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## PRIVATE CLIENT SERVICES 2021 YEAR-END ADVISORY

As 2021 draws to a close, we present our annual year-end advisory. Our 2021 edition outlines the current estate and gift tax environment, including projections for next year, and highlights year-end planning opportunities. We also welcome the addition of a new Private Client Services partner in our Greenwich office, Vanessa L. Maczko.

### 2022 ESTATE, GIFT AND GST TAX EXEMPTION

Starting on January 1, 2022, the estate, gift and generation-skipping transfer ("GST") tax exemption amounts are projected to be as follows:

**Unified Federal Estate, Gift and GST Tax Exemption.** The estate, gift and GST tax exemption will be \$12.06 million per taxpayer, up from \$11.7 million in 2021. With proper planning, a married couple can shield a total of \$24.12 million from federal estate, gift and GST tax in 2022. Note that on January 1, 2026, the exemption is set to revert to \$5,000,000, indexed for inflation after 2011.

**Estate, Gift and GST Tax Rate.** The federal estate, gift and GST tax rate will remain at 40%.

**Annual Exclusion from Gift Tax.** The gift tax annual exclusion amount will increase to \$16,000 per calendar year and per donee in 2022, up from \$15,000 in 2021.

Accordingly, a married couple may make gifts of up to \$32,000 per calendar year and per donee without using their gift tax exemptions. The exclusion for gifts made to a spouse who is not a citizen of the United States is \$164,000 in 2022.

**Connecticut Unified Estate and Gift Tax Exemption.** The Connecticut estate and gift tax exemption will increase to \$9.1 million in 2022 (up from \$7.1 million in 2021), and it will match the federal exemption amount on January 1, 2023. Currently, the tax rate on estates or gifts in excess of the Connecticut exemption ranges from 10.8% to 12%.

**New York Estate Tax Exemption and "Look Back."** For decedents dying on or after January 1, 2022, the New York estate tax exemption will be \$6 million. The New York estate tax is structured as a "cliff tax" and as such, if your taxable estate at the time of your death is greater than 105% of the value of the exemption, then the exemption is completely phased out and all assets are taxed. In effect, this estate tax "cliff" will subject your entire estate to New York estate tax. Currently, the top New York estate tax rate is 16%. While New York does not have a gift tax, the state does "look back" and include gifts made by the donor within three years of death in the decedent's estate in calculating the New York estate tax due.

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**YEAR-END PLANNING OPPORTUNITIES****1. Gifts to Family and Friends that Utilize the Annual Gift Tax Exclusion**

The holiday season often inspires giving to family and friends. Under the federal gift tax laws, each individual can gift up to \$15,000 before December 31, 2021, to any number of people without exhausting any portion of his or her lifetime exemption from estate and gift tax. A married couple can gift up to \$30,000 per donee.

Such gifts may be made either outright or to certain types of trusts under which the beneficiaries have withdrawal rights (sometimes referred to as "Crummey Trusts"), and can be in the form of cash, marketable securities or other property interests. Note that each recipient can only receive \$15,000 in total in a given year (or \$30,000 from a married couple), so such gifts should be coordinated with your other gifts to the individual (including to insurance trusts or Crummey Trusts for their benefit and to 529 College Savings Plans, discussed below). This is important so you can avoid inadvertently exceeding your gift tax annual exclusion amounts.

*Please be aware that if an annual exclusion gift is made by check prior to year-end, the recipient must cash or deposit the check during 2021 in order for such gift to count as a 2021 annual exclusion gift.*

Donors may also want to keep in mind two additional exceptions to the gift tax:

- First, a taxpayer may pay an individual's tuition without incurring any gift tax liability, if such payment is made directly to the educational institution. Reimbursement of tuition expenses to the benefitted individual will be treated as a gift for gift tax purposes. While this exception only applies to tuition,

funds held in 529 College Savings Plans can be used to pay other education expenses, such as room and board, books and related items.

- Second, medical expenses may be paid on behalf of an individual directly to the provider also without incurring any gift tax liability. In order to qualify, such medical expenses must not be paid by an insurance company and cannot be reimbursable by insurance. This exception includes payments for prescription drugs; expenses related to the diagnosis, cure, mitigation, treatment or prevention of disease; transportation essential to medical care; and premiums for medical insurance.

As mentioned above, Connecticut residents should be aware that Connecticut imposes its own gift tax. However, the Connecticut gift tax annual exclusion mirrors the federal gift tax annual exclusion and generally follows the same rules.

**2. Contributions to 529 Plans**

The end of the year is also a time to consider establishing 529 College Savings Plans ("529 plans"), or funding existing accounts, for the benefit of your children or grandchildren. Federal law allows annual exclusion contributions to 529 plans, a tax-advantaged savings plan designed to encourage saving for future education costs. 529 plans can be set up as separate accounts for each family member. The contributed funds can grow tax-free and be withdrawn tax-free as long as the funds are used to pay for the beneficiary's education. Please note that up to \$10,000 per year and per student may be withdrawn from a 529 plan to pay for elementary and secondary school expenses.

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There is also a five-year rule that allows an individual to frontload a 529 plan with five times the annual exclusion amount. In other words, \$75,000 per person or \$150,000 per married couple can be contributed in 2021; the five-year contribution must be reported on a timely filed gift tax return. While additional contributions within that five-year period are not permitted, you are allowing a larger sum of money more time to grow tax-free. Alternatively, you may make an annual exclusion gift in 2021 (either \$15,000 per single person or \$30,000 per married couple) to the 529 plan and then make a five-year contribution in 2022 (with an \$80,000 gift for a single individual, or a \$160,000 per married couple) to make an even larger contribution that will continue to grow tax-free.

Contributions to 529 plans may also entitle the contributor to an income tax deduction.

### 3. Charitable Giving

While gifts to qualified charitable organizations can be made with cash, giving appreciated assets (assets that will incur capital gains tax upon sale) directly to a charity is a simple and tax efficient method of achieving philanthropic goals.

In most cases, you can claim an income tax deduction based on the fair market value of the property contributed, and a qualified charitable organization will not incur capital gains tax when it sells the property. For taxpayers in higher income tax brackets, gifting appreciated assets to charity in 2021 and beyond

can be an effective way to avoid capital gains tax and the 3.8% Medicare surtax. To further your charitable goals you may also structure charitable gifting through entities such as donor advised funds, private foundations or through trusts (such as charitable remainder unitrusts).

Charitable contributions may also be made from individual retirement accounts (IRAs). Traditionally, IRA distributions are taxed to the recipient at ordinary income tax rates. However, current law also allows individuals over the age of 70½ to direct up to \$100,000 to be distributed from an IRA directly to a qualified charity, thus avoiding the income taxes on such amount.

### TAX LAW CHANGES ON THE HORIZON

We have penned several tax advisories this year to keep you informed about the various tax proposals ushered in upon President Biden taking the oath of office – from Bernie Sanders' "For the 99.5% Act" and Biden's Green Book proposals to the House Ways and Means Committee's bill. The latest incarnation of proposals effecting the tax landscape is the Build Better Act, which contains provisions for a wide range of social, environmental and administrative priorities. The House of Representatives passed this Act on November 19th, 2021, but it has yet to pass the Senate. The Act is a departure from the previous proposals as it does not seek to reduce the estate and gift tax exemptions levels and it does not limit the effectiveness of grantor trusts.

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*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*

If the Act is passed into law, it proposes raising additional revenue by increasing resources for the IRS and its enforcement of existing laws as well as implementing several new taxes, including the assessment of a surcharge of up to 8% on individuals, trusts and estates. In addition, the Act limits the qualified small business stock (QSBS) exclusion from gain to 50% for most sales of QSBS occurring after September 13, 2021. The Act does propose to raise the cap on the state and local tax deduction from \$10,000 to \$80,000.

### **WIGGIN AND DANA WELCOMES A NEW PARTNER**

Wiggin and Dana is pleased to report that Vanessa L. Maczko joined the firm as a Private Client Services partner this year. Vanessa advises moderate to high net-worth international and domestic individuals and families on multi-

generational transfers of assets, such as closely-held business interests, art collections, real estate, and insurance policies. Her practice focuses on estate, gift and generation-skipping transfer tax planning. Vanessa also advises clients on charitable giving by forming and administering private foundations, setting up donor advised funds, and drafting charitable lead and charitable remainder trusts.

### **FINAL THOUGHTS**

As 2021 ends, we recommend that you consider the planning opportunities described above before the year comes to a close. We welcome the opportunity to discuss the planning options that will be available once pending legislation is passed. In the meantime, we wish you and your family the very best for the holidays and a healthy, safe, and wonderful 2022.