

****UPDATED****

CLIENT ALERT

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Federal, District of Columbia and Maryland Estate Tax Exemptions Increase for 2018 and Maryland Decouples from the Federal Exemption for 2019 and the District of Columbia May Follow Suit

This Client Alert provides an **update** regarding higher estate tax exemptions in 2018 and beyond.

I. **Federal Exclusion Amounts.** Earlier this year, we advised you that for 2018, the federal basic exclusion from gift and estate tax increased to \$11,180,000, which is a \$5,690,000 increase from the 2017 basic exclusion amount.¹ This eliminates federal transfer taxes for roughly 99.9% of the U.S. population. However, in 2026 the exclusions are scheduled to roll back to the pre-2018 levels as indexed for inflation (estimated to be approximately \$6 million² for a single person or \$12 million for a married couple).

The annual gift tax exclusion increased by \$1,000 to \$15,000 per donee for 2018, and the annual exclusion for gifts to non-U.S. citizen spouses increased by \$3,000 to \$152,000.³

II. **DC Estate Tax.** We also advised you that as a result of legislation enacted in 2015 and DC revenues in 2017 exceeding the target set for relaxation of its estate tax, the DC estate tax exclusion for 2018 and future years was increased to match the federal exclusion amount.⁴ As a result, the DC estate tax exclusion jumped from \$2,000,000 in 2017 to \$11,180,000 starting January 1, 2018. This is the highest that the DC estate tax exemption has been.

In what is potentially a major turn of events that could affect DC residents and those dying with property located in DC, the Council of the District of Columbia announced that it will seek to reduce the newly increased amount by 50%. Apparently, the increase in the Federal exemption took the Council by surprise,⁵ and in response, on February 6, 2018, ten of the thirteen Council members joined

¹ Rev. Proc. 2018-18, Section 3.35 (March 5, 2018). *See also*, H.R. 1 – 115th Congress (2017-2018)(the “Tax Act”), § 1602, which doubled the basic exclusion amount from \$5 million to \$10 million, subject to sunset in 2026. The 2018 increase is slightly more than double the 2017 amount, because of the inflation adjustment from 2017 to 2018.

² The \$6 million amount is roughly calculated by determining what the exclusion would have been (using the cost of living factor in effect) had the recent change not taken place by the year 2026.

³ Rev. Proc. 2017-58, Section 3.37(1) and (2).

⁴ D.C. Code § 47-3701(14), as modified by Fiscal Year 2018 Budget Support Act of 2017 (D.C. Council Bill 22-244), § 7173(b) changes D.C. Code § 47-3701(14) to read in part: “Zero bracket amount” means ... (C) For a decedent whose death occurs after December 31, 2017, an amount equal to the basic exclusion amount as prescribed in section 2010(c)(3)(A) of the Internal Revenue Code and any cost-of-living adjustments made pursuant to section 2010(c)(3)(B) of the Internal Revenue Code.”

⁵ *See* Jamison, [D.C. lawmakers want to undo congressional Republicans' estate-tax break](#), Wash. Post (April 7, 2018).

in a bill to **retroactively** change the DC estate tax exclusion to \$5,600,000 for 2018 (to be adjusted for inflation in future years).⁶ We will keep you posted on the status of this possible roll back and its potential effect.

III. **Maryland Estate Tax.** For individuals dying in 2018, the Maryland estate tax exemption is \$4,000,000, which is a \$1,000,000 increase from the 2017 Maryland estate tax exemption. The Maryland increase is part of a 2014 law that gradually increases the Maryland estate tax exemption each year until 2019, when it was scheduled to match the federal basic exclusion amount. Under the 2014 law, the Maryland estate tax exemption was scheduled to automatically jump from \$4,000,000 in 2018 to approximately \$11.4 million⁷ starting January 1, 2019.⁸

However, **Maryland recently enacted new changes** to decouple from the federal exclusion amount and limit the Maryland estate tax exclusion to \$5 million in 2019 (with no adjustment for inflation in future years), and to allow transferability of a deceased spouse's unused Maryland estate tax exclusion to a surviving spouse (i.e., so-called "portability").⁹ By comparison to the DC proposal, Maryland's change does not involve any element of retroactivity and takes effect as of July 1, 2018.

Therefore, in 2019, the Maryland estate tax exclusion amount will be limited to \$5 million!

IV. **No Estate Tax in Virginia and Florida.** As a reminder from our prior alerts, Virginia repealed its estate tax effective July 1, 2007 and Florida's estate tax ceased to apply when the federal government repealed the credit for state estate taxes.

If you have any questions about estate tax exemptions and exclusions, please contact one of our lawyers.

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⁶ DC Bill [B22-0685](#), Estate Tax Clarification Amendment Act of 2018. The inflation factor used by the District would be the local Consumer Price Index; it will not be tied to the Federal CPI (used for determining the Federal exclusion amount).

⁷ The \$11.4 million amount is the amount that the Maryland legislators believe that the Federal exclusion would be in 2019. See, [Fiscal and Policy Note to Maryland HBO 308](#).

⁸ Md. Code Ann., Tax-General § 7-309 (2017).

⁹ Maryland [HB0308](#) (April 5, 2018).