IRS Finalizes Rules
Confirming No Estate Tax Clawback

In today's estate planning climate, many find it beneficial to take advantage of the increase in the estate tax exemption, yet are cautious that a future lower exemption could result in unintended estate tax exposure. Regulations and clarifications issued may provide reassurance that this strategy is viable. Beginning in 2018, federal tax exemptions for estates and gifts were doubled from $5m (adjusted for inflation) to $10m (adjusted for inflation).

In 2019 the exemption amount is $11,400,000, and will increase to $11,580,000 in 2020. These increased exemptions are available for a limited number of years, as the exemption will decrease in 2026 back to the $5m (adjusted for inflation) level.

This increased exemption is "use-it" or "lose-it". If taxable gifts are not made during this increased exemption period, the unused portion cannot be saved and used in a future year.

However, taxpayers and advisors were concerned about an estate tax clawback, an adverse estate tax if the taxpayer dies when the exemption level has decreased after 2025.

Last year, the IRS proposed rules to confirm that there will be no clawback, and recently they finalized these rules. Taxpayers and their advisors can now finalize gift planning without any concern of a future clawback in the taxpayer's estate.

Planning points:

- Gifts made now (through 2025) using the increased exemption will not be subject to future estate tax;
- There is no opportunity to save or bank the increased exemption; if taxable gifts are not made before the exemption decreases, then the increased exemption is lost;
- Taxpayers who want to use the increased exemption but are concerned about giving away too much can consider funding trusts which provide for a spouse (Spousal Lifetime Access Trusts, or SLATs) – these trusts may act as an emergency tap on funds given away now.

In addition, the recent IRS rules clarified treatment of the federal portability rules. Federal rules permit a surviving spouse to benefit from any exemption not used by a decedent spouse. This amount is called the Deceased Spouse Unused Exemption, or DSUE. For example, if one spouse dies with a taxable estate of $10m at a time when the federal exemption is $11,400,000, then the surviving spouse may benefit from the $1,400,000 DSUE in addition to her own exemption. The IRS confirmed that the DSUE is calculated at the time of death, and is not adjusted if the second spouse dies after the exemption decreases.

For more information, contact your Anchin Relationship Partner or Michael Rudegeair, a Director in Anchin Private Client, at 212.840.3456 or info@anchin.com.

ANCHIN
Private Client

Jared Feldman, CPA
Leader
jared.feldman@anchin.com

Mela Garber, CDFA
Tax Leader
mela.garber@anchin.com

1375 Broadway, New York, NY 10018 • 212.840.3456 • www.anchinprivateclient.com