Legal Matters®

Estate Planning
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Keep your tax credit for charitable gifts

Following the Tax Cuts and Jobs Act (TCJA), many taxpayers are concerned about losing tax breaks for charitable contributions. Under the law, fewer households have a tax incentive to make charitable gifts. However, with planning, individuals and businesses can still benefit from donations.

The law increased the standard deduction to $12,000 for individual filers and $24,000 for married households filing jointly. This increase, plus the elimination of other deductions, means many households will no longer itemize, essentially losing the benefit of their charitable gifts.

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However, you can still leverage contributions if you bundle several years of giving into one tax year and surpass the standard deduction limit. You'll have higher giving one year and less the next. This strategy works well for households already close to the new standard deduction limit.

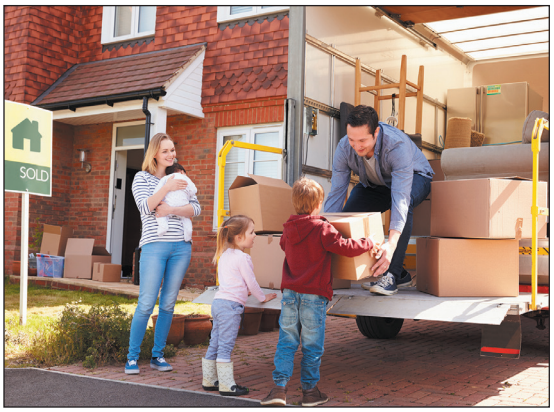
• **January-December bundles:** One approach is to donate at the beginning of January and the end of December. This comes closer to normalizing cash flow for both you and the charity. Just be sure the charity records the correct date on your receipt.

• **Donor advised funds:** Another approach is to bundle your giving in a donor advised fund (DAF), available through brokerage firms and community foundations. With these funds, you get a tax benefit for the year you donate, but you have unlimited time to decide how you want to allocate those gifts. This strategy is scalable, meaning you can put several years of donations into a DAF.

• **Appreciated stock:** Under the new law, you still get a tax break for donating shares of appreciated stock, mutual funds and real estate.

continued on page 3

Moved out of state? Check your estate plan



There's a lot to do when you move to a new state. In midst of the hustle, certain matters can be overlooked, including important things such as estate planning documents.

Property laws vary from state to state, so it's a good idea to revisit these documents if you've moved. Have your will, trust, power of attorney and advance directive reviewed by an advisor familiar with the laws of your new home.

You've already put a lot of hard work into those documents. You've done the heavy lifting of deciding your wishes and how they should be executed. As a result, updating them for your new state won't take a lot of effort.

Here are a few key things that an out-of-state move may affect:

• **Executors:** In some states, the court can reject an executor solely based on residency. Others impose additional restrictions on out-of-state executors. For practical reasons, it's a good idea to name an executor who lives nearby. Check with an advisor about the rules in your state.

• **Wills:** Moving between a community property state and a common law state can impact what you and your spouse own. In community property states, spouses own equal halves of anything acquired during the marriage. In common law states, each spouse owns whatever is in his or her name. The shift can affect asset distribution, so revisit your wills.

• **Powers of attorney:** In some states, you can identify advance directives and name your power of attorney on one form. Others require separate documents, and language varies by state.

• **Advance directives:** Medical providers may be reluctant to honor an out-of-state document, and your family will have an easier time if yours is local.

Of course, you need to make sure your financial institutions, insurance companies and other account custodians have current contact information for you and your beneficiaries. If your estate planning documents are more than a few years old, it's a good idea to review them even if you're staying put.

Credit unfreezes now free

As of Sept. 21, a new law requires that the three major credit reporting bureaus allow you to place or lift a security freeze on your credit files without charge.

When your files are frozen, lenders can't check your credit. That means an identity thief can't take out new credit or borrow in your name.

The law change comes roughly a year after an Equifax breach that may have affected nearly 150 million consumers. Many security experts were recommending consumers freeze their credit.

At that time, a freeze was free, but an "unfreeze" cost between $3 to $10 in most states. Now, you will be able to freeze and unfreeze your report and credit bureaus will be required to fulfill requests within one business day (three days if you mail your request).

Placing a freeze is easy, although you will have to do so separately with each of the three bureaus.

In the last year, more than 90 percent of Americans say they've taken some action to protect themselves from identity theft, although just 8 percent say they've frozen their credit report, according to a CompareCards.com survey.

Placing a freeze on your credit report doesn't prevent you (or criminals) from using your existing credit cards, but it can stop a thief from opening a new one in your name.

Paying taxes when you inherit a home

When you inherit a home and sell it, you pay capital gains tax based on the value of the home on the date of the owner's death. For example, if you inherit your dad's vacation cabin, and it was worth $300,000 when he died, and you later sell it for $325,000, you'll pay tax on the $25,000 gain.

The value of the house at the time of the owner's death is called the stepped-up basis. If your parents purchased the cabin decades ago for $100,000, your gain isn't based on this number. It's calculated on the stepped-up value of the property at the owner's death.

If you make improvements to the property before the sale, you can subtract those expenses from your capital gain calculation. If you sell for less than the property's stepped-up basis, you can deduct the loss up to $3,000 per year, rolling over more than that into future years.

Stepped-up basis applies to all inherited assets, including jewelry, vehicles, stocks and bonds.

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continued from page 1

By making the gift directly, instead of selling the asset and then making a gift, you eliminate the tax consequences.

• **Charitable advertising:** Businesses still can gain tax benefit from charitable sponsorships or advertising through a charity. You could, for example, sponsor a golf outing or advertise in the charity's newsletter. If certain conditions are met, such exchanges are deductible as business advertising. Your preferred charity benefits, and you retain the savings.

Be aware that you can't inflate the value of a sponsorship or ad. For the promotion to be deductible as an advertising expense, there must be a reasonable expectation that you will receive a proportionate financial return. If there's a rational reason your company would benefit from a sponsorship, you may be able to claim a deduction.

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Talk to an advisor to build your giving strategy and ensure you are meeting any requirements under the new law.

Grandparents' options for college costs

With the cost of college tuition rising, some grandparents are pitching in. Grandparents who want to help out have several options, but many come with limitations or possible pitfalls:

• **Cash gifts:** If your grandchild won't qualify for financial aid, a cash gift may be a good option. Under federal law, couples can give up to $30,000 per year before being subject to gift taxes. However, if your grandchild might qualify for financial aid, such a cash gift could limit their eligibility.

• **Payments to the school:** When tuition payments are made directly to the school, those payments aren't classified as a taxable gift and there's no annual limit. However, only payments for tuition are exempt, not payments for room, board, books or other fees. Before making a payment, ask the school if it will impact any school-directed financial aid.

• **529 plans:** Grandparents may contribute to a 529 college savings plan. Contributions grow tax-deferred, and withdrawals are tax-free at the federal level (and usually at the state level) as long as they're used for qualified education expenses.

Funds in a 529 plan can be transferred between siblings and cousins and there's no time limit in which the money needs to be used. However, be aware that any 529 plans you own may affect Medicaid eligibility.

Assets held in a grandparent's 529 account won't impact a student's financial aid eligibility. However, once a grandparent withdraws money to pay for college, it becomes reportable on the following year's aid application. That drives up the student's Expected Family Contribution (EFC) and reduces federal aid.

One workaround is not to withdraw the funds until your student's final year of school. Because they won't be applying for aid next year, your gift won't have an impact.

• **Coverdell accounts:** Grandparents have the option to fund a Coverdell Education Savings Account (ESA). Like a 529 plan, these funds grow tax-deferred and are tax-free if used to pay for qualified education expenses.

The upside to Coverdell accounts is that they provide the ability to self-direct investments. Plus, these accounts can be used to fund eligible K-12 expenses such as books, equipment and tutoring, as opposed to 529 plans, which can only be used to fund K-12 tuition.

You can only contribute $2,000 per beneficiary per year and only until they turn 18. Your ability to contribute also is phased out based on your income.

• **Drawing from IRAs:** If you're 59 and a half or older, you can withdraw money from IRAs to pay for a grandchild's education without paying the 10 percent penalty. For some, this strategy may be better than 529 and Coverdell accounts due to the lack of limits and restrictions.

Funding college can be a complicated endeavor. Talk to an advisor to help you shape your strategy.

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Your Health Savings Account can be a stealth IRA

Generally, people don't think about a Health Savings Account (HSA) as a savings account. The HSA was intended to be a tax-advantaged account to pay for medical expenses, but in certain ways it's better than an IRA.

An HSA is a tax-preferred investment account with triple tax advantages. Your money isn't taxed when it's contributed, as it grows, or when you spend it on qualified expenses. It's the only tool that allows you to contribute tax-deductible dollars and take them back out tax-free.

Unlike flexible spending accounts, there's no "use it or lose it" provision, meaning the account can continue to grow and gain value.

In order to open an HSA, you must be enrolled in a High Deductible Health Plan. For 2019, this is defined as one with a deductible of at least $1350 for an individual or $2700 for a family.

The 2019 contribution limits are $3500 for an individual and $7000 for a family. If you're over 55, you can add $1000 in catch-up contributions. (That's better than the limits on traditional or Roth IRAs.)

Plus, unlike IRAs, there's no income limit on deducting contributions to an HSA. Your contributions remain deductible no matter how much you earn.

An HSA combines the tax benefits of a Roth IRA and a traditional IRA in one sheltered account. If you don't use the money, it can continue to grow tax-free.

If you withdraw money before age 65, you must use it to pay for qualified medical expenses. Otherwise, you'll be subject to income tax and a 20 percent penalty.

However, once you reach age 65, you can withdraw money for any reason. At that point, you can continue to use your HSA funds for medical expenses and avoid taxes, or you can withdraw funds for other purposes and pay income tax on the amount. Essentially, you have the option to treat it like a traditional IRA once you reach 65.

Considering your expected health care costs in retirement, an HSA may be a better savings tool than other options. Talk to an advisor about adding it to your financial strategy.