

**Steve Leimberg's Estate Planning  
Email Newsletter Archive Message #2695**

**Date:09-Jan-19**

**Subject: Andrea Dykes, Linda Kotis and Carolyn Rogers on the Reset of the District of Columbia's Estate Tax Exemption**

*“DC has declared its independence from Congress. Effective October 1, 2018, the estate tax exemption for a District of Columbia decedent whose death occurs on or after January 1, 2018, is \$5.6 million,<sup>1</sup> a decoupling from the federal estate tax exemption. DC Council Member Charles Allen (D-Ward 6) observed that the 2018 increase of the federal exemption to \$11.18 million was a ‘decision made by Congress [and DC did not] have any say in it.’<sup>2</sup> In spite of this federal-DC disconnect, the District’s taxpayers can still structure their estates to reduce tax liability at death. DC does not impose a gift tax or require the use of estate tax exemption on transfers prior to death. Therefore, District residents who set up inter vivos trusts combined with life insurance may provide their families with ‘tax savings for all.’<sup>3</sup>”*

**Andrea Dykes, Linda Kotis, and Carolyn Rogers** provide members with commentary analyzing the decoupling of the District of Columbia estate tax exemption with the new federal estate tax exemption, as well as opportunities for tax savings in spite of this change.

**Andrea Dykes** is Managing Partner of **Howard Insurance**. Andrea is focused on developing strategies to achieve the firm vision for its clients in addition to leading the firm’s life insurance practice. For over a decade, Andrea has earned a trusted reputation for her consultative approach to providing life insurance solutions for individuals, business owners, and executives. Her areas of expertise include the use of insurance in family wealth transfer planning and business succession planning. Andrea has extensive experience in all aspects of executive and employee benefit strategies. Andrea graduated from the University of Delaware, earning a degree in Business Administration with concentrations in Finance and Economics. Andrea holds the Certified Financial Planner (CFP) and Certified in Long Term Care (CLTC) professional designations. She currently serves on the Board of Directors of the Washington Area Women’s Foundation, the Washington Women's Leadership Initiative, and is an active member of the

DC Estate Planning Council, Association for Advanced Life Underwriting (AALU), and the Society of Financial Service Professionals. Andrea has been recognized as a top Insurance Advisor by *Washingtonian Magazine*.

**Carolyn Rogers** is a Vice President of **Howard Insurance**. In this role, she works directly with the firm's clients and advisors on the planning, placement, and servicing of sophisticated life, disability, and long term care insurance solutions. From the beginning of her insurance career in 2005, Carolyn has built a successful practice by combining her passion for educating clients on their insurance portfolio with distilling complex planning and products. Carolyn uses this approach to advise successful families on life insurance solutions for their estate planning and personal financial security, and on the use of life insurance for business succession and executive benefit planning. Carolyn's technical proficiency and dedication to client service is highly respected and sought after by clients and advisors. Carolyn graduated cum laude from The George Washington University, earning a degree in International Affairs with concentrations in International Development and International Economics. Carolyn holds the Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC) designations. She is an active member of the Washington, D.C. Estate Planning Council and serves on the board of the National Capitol Chapter of the Society of Financial Services Professionals. Carolyn has been recognized as one of the area's best insurance advisors by *Washingtonian Magazine* and *Northern Virginia Magazine*.

**Linda Kotis** is Of Counsel in the Washington, DC office of **Ivins, Phillips & Barker**, and a member of the District of Columbia, California, Indiana, and Maryland Bars. She advises clients on forming and revising their estate plans and analyzes estate, income, generation-skipping transfer, and gift taxation matters for high net worth individuals and families. Linda's significant experience also includes analysis of complex state trust administration and non-tax issues, the administration of high net worth estates, formation of private foundations, marital agreements, complex guardianships, post-mortem planning, probate matters and court pleadings regarding fiduciary administration issues. She also has assisted a private foundation in developing grant programs for approval by the IRS and creating grant agreements. She wrote *Minding the Gap: The Mismatch Between Maryland's 2019 Estate Tax Exemption and the New Federal Estate Tax Exemption* (June 25, 2018) and *Reform School: Lessons on Rescuing an Undesirable Tax Plan after Death* (April 27, 2017) for LISI, and is author of articles in *Probate & Property* magazine, *Washington Lawyer*, *Bloomberg BNA Daily*

*Tax Report*, and *Wealth Strategies Journal*. Linda's most recent presentations on estate planning were *Lemons to Lemonade: Making Use of the Delaware Tax Trap* (November 13, 2018) with Kasey A. Place at the DC Bar Communities, Estates, Trusts, and Probate Lunch Series and as a panelist at the *Women, Influence & Power in Law* conference (October 4, 2018). Past presentations include meetings of the American Bar Association and the District of Columbia Bar, as well as law firm briefings. Linda is an active member of the Estate Planning Council of Montgomery County, Maryland.

Here is their commentary:

## **EXECUTIVE SUMMARY:**

After the station was acquired by 19th Century Fix Broadcasting, Mary moved from Minneapolis to become the executive producer of Sue Ann's DC series, *The Darling Domestic*. Mary's shrewd investment in a production company, Darling Domestic Pro, Inc., developing instructional videos, audiotapes, and print products has propelled her estate to over \$30 million. While Mary never married and has no children, she considers Phyllis' daughter, Bess, like her own and supported Bess during her two Masters and PhD programs on progressive child-rearing at Columbia.

Ted and Georgette have also made their way to our nation's capital, deciding that retirement in Washington's more reasonable climate and proximity to family justified leaving their long-time Minnesota home. Ted's and Georgette's Navy Yard condo is just minutes away from the 16<sup>th</sup> Street home of their son, David, who is now a Georgetown law professor. Their daughter, Mary Lou, is following in her dad's footsteps as an anchor on the *New Six O'Clock News*, an offering of DC's latest cable start-up. Ted and Georgette amassed considerable assets from Ted's tremendous speaking fees at BAXTER<sup>4</sup> talks over the years and Georgette's sale of "Golden Girl Rent-A-Car" in 2016.

Mary and Ted and Georgette are relieved that their federal estate tax liability will be reduced due to the 2017 Tax Cuts and Jobs Act, as they expect their assets to continue to grow. Each of them, however, is concerned about how their estates will be affected by the District's decoupling of its estate tax exemption from the federal estate tax exemption.

Mary and Ted and Georgette should consider making lifetime gifts. This is because DC does not impose a gift tax or require the use of estate tax

exemption on transfers prior to death. Removing assets from their estates now will also remove future appreciation of those assets as well. Furthermore, making such gifts to inter vivos trusts combined with life insurance may provide their families with greater savings and flexibility.

## **FACTS:**

Effective October 1, 2018, the estate tax exemption for a District of Columbia decedent whose death occurs on or after January 1, 2018, is \$5.6 million.<sup>5</sup> In describing the Estate Tax Clarification Amendment Act of 2018, DC Council Member Charles Allen (D-Ward 6) explained:

The District's estate tax threshold would have been \$5.6 million in 2018, but through its December federal tax overhaul, Congress effectively amended our tax law to match the new federal threshold of \$11.2 million. According to the CFO's February revenue estimate, this change will cost the District \$6.5 million in the budget we are currently considering, with that number rising to \$7.2 million by FY2022. This lost revenue will benefit only a very small number of our very wealthiest residents.

Last spring, we debated whether to follow the Tax Revision Commission recommendations previously put in place to increase our estate tax threshold from \$2 million to match the then-federal level.<sup>6</sup> That was a healthy debate, but ultimately a majority of the Council decided to follow the recommendations. But the Commission's own report said that "[u]nder the Commission's recommendation, the District's estate tax threshold would increase to \$5.25 million, with annual adjustments" beginning in 2014 and thereafter.

There is nothing in the report that suggests we should substitute the judgement of this Congress for our own, or that \$11.2 million is a reasonable estate tax threshold.<sup>7</sup>

The new DC estate tax exemption will be indexed for inflation. Therefore, because the federal exemption has now risen to \$11.4 million,<sup>8</sup> the DC exemption has also risen, to \$5.7 million.

DC estate tax applies only to the value of the estate above the exemption amount.<sup>9</sup> Note that this has not always been the case in the District of Columbia. Until the law was amended in 2015,<sup>10</sup> estate tax liability began on the first dollar of the estate, once it was determined that a DC decedent had a taxable estate, not on the amount above the exemption. As a result, an estate with assets exceeding the exemption amount received no benefit from the DC exemption.

Now that the DC exemption is set at half of the federal exemption, what does the 2018 change mean for DC taxpayers?

## COMMENT:

After the station was acquired by 19th Century Fix Broadcasting, Mary moved from Minneapolis to become the executive producer of Sue Ann's DC series, *The Darling Domestic*. Mary's shrewd investment in a production company, Darling Domestic Pro, Inc., developing instructional videos, audiotapes, and print products has propelled her estate to over \$30 million. While Mary never married or had children, she considers Phyllis' daughter, Bess, like her own and supported Bess during her two Masters and PhD programs on progressive child-rearing at Columbia.

Ted and Georgette have also made their way to our nation's capital, deciding that retirement in Washington's more reasonable climate and proximity to family justified leaving their long-time Minnesota home. Ted's and Georgette's Navy Yard condo is just minutes away from the 16<sup>th</sup> Street home of their son, David, who is now a Georgetown law professor. Their daughter, Mary Lou, is following in her dad's footsteps as an anchor on the *New Six O'Clock News*, an offering of DC's latest cable start-up. Ted and Georgette amassed considerable assets from Ted's tremendous speaking fees at BAXTER talks over the years and Georgette's sale of "Golden Girl Rent-A-Car" in 2016.

Mary and Ted and Georgette are relieved that their federal estate tax liability will be reduced due to the 2017 Tax Cuts and Jobs Act, as they expect their assets to continue to grow. Each of them, however, is concerned about how their estates will be affected by the District's decoupling of its estate tax exemption from the federal estate tax exemption.

The new DC law means that the District's estate tax exemption amount is decoupled from the federal estate tax exemption. Because of this gap, a

larger portion of their estates would be subject to the District's estate tax, than the amount subject to federal estate tax.

### **Reduction of DC Taxable Estate During Lifetime**

Recent articles about the new federal estate tax exemption (*IPB March 2018 Newsletter*)<sup>11</sup> and Maryland's decoupling of its state estate tax exemption (*LISI, June 25, 2018*)<sup>12</sup> offer ideas for estate tax savings. These strategies include (1) giving assets to a family member whose estate will not exceed the federal or state exemptions and having the donee bequeath assets back to the original donor; (2) funding a Domestic Asset Protection Trust with the grantor as a discretionary beneficiary, which allows the grantor to have continued access to property while reducing his taxable estate; and (3) creating a grantor trust and retaining the power to swap assets, which removes assets for estate tax purposes and sets the stage to reduce income taxes on future sales.<sup>13</sup> These types of gifts would work well to help Mary and Ted and Georgette reduce their DC taxable estates and benefit themselves and their families.

Other options should be considered by our Minneapolis transplants. These include creating a grantor retained annuity trust (GRAT) and one or two spousal lifetime access trusts (SLAT), with the added twist of using life insurance products in conjunction with the trusts, as described below.

### **Grantor Retained Annuity Trust**

**Overview:** A Grantor Retained Annuity Trust (GRAT) is an irrevocable trust in which the grantor receives a fixed amount, payable to or for the grantor's benefit for each year of the annuity term. A grantor may serve as trustee of his own GRAT. Upon the trust's termination, the remaining principal is payable outright to or in trust for remainder beneficiaries. Annuity payments to the grantor are based on the Section 7520 rate. One planning technique is to create a short-term (nearly) zeroed-out GRAT<sup>14</sup> with high annuity payments. If the assets actually generate a return at or above the Section 7520 rate, then the remainder beneficiaries will receive a tax-free gift of assets at a minimal gift tax cost to the grantor.

Mary is interested in funding a GRAT with some of her Darling Domestic Pro stock. She would also like to benefit Bess as a remainder beneficiary.

**Creating Trust:** Mary would like to create a short-term zeroed-out GRAT. She likes the idea of using Darling Domestic Pro stock and removing the

value of the stock from her estate. She also is pleased that she could serve as her own trustee so as not to rely on someone else to assume that role. She has decided to create an irrevocable trust for Bess and Bess' children to receive the remainder of the GRAT at the end of its term.

Mary has been thinking that she would not need all of the annuity payments to support her lifestyle. She has been wondering how else she could invest those payments.

***Using Life Insurance:*** Mary could use some or all of the after-tax GRAT annuity payments to fund an irrevocable life insurance trust (ILIT). The ILIT would purchase a life insurance policy on Mary's life. The ILIT would be the owner and beneficiary of the policy. Mary would make annual exclusion gifts to the ILIT to pay premiums for the policy. Once the GRAT term has ended, the ILIT would also be the remainder beneficiary of the GRAT. On Mary's death, the ILIT would receive the insurance death benefit, as the beneficiary of the policy. The life insurance offers additional liquidity to Bess and her children as trust beneficiaries, who would enjoy access to these assets free of estate tax. In combination, this planning helps reduce the value of Mary's estate while creating much needed liquidity at her death to help pay any estate taxes due.

GRATs and life insurance can be ideal partners, especially for clients who have a limited number of beneficiaries for the purpose of making annual exclusion gifts, like Mary. Mary can fund a life insurance policy with annual exclusion gifts during the GRAT term and step up premium payments using the GRAT remainder thereafter. The chart below illustrates this example.<sup>15</sup>

Grantor Retained Annuity Trust Activity							Irrevocable Life Insurance Trust Activity							
Initial GRAT Principal (Pre-Discounted): \$10,000,000							Total ILIT Value at Death at LE: \$19,045,052							
Age	GRAT Growth at 3.0%	GRAT Income at 5.0%	Portion of GRAT Payment Made in Cash	Portion of GRAT Payment Made in Kind	Total GRAT Payment*	GRAT Remainder (Pre-Discounted)	ILIT Principal (Pre-Discounted)	Gifts to ILIT	ILIT Premiums	ILIT Growth at 3.0%	ILIT Income at 5.00%	ILIT Death Benefit	ILIT Remainder (Pre-Discounted)	ILIT Total Value at Death
55	300,000	500,000	-500,000	-1,780,016	-2,280,016	7,518,725	0	45,000	-45,000	0	0	10,000,000	0	10,000,000
56	225,562	375,935	-375,936	1,904,080	-2,280,016	4,769,162	0	45,000	-45,000	0	0	10,000,000	0	10,000,000
57	143,075	238,458	-238,458	-2,041,558	-2,280,016	1,722,302	0	45,000	-45,000	0	0	10,000,000	0	10,000,000
58	0	0	0	0	0	0	1,722,302	45,000	-118,309	45,420	82,450	10,000,000	1,776,862	11,776,862
59	0	0	0	0	0	0	1,776,862	45,000	-118,309	47,057	85,178	10,000,000	1,835,788	11,835,788
60	0	0	0	0	0	0	1,835,788	45,000	-118,309	48,824	88,124	10,000,000	1,899,427	11,899,427
61	0	0	0	0	0	0	1,899,427	45,000	-118,309	50,734	91,306	10,000,000	1,968,157	11,968,157
62	0	0	0	0	0	0	1,968,157	45,000	-118,309	52,795	94,742	10,000,000	2,042,386	12,042,386
63	0	0	0	0	0	0	2,042,386	45,000	-118,309	55,022	98,454	10,000,000	2,122,554	12,122,554
64	0	0	0	0	0	0	2,122,554	45,000	-118,309	57,427	102,462	10,000,000	2,209,134	12,209,134
65	0	0	0	0	0	0	2,209,134	45,000	-118,309	60,025	106,791	10,000,000	2,302,641	12,302,641
66	0	0	0	0	0	0	2,302,641	45,000	-118,309	62,830	111,467	10,000,000	2,403,629	12,403,629
67	0	0	0	0	0	0	2,403,629	45,000	-118,309	65,860	116,516	10,000,000	2,512,695	12,512,695
68	0	0	0	0	0	0	2,512,695	45,000	-118,309	69,132	121,969	10,000,000	2,630,487	12,630,487
69	0	0	0	0	0	0	2,630,487	45,000	-118,309	72,665	127,859	10,000,000	2,757,702	12,757,702
70	0	0	0	0	0	0	2,757,702	45,000	-118,309	76,482	134,220	10,000,000	2,895,095	12,895,095
71	0	0	0	0	0	0	2,895,095	45,000	-118,309	80,604	141,089	10,000,000	3,043,479	13,043,479
72	0	0	0	0	0	0	3,043,479	45,000	-118,309	85,055	148,508	10,000,000	3,203,733	13,203,733
73	0	0	0	0	0	0	3,203,733	45,000	-118,309	89,863	156,521	10,000,000	3,376,808	13,376,808
74	0	0	0	0	0	0	3,376,808	45,000	-118,309	95,055	165,175	10,000,000	3,563,729	13,563,729
79	0	0	0	0	0	0	4,473,399	45,000	-118,309	127,953	220,004	10,000,000	4,748,047	14,748,047
84	0	0	0	0	0	0	6,084,650	45,000	-118,309	176,290	300,567	10,000,000	6,488,198	16,488,198
89	0	0	0	0	0	0	8,452,107	45,000	-118,309	247,314	418,940	10,000,000	9,045,052	19,045,052
94	0	0	0	0	0	0	11,930,678	45,000	-118,309	351,671	592,868	10,000,000	12,801,908	22,801,908

\*Assumes 3.4% 7520 rate and 36% discount

## Spousal Lifetime Access Trust

**Overview:** A Spousal Lifetime Access Trust (SLAT) is an irrevocable trust created by one spouse for the other. The trust provides the beneficiary spouse with access to income and/or principal during his or her lifetime. The transfer of assets, as well as future appreciation, is removed from the grantor's estate and is also not subject to tax in the beneficiary's estate.

Ted is on board with this plan. He is especially pleased that his creation of a SLAT for Georgette would not eliminate his access to assets in the trust. This is because any income or principal distributions to Georgette from the SLAT would be indirectly available to Ted as well. Georgette could use distributions from the SLAT to pay their condo mortgage and monthly fees, pay for homeowners' and health insurance, or other expenses Ted might have contributed to had the assets still been held in his own name. Similarly, Georgette would have indirect access to the assets she uses to fund a SLAT for Ted's benefit.

**Creating Trust:** Ted and Georgette are thinking of funding two SLATs, one for each of them, using \$5 million in marketable securities from each of their separate brokerage accounts. Each would need to take care to avoid the trusts being includible in his or her own gross estate at death (through the



“reciprocal trust doctrine).<sup>16</sup> Therefore, each SLAT would need different terms and beneficiaries and should not be created in rapid succession.

Ted could create SLAT#1 for Georgette and their son, David. Georgette could create SLAT#2 for Ted and their daughter Mary Lou. SLAT#1 could authorize the Trustee to make net income and/or principal distributions for the health, education, maintenance and support (HEMS) of the beneficiaries. SLAT#2 could require quarter-annual distributions of income to Ted and allow principal distributions for HEMS to Mary Lou. Sue Ann could serve as trustee of the trust created for Georgette and David. Murray, Ted’s former co-worker (and reluctant best friend), could serve as trustee of the trust created for Ted’s benefit.

Each SLAT could permit the appointment of an independent trustee, such as a family friend or a trust company. The independent trustee could make discretionary distributions of principal for big-ticket items, such as the down payment on the Rolls-Royce Ted has been craving or a trip to Acapulco, his favorite vacation spot.

***Using Life Insurance:*** In addition to holding securities, one of the SLATs could own a life insurance policy on the life of the grantor. For example, SLAT#1 for Georgette’s benefit could own a policy on Ted’s life. On Ted’s death, the death benefit would be paid to the trust, free of income and estate tax, benefitting Georgette and David. This can be attractive for their planning for a couple reasons:

First, though Georgette has indirect access to the assets inside of SLAT #2 during Ted’s lifetime, she loses access to those assets inside the SLAT for the benefit of Ted at his death. Owning life insurance inside SLAT #1 can replace those assets lost in the event of Ted’s death because Georgette would have access to the death benefit proceeds. Let’s assume Georgette is concerned about losing access to the trust assets in the short term. In this case, she should consider a term life insurance policy on Ted’s life.

Let’s illustrate this concept and assume SLAT #1 has a principal amount of \$5 million, plus a \$5 million 20 year term life insurance policy on Ted’s life.<sup>17</sup>

Irrevocable Life Insurance Trust Activity										
Age	ILIT Principal	ILIT Premiums	Unrealized Capital Growth	Realized Capital Growth	Dividend Income	Total Annual Taxes	Annual Management Fees	ILIT Death Benefit	ILIT Remainder	ILIT Total Value at Death
59	5,000,000	-39,105	253,006	44,648	99,218	-51,519	-49,094	5,000,000	5,257,154	10,257,154
60	5,257,154	-39,105	266,120	46,962	104,361	-54,189	-51,639	5,000,000	5,529,665	10,529,665
61	5,529,665	-39,105	280,019	49,415	109,811	-57,019	-54,335	5,000,000	5,818,450	10,818,450
62	5,818,450	-39,105	294,747	52,014	115,587	-60,018	-57,193	5,000,000	6,124,481	11,124,481
63	6,124,481	-39,105	310,354	54,768	121,708	-63,197	-60,222	5,000,000	6,448,787	11,448,787
64	6,448,787	-39,105	326,894	57,687	128,194	-66,565	-63,431	5,000,000	6,792,461	11,792,461
65	6,792,461	-39,105	344,421	60,780	135,067	-70,134	-66,832	5,000,000	7,156,659	12,156,659
66	7,156,659	-39,105	362,995	64,058	142,351	-73,916	-70,436	5,000,000	7,542,606	12,542,606
67	7,542,606	-39,105	382,679	67,532	150,070	-77,924	-74,256	5,000,000	7,951,601	12,951,601
68	7,951,601	-39,105	403,537	71,212	158,250	-82,171	-78,303	5,000,000	8,385,021	13,385,021
69	8,385,021	-39,105	425,642	75,113	166,918	-86,672	-82,592	5,000,000	8,844,325	13,844,325
70	8,844,325	-39,105	449,066	79,247	176,104	-91,442	-87,138	5,000,000	9,331,058	14,331,058
71	9,331,058	-39,105	473,890	83,628	185,839	-96,497	-91,955	5,000,000	9,846,857	14,846,857
72	9,846,857	-39,105	500,195	88,270	196,155	-101,854	-97,059	5,000,000	10,393,460	15,393,460
73	10,393,460	-39,105	528,072	93,189	207,087	-107,530	-102,468	5,000,000	10,972,705	15,972,705
74	10,972,705	-39,105	557,614	98,402	218,672	-113,545	-108,201	5,000,000	11,586,542	16,586,542
75	11,586,542	-39,105	588,919	103,927	230,949	-119,920	-114,275	5,000,000	12,237,037	17,237,037
76	12,237,037	-39,105	622,095	109,781	243,959	-126,676	-120,713	5,000,000	12,926,378	17,926,378
77	12,926,378	-39,105	657,251	115,985	257,745	-133,834	-127,534	5,000,000	13,656,886	18,656,886
78	13,656,886	-39,105	694,507	122,560	272,356	-141,421	-134,764	5,000,000	14,431,020	19,431,020
83	17,831,741		909,419	160,486	356,635	-185,183	-176,466	0	18,896,632	18,896,632

Second, since the SLATs are grantor trusts, any income generated by the assets in trust will be taxable to Ted and Georgette. Life insurance can help shield them from that expense. This cannot be accomplished with term life insurance, rather with a permanent life insurance policy with a cash value component. When properly structured, the cash value of life insurance grows income tax free, withdrawal and loans against the policy value are income tax free, and the policy death benefit is received income tax free.

Let's illustrate this concept and assume SLAT #1 has a principal amount of \$5 million, plus a \$5 million permanent life insurance policy on Ted's life.

Irrevocable Life Insurance Trust Activity										
Total ILIT Value at Death at LE: \$28,673,948										
Age	ILIT Account Balance (BOY)	ILIT Premiums	Unrealized Capital Growth	Realized Capital Growth	Dividend Income	Total Annual Taxes	Annual Management Fees	ILIT Death Benefit	ILIT Account Balance (EOY)	ILIT Total Value at Death
59	5,000,000	-378,166	235,714	41,597	92,437	-67,351	-45,545	5,000,000	4,878,684	9,878,684
60	4,878,684	-378,166	229,526	40,505	90,010	-66,241	-44,343	5,000,000	4,749,976	9,749,976
61	4,749,976	-378,166	222,962	39,346	87,436	-65,063	-43,067	5,000,000	4,613,424	9,613,424
62	4,613,424	-378,166	215,998	38,117	84,705	-63,814	-41,714	5,000,000	4,468,551	9,468,551
63	4,468,551	-378,166	208,610	36,813	81,808	-62,488	-40,279	5,000,000	4,314,849	9,314,849
64	4,314,849	-378,166	200,771	35,430	78,734	-61,081	-38,756	5,000,000	4,151,780	9,151,780
65	4,151,780	-378,166	192,454	33,963	75,472	-59,589	-37,140	5,320,872	3,978,775	9,299,647
66	3,978,775	0	202,918	35,809	79,575	-41,320	-39,375	5,482,987	4,216,383	9,699,370
67	4,216,383	0	215,036	37,947	84,328	-43,787	-41,726	5,656,192	4,468,180	10,124,372
68	4,468,180	0	227,877	40,214	89,364	-46,402	-44,218	5,832,311	4,735,015	10,567,326
69	4,735,015	0	241,486	42,615	94,700	-49,173	-46,858	6,045,551	5,017,784	11,063,335
70	5,017,784	0	255,907	45,160	100,356	-52,110	-49,657	6,269,835	5,317,441	11,587,276
71	5,317,441	0	271,189	47,857	106,349	-55,222	-52,622	6,493,987	5,634,992	12,128,979
72	5,634,992	0	287,385	50,715	112,700	-58,519	-55,765	6,732,170	5,971,507	12,703,677
73	5,971,507	0	304,547	53,744	119,430	-62,014	-59,095	6,985,490	6,328,119	13,313,609
74	6,328,119	0	322,734	56,953	126,562	-65,718	-62,624	7,251,426	6,706,027	13,957,453
75	6,706,027	0	342,007	60,354	134,121	-69,642	-66,364	7,534,949	7,106,503	14,641,452
76	7,106,503	0	362,432	63,959	142,130	-73,801	-70,327	7,835,813	7,530,895	15,366,708
77	7,530,895	0	384,076	67,778	150,618	-78,208	-74,527	8,155,913	7,980,632	16,136,545
78	7,980,632	0	407,012	71,826	159,613	-82,879	-78,978	8,497,127	8,457,226	16,954,353
83	10,665,729	0	543,952	95,992	213,315	-110,764	-105,550	10,608,024	11,302,674	21,910,698
88	14,254,233	0	726,966	128,288	285,085	-148,030	-141,062	13,568,469	15,105,479	28,673,948
93	19,050,095	0	971,555	171,451	381,002	-197,835	-188,523	16,742,657	20,187,745	36,930,402
98	25,459,534	0	1,298,436	229,136	509,191	-264,397	-251,951	19,875,765	26,979,948	46,855,713

### Considering the Time Value of Money and Risks in Waiting

Under current law, the federal estate tax exemption amount reverts to \$5 million as adjusted for inflation in 2026.<sup>18</sup> Congress may attempt to make the federal exemption amount a permanent feature. The new Democratic House Majority also introduces some uncertainty in the mix. Should Mary and Ted and Georgette adopt a wait-and-see approach before implementing some of these strategies?

Delaying planning based on potential Congressional action could be costly, especially considering that each of them is likely to have some estate tax liability in any event. If the planning is completed now the assets will grow outside of their estates, suppressing the overall value of their taxable estate. If planning is delayed, it may be more difficult and expensive to provide comparable estate tax reduction.

Additionally, since the IRS has recently proposed regulations that indicate there would be no "clawback" on lifetime gifts made should the federal estate tax exemption revert, there is little risk to making gifts now.<sup>19</sup>

Mary and Ted and Georgette could consider strategies like purchasing convertible term life insurance, or acquiring permanent life insurance with skip pay or step up in premium designs, as a wait-and-see approach with flexibility. Other risks in a wait-and-see approach related to the acquisition of life insurance may be the health of the insured and the potential future pricing increases imposed by the insurer. Considering these strategies can preserve the insurability of each Mary and Ted and Georgette for potential future planning while providing immediate death benefit protection.

### **Revisiting DC Estate Plans Now**

The District's reset of its estate tax exemption means that DC residents hoping for a "huge" new exemption to match the federal exemption amount will not get their wish. Still, there are opportunities to reduce DC estate tax liability under the new law. These include making lifetime gifts to trusts for family members to reduce the estate tax on the amount gifted plus its appreciation. Life insurance should be considered as a tool in the trust to create liquidity and provide tax efficiency.

Waiting for Congress to make the tax cuts permanent results in a missed opportunity to save on the time value of money. District residents should revisit their planning now, to review their goals to assist family members and take advantage of potential tax savings now and in the future.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!**

*Andrea Dykes*

*Linda Kotis*

*Carolyn Rogers*

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## CITATIONS:

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<sup>1</sup> D.C. Code § 47-3702 DC B. 685

<sup>2</sup> “D.C. lawmakers want to undo congressional Republicans’ estate-tax break,” *The Washington Post*, April 7, 2018, accessed on September 18, 2018 at <https://www.washingtonpost.com/local/dc-politics/dc-lawmakers-want-to-undo-congressional-republicans-estate-tax-break/2018/04/06>.

<sup>3</sup> The motto of the District of Columbia is “Justitia Omnibus” which is Latin for “Justice for All.” Accessed on September 26, 2018 at <https://os.dc.gov/page/dc-symbols>.

<sup>4</sup> Broadcaster’s Advice for X-Celling in The Entertainment Ratings.

<sup>5</sup> D.C. Code § 47-3702 DC B. 685

<sup>6</sup> The D.C. Tax Revision Commission unanimously approved a set of recommendations to improve the tax system of the District of Columbia on December 18, 2013. Among these recommendations were to raise the DC estate tax threshold from \$1 million to the \$5.25 million federal level and index it for inflation thereafter. The rationale was to simplify the existing system which was tied to the federal credit and use fewer brackets, while still retaining the opportunity to generate revenue from higher value estates. D.C. Tax Revision Commission Final Report dated May 2014, at page 15.

<sup>7</sup> Letter dated April 5, 2018 from Charles Allen to Members of the Council of the District of Columbia.

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<sup>8</sup> *What's New - Estate and Gift Tax: Exclusions*, accessed on December 13, 2018 at <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax>.

<sup>9</sup> DC Code § 47-3702(a-1)(1) states as follows:

(a-1) A tax is imposed on the taxable estate of every resident decedent dying after December 31, 2015, as follows:

(1) The rate of tax shall be 16%; except, that the portion of the taxable estate that does not exceed the current zero bracket amount shall be taxed at 0%, and if the taxable estate exceeds the zero bracket amount, the following tax rates shall be applied to the incremental values of the taxable estate above the zero bracket amount:

<sup>10</sup>2015 DC B 158.

<sup>11</sup> Linda Kotis in Ivins Phillips & Barker's March 2018 Estates, Trusts, & Tax Newsletter, *Six "Super" Ideas for Using that "Huge" New Exemption*, <http://www.ipbtax.com/publications-419.html>.

<sup>12</sup> Linda Kotis, *Minding the Gap: The Mismatch Between Maryland's 2019 Estate Tax Exemption and the New Federal Estate Tax Exemption*, [LISI Estate Planning Newsletter #2646](#), June 25, 2018.

<sup>13</sup> Assets given to the grantor in an exchange with the trust receive a step-up in basis upon the grantor's death. Income taxes on sales of such assets following the grantor's death will be reduced.

<sup>14</sup> Treas. Regs. § 25.2702-3(e).

<sup>15</sup> Assumes Mary is age 55, preferred nonsmoker, using no-lapse guarantee universal life.

<sup>16</sup> A trust created by a grantor for her husband, with substantially identical provisions to a second trust created by the husband for his wife, and which puts each grantor in approximately the same economic position as if he or she had retained a life estate in the other spouse's trust, are considered to be reciprocal trusts. Pursuant to Section 2036(a)(1) of the Internal Revenue Code (the "Code"), the trust created by the grantor for his or her spouse would be includible in such grantor's gross estate at death. *U.S. v. Grace et al.*, 395 U.S. 316 (1969).

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<sup>17</sup> Assumes Ted is age 59 and a standard nonsmoker risk. Assumes capital growth rate of return of 6%, 2% dividend income rate, 50% ordinary income tax rate, 25% capital gain rate, 90% portion of long-term capital gain, 26.5% composite capital gain rate, and 15% annual growth turnover rate.

<sup>18</sup> Section 2010(c)(3)(C) of the Internal Revenue Code.

<sup>19</sup> See Mike Jones' commentary, *Is There Clawback of the Expiring Increased Applicable Exclusion Amount After 2025*, Estate Planning Newsletter #2684 (November 26, 2018) at <http://www.leimbergservices.com>; *Estate and Gift Taxes; Difference in the Basic Exclusion Amount, A Proposed Rule*, accessed on December 13, 2018 at <https://www.federalregister.gov/documents/2018/11/23/2018-25538/estate-and-gift-taxes-difference-in-the-basic-exclusion-amount>