

Estate Tax Update

Federal Estate Tax, Gift Tax, and Generation-Skipping Tax Exemptions

The 2017 federal exemption against estate and gift taxes is \$5,490,000 per person. This is an increase over the 2016 exemption, which was \$5,450,000 per person. The \$40,000 exemption increase is an inflation adjustment. Estates in excess of this amount are subject to a 40% federal estate tax. The federal generation-skipping transfer tax exemption was also increased to \$5,490,000 per person.

State Estate Tax Exemption

The 2017 Washington State estate tax exemption is \$2,129,000 per person. This is an increase over the 2016 exemption, which was \$2,079,000 per person. The \$50,000 exemption increase is an inflation adjustment. Washington estates in excess of this amount are subject to a 10% - 20% Washington State Estate Tax. Even though the Washington State estate tax exemption has been increased to \$2,129,000, the filing threshold for the Washington State Estate and Transfer Tax Return remains at \$2,000,000. Each estate over \$2,000,000 is required to file a Washington State Estate and Transfer Tax Return.

Federal Gift Tax Annual Exclusion

The federal annual gift tax exclusion remains at \$14,000 for 2017.

Federal and State Tax Summary

The chart below outlines the federal and state exemptions and tax rates for 2013 through 2017.

Year	Federal Estate Tax		Gift Tax			GST Tax		WA State Estate Tax	
	Rate	Exemption	Rate	Exemption	Annual Exclusion	Rate	Exemption	Rate	Exemption
2013	40%	\$5.25M	40%	\$5.25M	\$14,000	40%	\$5.25M	10%-19%	\$2.00M
2014	40%	\$5.34M	40%	\$5.34M	\$14,000	40%	\$5.34M	10%-20%	\$2.012M
2015	40%	\$5.43M	40%	\$5.43M	\$14,000	40%	\$5.43M	10%-20%	\$2.054M
2016	40%	\$5.45M	40%	\$5.45M	\$14,000	40%	\$5.45M	10%-20%	\$2.079M
2017	40%	\$5.49M	40%	\$5.49M	\$14,000	40%	\$5.49M	10%-20%	\$2.129M

Estate Planning Update

New Washington Power of Attorney Act

A Durable Power of Attorney is a document that allows you to appoint an Agent to act on your behalf. Since 1985, these documents have been governed by Washington's Power of Attorney Act (RCW 11.94). However, the 1985 law lacked many provisions, which led to practical problems and litigation. The Washington Legislature passed the Uniform Power of Attorney Act to address these concerns. The new Act took effect on January 1, 2017.

The new Act ushered in many changes, including the following:

Clarification of the Duties of an Agent. The 1985 law was silent on the duties of the Agent. The new Act imposes a list of duties upon the Agent, including the duty to act in accordance with the expectations of the principal and in the principal's best interest, the duty of care, and the duty of loyalty.

Change in Representation Upon Divorce. It is fairly common to name your spouse as your Agent. If you did, the 1985 law revoked your spouse's appointment upon the filing of the final decree of dissolution of the marriage. The new Act revokes your spouse's appointment upon the filing of a petition to dissolve the marriage.

Change in Gifting Authority. Unless you imposed them, the 1985 law had no limits on the authority of the Agent to make gifts of your assets. The new Act limits your Agent's ability to make gifts up to the annual exclusion amount unless you affirmatively allow additional gifting.

If you have a power of attorney that was executed prior to January 1, 2017, it will still be valid. However, you may not get the full advantage of the new Act. For example, you may be the Agent for your father and need to make large non-taxable gifts to reduce his estate to avoid the Washington estate tax. Without an updated power of attorney, your gifting ability may be limited and you may not be able to avoid or minimize this tax. Therefore, we encourage everyone to update their documents to take advantage of the benefits provided under the new Act.

New Law Allowing Access to Digital Assets

When a loved one dies, family members often want to preserve digital photos, online albums, and other digital assets belonging to the deceased.

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For years, gaining access has been difficult, if not impossible. In 2016, Washington (and 20 other states) enacted a Digital Assets Act, which permits a fiduciary (e.g., a Personal Representative under a Will, an Attorney-in-Fact under a Power of Attorney, a Trustee of a Trust, or a Guardian of an incapacitated person) to access an individual's digital assets such as email, digital photos, and online networking accounts.

A custodian (the company that stores the digital assets) may provide a procedure that allows you to grant or limit a fiduciary's access to digital assets. However, you may not want to go through the hassle to update your preferences with each custodian. The Digital Assets Act allows you to grant or restrict access to your digital assets in your estate planning documents. Some individuals may be comfortable allowing full access by their fiduciaries while others may prefer that their digital assets be deleted following their deaths. If a user would like to grant access to the content (e.g., text messages or the body of an email) as well as the catalog of electronic communications (i.e., a list of communications with the address of sender and recipient and the date and time of the message), it is important to authorize such access in estate planning documents. Whether you want your fiduciary to have full access, limited access, or to delete your digital assets, your estate planning documents should be specific about your desired treatment of your digital assets.

Taking on the Role of Trustee - Trustee Record-Keeping Duties

Trusts are popular estate planning tools in the U.S. Part of using trusts in planning is selecting a trustee to administer the trust. While it is common to select one or more family members as trustee of a trust, most individuals do not fully understand their responsibilities and duties in the role of trustee. If you are named as a trustee of a trust, you may be taking on more responsibility (and liability) than you realize when you agree to be the trustee for a family member's trust.

Washington State, like many states, has a statutory trust code that governs the administration of trusts. Under Washington's trust code, trustees have general and specific duties for record-keeping, reporting to beneficiaries, and managing assets held in trust for beneficiaries. Often, individual trustees keep insufficient records of transactions that occur, and rarely, if ever, do they document the reasoning behind their decisions. Unfortunately, this leads to disputes with beneficiaries regarding the trustee's management of the trust. The absence of documentation, clear understanding of past acts, and proper disclosure to beneficiaries can create significant liability for trustees who are not deliberate in the execution of their trusteeship. Proper record keeping generally produces efficient administration, proper disclosure to beneficiaries, and evidence to a successor trustee or a court of why a course of action was taken by the trustee.

Trusts are usually intended to last for a significant length of time, often over multiple generations, but memories fade and trustees are replaced. Accordingly, a trustee needs not only to comply with fiduciary and reporting responsibilities to beneficiaries, but also adopt a deliberate approach to keeping records of his or her actions in administering the trust.

What to Do When Your Child Turns 18

A child's 18th birthday is momentous. He/she can register to vote, serve on a jury, marry without parental consent, and hold assets in his/her name. At 18, your child may also apply for a credit card and decide to spend spring break in Florida with college buddies. What if something happens to him/her?

As a parent, you no longer automatically have the ability to make financial and health care decisions for your child once he/she turns 18. Once your child is 18, a guardianship proceeding would be required in order to provide you with legal authority to make decisions for your child. A guardianship proceeding can be tedious, and at a minimum, create a 60-day waiting period before you can help your child. To avoid the time and expense of dealing with the court system, upon turning 18, your child should execute the following legal documents:

A Financial Power of Attorney. This document allows your child to appoint an Agent (usually you as the parent) to step in and make financial decisions on your child's behalf. It can be effective immediately, allowing you to continue to manage your child's finances, and obtain information (such as college transcripts), until your child is ready to assume that responsibility.

A Health Care Power of Attorney. This document allows your child to appoint an Agent (again, usually you, as the parent) to step in and make health care decisions if your child is unable to communicate.

A HIPAA Release Authorization. This is typically a one-page document (or a provision in the Power of Attorney) where your child authorizes health care professionals to release his/her medical information to another person (you). With this document, you can get the doctor, hospital, or student health center to talk to you about your child.

While the thought that your child is officially an adult at 18 may be amusing to some, it can be a frightening event if you are unprepared for the transition.

Contact the Authors

Laura Hoexter
206.689.2153
lhoexter@helsell.com

Liberty Upton
206.689.2134
lupton@helsell.com

WWW.HELSELL.COM Helsell Fetterman LLP

Seattle 1001 Fourth Avenue, Suite 4200 Seattle, WA 98154
Bellevue 10900 NE Fourth Street, Suite 2300 Bellevue, WA 98004