

# O'DONNELL & ASSOCIATES

ATTORNEYS AT LAW

1190 CHESTNUT STREET, MENLO PARK CA 94025

650/853-7183 WWW.ESTATEANDTRUSTPLANNING.COM

## THE NEED FOR ESTATE PLANNING



*Matthew O'Donnell, Esq. is certified by the State Bar of California Board of Legal Specialization as a Specialist in Estate Planning, Trust and Probate law.*



*All of us here at O'Donnell & Associates are committed to giving our clients peace of mind by providing comprehensive estate planning solutions and services.*



*We are happy to answer your questions and address your estate concerns. Call us at 650/853-7183*

*Congress avoided the so-called "Fiscal Cliff" by passing the American Taxpayer Relief Act of 2012 (the 2012 Tax Act).*

*In December 2017 Congress passed, and the President signed, a sweeping tax reform bill known as the Tax Cuts and Job Acts ( The 2017 Tax Act)*

The 2012 Tax Act made several important revisions to the tax code that will affect estate planning for the foreseeable future. The 2017 Tax Act made significant changes to the 2012 Tax Act. What follows is a brief description of some of these revisions – and their impact:

The federal gift, estate and generation-skipping transfer tax provisions were made permanent as of December 31, 2012. This is great news for all Americans; for years, we have been planning with uncertainty under legislation that contained built-in expiration dates. And while "permanent" in Washington only means that this is the law until Congress decides to change it, at least we now have more certainty with which to plan.



The 2012 Tax Act set the federal gift tax and estate tax exemptions at \$5 million per person, adjusted annually for inflation.



The adjusted exemption amount for 2017 under the 2012 Tax Act was \$5,490,000. The 2017 Tax Act increased this amount to \$11.2 million for those dying after January 1, 2018.

The generation-skipping transfer (GST) tax exemption also remains at the same level as the gift and estate tax exemption (\$11.2 million adjusted for inflation).

This tax, which is in addition to the federal estate tax, is imposed on amounts that are transferred (by gift or at your death) to grandchildren and others who are more than 37.5 years younger than you; in other words, transfers that "skip" a generation. Having this exemption be "permanent" allows you to take advantage of planning that will greatly benefit future generations.

This means that the opportunity to transfer large amounts during lifetime or at death not only remains but increases. Also, with the amount tied to inflation, you can expect to be able to transfer even more in the future.

*Married couples can take advantage of these higher exemptions and, with proper planning, transfer up to \$22+ million through lifetime gifting and at death.*



The “portability” provision was also made permanent. This allows the unused exemption of the first spouse to die to transfer to the surviving spouse, without having to set up a trust specifically for this purpose. However, there are still many benefits to using trusts, especially for those who want to ensure that their estate tax exemption will be fully utilized by the surviving spouse.

Separate from the new tax law, the maximum amount for annual tax-free gifts is \$15,000; meaning you can give up to **\$15,000 per beneficiary, per year** free of federal gift, estate and GST tax – in addition to the \$11.2 million gift and estate tax exemption.



By making annual tax-free transfers *while you are alive*, you can transfer significant wealth to your children, grandchildren and other beneficiaries, thereby reducing your taxable estate and removing future appreciation on assets you transfer. And, you can significantly enhance this lifetime giving strategy by transferring interests in a limited liability company or similar entity because these assets have a reduced value for transfer tax purposes, allowing you to transfer more free of tax.

For most Americans, the 2012 and 2017 Tax Acts have removed the emphasis on estate *tax* planning and put it back on the real reasons we need to do estate planning: *taking care of ourselves and our families the way we want.*

## THIS INCLUDES:

- Protecting you, your family, and your assets in the event of incapacity;
- Ensuring your assets are distributed the way you want;
- Protecting your legacy from irresponsible spending, a child's creditors, and from being part of a child's divorce proceedings;
- Providing for a loved one with special needs without losing valuable government benefits; and
- Helping protect assets from creditors and frivolous lawsuits.

For those with larger estates, ample opportunities remain to



transfer large amounts tax-free to future generations, but it is critical that professional planning begin as soon as possible. With Congress looking for more ways to increase revenue, many reliable estate planning strategies may soon be restricted or eliminated. Thus, it is best to put these strategies into place now so that they are more likely to be grandfathered from future law changes.

***If you have been sitting on the sidelines, waiting to see what Congress would do, the wait is over.***

***Now that we have increased certainty with “permanent” laws, there is no excuse to postpone your planning any longer.***







## WHAT DO PEOPLE WANT FROM ESTATE PLANNING?

Most of us have needs and desires for ourselves and our loved ones that are timeless and that no Congress can ever legislate away.

See how many of these apply to you.

**FOR OURSELVES: *Protection and Control.*** We want control over our assets and health care decisions. We want financial security. We want to be protected from the risks of life, which include unjust lawsuits, disability, and the cost of long-term care. Some of us have philanthropic goals, too.

**FOR OUR SURVIVING SPOUSE: *Financial Security.*** We want to know that our surviving spouse will be financially secure and will be protected from taxes, primarily from income tax.

**FOR OUR CHILDREN AND GRANDCHILDREN:**

***An Education & Financial Security, including Asset Protection from Immaturity, Divorce and Lawsuits.*** We also want to know that assets that are not needed by our surviving spouse will go to our children, not to a new spouse and then his or her children.

Another big motivator for planning can be protecting assets from gift, estate and income taxes for as long as possible, which today can be forever. We want our descendants to live successful lives that include a work ethic, integrity, faith, and appreciation and respect for other family members. Above all, we want our family members to love each other, spend time together and avoid conflict. We do not want them to be harmed by the wealth that is left to them. This is often far more important to us than tax planning.

**FOR OUR BUSINESS: *Attract and keep quality talent and preserve the value built up through hard work.***

Building a business, whether it is a store, manufacturer, or agricultural operation, is hard work. We don't want that work to have been wasted. We want our business to pass to family members who want to own and operate it, while treating non-participating family members fairly, or we want to sell it to employees or outsiders for a fair price.

### THE CONSEQUENCES OF NOT PLANNING

Each of these needs and desires requires proper planning to achieve. They will not just happen because you want them to. If you do not plan, you and your family will be under the default plan established by your state's legislature. Sad experience tells us that it very probably will not be what you would want. For example, in most states, your estate will be divided between your surviving spouse, who will get half, and your descendants, who will get the other half. In some states, all would go either to your surviving spouse or your children, depending on the facts of your case. Under any of those systems, your surviving spouse might get fewer assets than needed or intended. Under every state's default laws, adult children receive their full inheritances right away and minor children receive theirs when they turn 18, both with no controls or conditions. Without a plan to replace you as owner, your business may have to be liquidated.



### THE SIMPLE TRUTH IS THIS:

***To meet your needs and realize your desires you must take the time both to plan and to put that plan in place.***

*This is a general discussion of some of the most critical legal and estate planning issues. Due to periodic changes in the law and the complexities and peculiarities of each situation, no action should be taken without first consulting a lawyer.*

*To comply with the U.S. Treasury regulations, we must inform you that any U.S. federal tax advice contained in this article was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.*