT, exemptions increased
- Standard deduction almost doubled (\$12k)
- Personal exemption repealed
- No change to
 - ACA's 3.8% net investment tax
 - ACA's 0.9% additional Medicare tax
 - 20% L/T Cap Gains and Qualified Dividends tax

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RA2017, Income Tax

- Changes to alimony and maintenance payments to divorces or agreements executed after 12.31.2018, also applies to modifications made 12.31.2018 to agreements executed prior to such date:
 - Alimony paid by payor spouse cannot be deducted from income ("above the line" deduction)
 - Alimony received by payee spouse is not to be included as income
 - Such provisions do NOT sunset

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RA2017, 20% Deduction

- Individual business owners of interests in pass-through entities entitled to a 20% deduction
- Entities include partnerships, limited liability companies, S corporations and sole proprietorships
- **Sec 199A deduction sunsets after 12.31.2025**
- Deduction addresses range between new rates for C corp (21%) vs maximum individual (37%)
- Net top rate of 29.6% (i.e., 80% of 37%)

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RA2017, 20% Deduction

- Qualified business income (QBI)
- Wage (Form W-2) limitation
 - Real estate exception
 - Specific service exception if taxpayer has taxable income below \$315,000 for MFJ and \$157,500 for S taxpayers; amounts are indexed and phased out
- Generally, deduction does not apply for specified service businesses: health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services

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RA2017, 20% Deduction

- Deduction available to trusts and estates
- Deduction cannot exceed taxable income less net capital gain, i.e., taxpayer's ordinary and qualified dividend income
- Deduction reduces taxable income but NOT AGI, i.e., 20% deduction in addition to the standard deduction, which as been almost doubled
- Details of Sec 199A are "very complicated" but tax savings opportunities, based upon comments from Joint Committee on Taxation, should be substantial to TPs who are eligible

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RA2017, Income Tax, Sch A

- Mortgage Interest Deduction
 - New mortgage amount of \$750,000
 - Prior \$1m amount if AOS dated prior to 12.15.2017
- Combined deduction limited to \$10,000 for
 - State and local income taxes OR
 - Real estate/property taxes
 - Prepayment in 2017 allowed if assessed in 2017
- Charitable contributions, cash, 60% of AGI
- 80% deduction for contributions made for university athletic seating rights is repealed

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RA2017, Income Tax, Sch A

- Distributions from Section 529 Plans for elementary and secondary school tuition permitted if less than \$10,000/year/student
- Medical expenses in 2017 and 2018 subject to a 7.5% AGI floor, vs 10%, but in 2019, 10%
- Repeal of miscellaneous deductions subject to 2% floor suspended until 2026
- The Pease limitations, which reduced itemized deductions as AGI increased, is suspended until 2026

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RA2017, Corporate Tax

- C corporation tax rate is 21% from 35%
- Corporate AMT is repealed – no sunset
- Section 179 expensing increased to \$1,000,000 from \$500,000 and the phase-out threshold amount is increased to \$2.5m from \$2.0m
- Entertainment expenses disallowed
- 50% limitation for meals associated with operating the trade or business
- NOL limited to 80%; no C/B, but C/F indefinite
- Above provisions do NOT sunset

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RA2017, Corporate Tax

- Limitations on interest expense
 - If 3 year average annual gross receipts are over \$25m, interest deduction generally limited to 30% of Co's adjusted taxable income without regard to depreciation, amortization and depletion during the years 2018 through 2021; different rules apply for years after 2022.
- Tax-free like-kind exchanges limited to only real property; repealed for personal property

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Post RA2017, What To Do?

- Some provisions are permanent, until changed
- Others (i.e., transfer taxes) sunset in 7 years
- Options related to Estate/Gift Tax Planning
 - Do nothing for 7 years - wait for "certainty", OR
 - Collect data
 - Discuss goals, objectives and risk tolerance
 - Develop and implement a plan
 - Periodically review plan and revise accordingly

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Estate Planning

- **Who** receives your property (beneficiaries)?
Spouse, children, grandchildren, other family members, charities?

- **How** is property managed and distributed?
Outright; in trust; or some combination?

- **Who** makes decisions (fiduciaries)?
Executor, Trustee, Agent, Guardian of Minors?

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COMMON OBJECTIVES

- Want a simple plan
- Benefit "family"; define "family"
- Minimize taxes (income and death)
- PRESERVE and PROTECT from the Ds:
 - Disability, Divorce and Death

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COMMON CONCERNS

- **What if my beneficiary/child**
 - Is single and does not want a premarital agreement, or significant other won't sign one
- **Marries and then divorces**
- **Has or develops bad habits**
 - Substance abuse problems
 - Spendthrift tendencies or diminished work ethic
- **Dies prematurely**
 - What happens to child's inheritance?
 - How are grandchildren protected?

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Estate Planning

- **Unmarried Client**
 - Single Parent with minor children; adult children
- **Childless Client**
 - Married; Single
- **Blended Family**
 - Assets kept separate or commingled?
 - How to protect children of each spouse? Common?
 - Deceased spouse's income to surviving spouse?

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Estate Planning

- **1st step revocable:**
 - Will
 - **Living/Revocable Trust**
 - If married, 2 Trusts or a Joint Revocable Trust?
 - Ability of surviving spouse to change Trust?
 - **Durable Power of Attorney**
 - Springing or Nonspringing
 - Separate Power for Business Decisions
 - **Healthcare Power of Attorney/Living Will**

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Last Will and Testament

- **Tangible Personal Property**
- **Tax Clause**
 - Source of funds to pay taxes
 - Allocation among beneficiaries of taxes paid
- **Residuary Probate Estate**
 - Spouse; children; others; and/or charities
 - In trust or outright distribution
- **Executor; Trustee (if any trusts; minors?)**
- **Guardian of Minor Children**

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A/B Wills - Married

Mandatory FET Planning

B Trust	A Trust
<ul style="list-style-type: none"> ▪ Credit Shelter/Bypass ▪ <u>Exemption Amount</u> ▪ Income & Principal? ▪ Spouse only? Spouse & children? Ability to change distribution? Basis at death? Tee? 	<ul style="list-style-type: none"> ▪ Marital ▪ Excess over amount ▪ Income to Spouse ▪ Discretionary prin? ▪ Ability to change? ▪ Basis at death? Tee?

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Disclaimer Wills - Married

Discretionary FET Planning

Surviving Spouse Residue of Estate, outright	Or	ByPass Trust Only funded by Disclaimer; Some or all of Exemption Amount
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Durable Power of Attorney

- Principal and Agent (fiduciary)
- Who determines when Principal is incapacitated? Agent or Physician?
- Agent makes legal and financial decisions
- Powers can be broad or restricted
- POA eliminates need to add child to bank account for access
- **Business POA?** Vote S-Corp stock?

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Healthcare Power Of Attorney/ Living Will

- Principal and Agent (fiduciary)
- Doctor determines if Principal is incapacitated
- Agent makes medical decisions
- End-stage Medical Condition
 - Aggressive medical care or not?
 - Tube feedings for nutrition and/or hydration?
 - Instructions: mandatory or discretionary?

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Property

- Assets
 - Tangible personal: autos, jewelry, art
 - Liquid including cash and investments
 - Real estate including personal residence
 - **Ownership interests in closely-held business**
 - Partnership (general or limited)
 - Corporation (C corp; S corp; limited liability company)
 - Trusts (less common)
 - Undeveloped land with, and w/o, oil/gas rights
 - Oil/Gas rights and no surface rights
 - Commercial or residential rental property

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Property

- Beneficiary Designations on
 - Life Insurance Policies
 - Retirement Accounts; "stretch IRAs"
 - For RMD purposes, whose life expectancy (LE) is used?
 - Is beneficiary entitled to only RMD or more?

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Ownership Options

- **Joint**
 - Between husband and wife, TBE
 - Between non-spouses: JTWRORS or TIC
- **Entity**
 - Trust
 - Partnership (requires 2 partners)
 - General
 - Limited (requires a general and limited partner)
 - Corporations
 - C Corp
 - S Corp
 - Limited Liability Company

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TBE in PA

- **Tenancy by the Entireties**
 - When spouses marry, become single legal entity
 - Each spouse has undivided interest in the whole
 - Interest cannot be severed or encumbered by the unilateral act of either party
 - Debts and judgments against one spouse cannot affect TBE property except for death and divorce
 - Death of non-debtor before debtor spouse an issue

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Inheritance from Parents

- Discuss Estate Plan and your share, if any, with parents – Does Plan Exist? Who makes decisions?
- Ask parent if your share can be held in trust versus distributed outright
- Outright distribution subject to creditors and may cause marital issues if you want to keep separate
- As Trustee, you could manage your inheritance, held in trust, and enjoy protection from creditors and predators

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Insurance Needs

- Income Tax Benefits from Life Insurance
- Family Protection
- **Business Succession**
- **Inheritance Equalization**
- **Estate Liquidity**
- For High Net Worth Clients, Taxes

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Estate Tax Planning

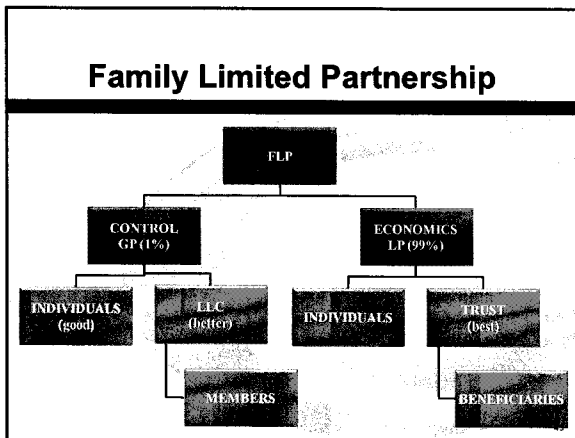
- **Who** receives your property (beneficiaries)
- **How** is property managed and distributed
- **Who** makes decisions (fiduciaries)
- 1st step revocable: Will, POA, Living Will
- 2nd step irrevocable (typically tax-driven)
 - Outright transfers/gifts
 - Transfers in trusts

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Estate Tax Planning Vehicles

- Irrevocable Life Insurance Trust (ILIT)
- Charitable Remainder Unitrust (CRT)
- Grantor Retained Annuity Trust (GRAT)
- Intentionally Defective Grantor Trust (IDGT)
- Family Limited Partnerships (FLPs)
- Limited Liability Companies (LLCs)
- Charitable Lead Trust (CLT)
- Dynasty Trust
- Asset Protection Trusts
 - DAPT: Delaware or Alaska
 - FAPT: Cayman Islands or Cook Islands

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- ### Summary
- Review and discuss goals and objectives
 - Identify beneficiaries (family/charities)
 - Determine distribution plan
 - Use Trusts, or other entity, to preserve and protect transfer of wealth/property to heirs
 - Carefully consider Agent's powers under POA
 - Discuss Estate Plan with adult children?
 - Review Estate Planning documents
 - Evaluate beneficiaries; does "fair" mean "equal"?
 - Reconsider fiduciaries
 - Simplify if possible (A/B Wills)
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Questions?

Thank You!

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