

## JO Knows Estate Planning Updates

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This past year has brought with it some important changes to the Massachusetts estate tax, and before the end of the next year, we will see large changes to the federal estate tax as well (barring any tax law changes by Congress). These changes present planning opportunities to all types of taxpayers, from those with modest estates living in Massachusetts to the wealthiest of taxpayers who will be subject to a federal estate tax. We hope that all our clients are considering their estate plans, and we're here to assist with that process.

### **Taking Advantage of the Temporary Estate Tax "Bubble"**

Right now, because of a temporary estate tax "bubble," an individual can shelter \$13.61 million from federal estate and gift taxes. But at the end of 2025, these amounts will sunset and revert back to \$5 million per person, adjusted for inflation (estimated at about \$7 million per person). Not only will the amount that escapes estate tax decrease, but the estate tax rate on anything left over will increase from 40% to 45% after 2025.

This sets the stage for thoughtful estate tax planning now, and that planning is particularly urgent for those who will be subject to federal estate tax after 2025. This type of estate planning often involves making large gifts now, while the exemption amount is high, and removing those assets and all their future appreciation from the taxable estate. The more complex gifting strategies often involve multiple steps, such as creating trusts or partnerships, valuing real estate or other assets, and transferring legal titles. Good attorneys for drafting documents and good valuation experts will be in high demand in 2025: the sooner you start the process, the better; waiting until 2025 may be too late.

### **The Massachusetts Estate Tax**

For clients who live in Massachusetts, the threshold at which a state-level estate tax is imposed differs wildly from the federal threshold. While a taxpayer could die today and owe zero federal estate taxes on a \$13.61 million estate, the same taxpayer who lives in Massachusetts would still owe Massachusetts estate taxes on all but the first \$2 million of that estate.

### **Married Couples Beware**

The reality is that many married individuals in Massachusetts will find that they tip over the \$2 million threshold easily. With the value of their primary residence, which has likely appreciated in value sharply in recent years, a couple of retirement accounts, and the remaining nest-egg, many Massachusetts taxpayers will owe a Massachusetts estate tax. Short of moving out of Massachusetts and establishing a domicile elsewhere (which can be a viable strategy but one that warrants careful planning), the next best way to mitigate the Massachusetts estate tax – particularly for married couples – is with the careful drafting of trusts for each individual.

### **Importance of Planning**

Generally, when a married taxpayer dies and leaves all assets to their surviving spouse, there is no estate tax imposed (federal or Massachusetts) because of an unlimited marital estate tax deduction. While this seems like great news, if this is the extent of the estate plan, then the first spouse to die has effectively wasted their \$2 million Massachusetts exemption. The estate of the second spouse to die will pay Massachusetts estate taxes on the couple's entire gross estate in excess of \$2 million, which now includes all the assets passed to them from the first spouse to die.

Through the use of relatively straightforward marital and family trust planning, the first spouse to die could take advantage of their own \$2 million exemption by placing assets in a trust that is available to benefit the surviving spouse, which avoids having those assets included in the surviving spouse's estate. The surviving spouse then has their own \$2 million exemption available at death, effectively sheltering a full \$4 million from MA estate taxes. The MA estate tax savings of this plan is \$99,600 compared with simply leaving all assets to a surviving spouse.

### **Johnson O'Connor Can Help**

With the looming federal estate tax changes and the opportunities to save Massachusetts estate taxes, we are encouraging all of our clients to consider whether they have the right estate plan in place for them. All estate planning should be done in conjunction with income tax planning, and we're well-equipped at Johnson O'Connor to help you with both. Please reach out to your advisor if you have questions, would like to review your current plan, or need to start planning.

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