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# THE LEGAL BULLETIN

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## Do We *Have* To Talk About Taxes *Again*?

I am not known for starting my newsletters on a negative note (well, half the time). That being said, let's talk about taxes. Again. But instead of me whining over how I can no longer deduct buying NY Jets tickets for clients (granted, not for the clients I actually like), let's review what actually affects you, what steps you should take, and where things are going between now and through the Tax Cuts and Jobs Act of 2017's sunset in December of 2025, and whether or not it is actually good or bad for you.



But if you don't want to spend your precious time reading further and prefer to give your selfie Minnie Mouse ears on Snapchat, I will give you the answer: *It depends*

## Federal Gift & Estate Tax

The federal gift and estate tax exemptions are now \$11,180,000 per person which may revert back to a \$5,600,000 base in 2026, meaning that 90%+ of my clients no longer have a federal estate tax to worry about. If you happen to fit into the 10% category the next 8 years may be a great opportunity to start gifting large sums of property without any gift tax

(provided it has a high cost basis, see more below), as it is likely any gift made shall avoid a retroactive gift tax if the law does sunset in 2026. And you don't have to be in a rush to make these gifts: You have 8 years, so gift cautiously.

## State Estate Taxes

If you are in the remaining 90%, you may still be affected by New York's estate tax exemption, which is no longer linked to the federal amount and instead currently caps at \$5,490,000. And if you live in New Jersey you now - I stress, "now" and not "forever" - live in an estate tax haven, since there is no longer a state estate tax in the Garden State (though they do have an inheritance tax assessed on gifts to remote family members and non-family beneficiaries). Of course, you still live in New Jersey, so I'll still make fun of you. And if you live in Connecticut you are all messed up for yet another reason: You are in one of only two US states that has a gift tax, and you also have an estate tax. So, does gifting more money now make sense? Well... *it depends*.

## Capital Gains Taxes

As my clients' lifespans have increased, I have seen them accumulate more money than they need: 80-year olds spend considerably less than 70-year olds - even if the ridiculous memorabilia they buy is the same stuff - and some older

individuals are embracing Medicaid planning even if they don't ultimately apply for Medicaid. So gifting assets during life is becoming a more-common phenomenon than ever before. The Tax Cuts and Jobs Act did not change anything regarding capital gains taxes, so this is a good opportunity to review what the capital gains tax rules are, and how they need to be balanced with your gifting strategies.

**"Donee Takes Donor's Basis"**: The price you purchased property at is very important if you gift that property: When you make a lifetime gift of a stock, real estate or another capital asset to someone that person receives it with your original "cost basis" (unless the asset is now worth less than what you purchased it for, in which case the recipient receives it at its current, lower

article continues onto page 2 →

## I Blog! A Lot!

I blog about once per week and am a contributing author for several online periodicals. I also have informational presentations on my website that may help explain Medicaid, Estate Taxes, Estate Planning, and other things that affect your wealth.

**Check out my website:**

[www.timinslaw.com/blog](http://www.timinslaw.com/blog)

[www.timinslaw.com/presentations](http://www.timinslaw.com/presentations)

value for cost basis purposes). So, the recipient [the “donee”] has the same cost basis that the gifting individual [the “donor”] originally purchased it at.

**“Step Up in Basis at Death”:**

However, any property you own as of the date of your death gets a “step up” in its cost basis to the value it was at your date of death. So if IBM stock is currently trading at \$100 per share today, while a lifetime gift of your IBM stock with a \$10 cost basis per share will require your beneficiary to declare \$90 per share in capital gains tax built into his or her basis, waiting to transfer this same stock at the time of your death would leave the stock to that same beneficiary with a \$100 cost basis per share (*thus no capital gains tax if it is sold immediately thereafter*). In other words, if you can wait to transfer your home, business or assets until after you die your children will not owe any capital gains taxes.

So while this is a good time to gift for gift tax purposes, you may still be better off waiting until your death to transfer your highly-appreciate property. This is a dilemma when you want to begin Medicaid planning or lock in that juicy \$11,180,000 federal estate tax exemption but are hesitant to gift your highly-appreciate stock or your \$800,000 house that you purchased for \$50,000 (*since your children will have a \$750,000 gain*). So, does gifting now make sense? Well... *it depends*.

**Income Taxes**

And finally, the dreaded, loathed, lamented, indented and demented income tax. And before you jump on your respective “Donald Trump is a

Sanctimonious Jerk” (*followed with a pout*) or declare “See, he IS Making America Great Again” (*again, then again*) soapbox, remember that I am not political party-affiliated, and believe we all agree it is best to view our finances with a rational rather than emotional perspective (*I.e. more money = good*). So, with that out of the way...the new income tax laws are, well, new. And sometimes confusing. And will differ substantially depending on where you live, what your income is, how you file, and the nature of your real estate and business interests. First, the federal income tax rates have changed, which is a good thing for almost everyone on the surface. In addition, the income tax amounts for married couples now equals that of two unmarried individuals filing separately (*I.e. the repeal of the “marriage penalty”*), except for the people earning over \$600,000.

It appears that if you work but are not self-employed, are unmarried, pay a lot of real estate taxes, and have sizeable state and city tax liabilities you are in pretty bad shape under the new law, but changing even one or two of these factors may have a HUGE impact on your income tax picture. There are no general trends to say the tax law is “better” or “worse” than before: IT DEPENDS.

As I have always suggested, take tax deductions now, since you never know what tax policy will look like in the future, and when possible make gifts with legitimate back-doors to reclaim them (using 529 Plans, powers of appointment, etc.). Go out of your way to connect with me to discuss any gifting considerations you may have, particularly if you are planning on gifting highly-appreciated assets or large amounts of money. Also, contact your Accountant and insist on “running your numbers” so you can consider adjusting your habits. And so, to answer my initial question of “Do we

have to talk about taxes AGAIN?”, the answer is YES but only if you care.

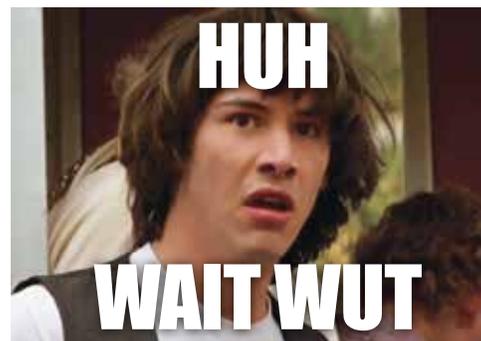
*Tax Brackets for Married Filing Jointly*

2017 Federal Income Tax Rates		2018 Federal Income Tax Rates	
10%	\$0 - \$18,650	10%	\$0 - \$19,050
15%	\$18,561 - \$75,900	12%	\$19,051 - \$77,400
25%	\$75,901 - \$153,100	22%	\$77,401 - \$165,000
28%	\$153,101 - \$233,350	24%	\$165,001 - \$315,000
33%	\$233,351 - \$416,700	32%	\$315,001 - \$400,001
35%	\$416,700 - \$470,700	35%	\$400,001 - \$600,000
39.6%	\$470,701 +	37%	\$600,001 +

However, while this may look good at a glance, remember that several changes have taken place:

1. State and Local income taxes are no longer deductible
2. Real estate taxes are only partially deductible
3. New mortgage interest deductions are capped

And this is how it translates in real numbers, depending on where you live:



*Income, Location (New York State or City) & Filing Status\* (special thanks to Citrin and Cooperman, Accountants and Advisors, for sharing this product!)*

Client 1	2017	2018	Client 2	2017	2018	Client 3	2017	2018
Adjusted Gross Income	\$154,000	\$154,000	Adjusted Gross Income	\$260,500	\$260,500	Adjusted Gross Income	\$470,500	\$470,500
New York State - Joint	\$23,897	\$24,112	New York State - Joint	\$60,641	\$55,248	New York State - Joint	\$147,653	\$133,910
Change in Taxes Owed		\$215	Change in Taxes Owed		\$5,393	Change in Taxes Owed		\$13,743
New York State - Single	\$26,961	\$28,408	New York State - Single	\$68,626	\$63,520	New York State - Single	\$163,032	\$149,831
Change in Taxes Owed		\$1,447	Change in Taxes Owed		\$5,106	Change in Taxes Owed		\$13,201
New York City - Joint	\$31,534	\$29,788	New York State - Joint	\$72,418	\$71,156	New York State - Joint	\$151,894	\$159,606
Change in Taxes Owed		\$1,746	Change in Taxes Owed		\$1,262	Change in Taxes Owed		\$7,712
New York City - Single	\$36,059	\$34,468	New York State - Single	\$80,558	\$79,584	New York State - Single	\$167,381	\$175,621
Change in Taxes Owed		\$1,591	Change in Taxes Owed		\$974	Change in Taxes Owed		\$8,240

## Why Should I Order Birth, Marriage, And Death Certificates Now?

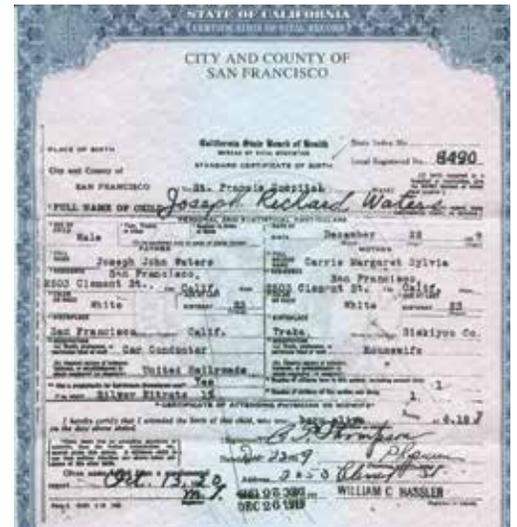
It is always a good idea to have a handful of your original Birth Certificates and Marriage Certificates, as well as copies of close family member's original Death Certificates. Unlike Letters Testamentary, Passports and Driver's Licenses, these Certificates never expire, so they are always valid even if they are decades old.

**Birth Certificates** come in useful proving familial relationships in the case of an Heirship Proceeding in the Surrogate's Court and the court occasionally requires one to have yourself named as Executor or Administrator of an estate. Ordering your Birth Certificate is easy and inexpensive, so consider ordering 3 or 4 originals.

**Marriage Certificates** are often required to apply for Medicaid, a

deceased-spouse's Social Security benefits, and other government programs. The issue is that you tend to be at an advanced age or in an emotionally-compromised state when you need to produce them (death of a spouse, your disability, etc.), so better to get a few additional copies now.

**Death Certificates** of deceased family members are some of the most important certificates since they may be required to transfer property decades after the passing of a family member. For example, if your parents owned their house jointly and your father died twenty years ago, your mother (or you, acting on her or her estate's behalf) will need to produce an original copy of his Death Certificate when you sell the home, even though your mother received legal title to the property as a joint owner. Having a spare original Death Certificate allows you to avoid wasting time and money waiting



for them to get mailed to you for the real estate closing.

The important thing to remember is that you often need an original certificate to transact business. New Yorkers and Jerseyites may order original at the following websites:

[www.health.ny.gov/vital\\_records/birth.html](http://www.health.ny.gov/vital_records/birth.html)  
[www.state.nj.us/health/vital/order-vital](http://www.state.nj.us/health/vital/order-vital)

## Dan Says



- Update Your **Computer Password List** every year in the month of January, and keep the list with your Will and Power of Attorney
- Execute your state of residence's **Health Care Proxy**: It should be available online
- **AVOID** placing legal documents in bank **safe deposit boxes**: Have a safe at home and share the combination with someone you trust
- **Do not keep too much cash** in your house (*including in your safe*), and have a list of all your valuables (*jewelry*) that is kept with your legal documents
- **Save your mortgage pay-off letter**: Your original mortgage was probably bought by three or four banks, so tracing its payoff can be difficult when you finally sell the home

- Give **unused prescription drugs** for pain-reducing and cognitive-altering conditions to a pharmacy so the home is not a target of addicts or troubled children
- Keep an **In Case of Emergency ["ICE"]** card in your wallet with the names and phone numbers of your Health Care Proxy, Primary Care Physician, Attorney and Accountant
- Have the contact information for your **In Case of Emergency** contacts' information clearly labeled in your phone with the letters **"ICE"**
  - Examples:
    - Timins, Michelle - Wife - ICE 1
    - Timins, Robert - Brother - ICE 2
    - Timins-Waldroff, Elise - Daughter - ICE 3

## Dan's Recent Notable Publications

**December 21, 2017:**

KIPLINGER.com publishes Dan's article on "How to Perform the Duties of Executor of an Estate"

**January 3, 2018:**

COMINGOFAGE.com publishes Dan's article on "On Second Thought, Don't Save All Your Money"

**January 10, 2018:**

INVESTOPEDIA.com publishes Dan's article on "Reasons to Avoid Irrevocable Life Insurance Trusts"

**April 18, 2018:** INVESTOPEDIA.com publishes Dan's article on "5 Reasons to be Skeptical of UTMA Accounts"

(I) INVESTOPEDIA



Kiplinger's

# What Has Dan Been Doing?

**February 20:**

Dan presents a pro bono session



**CID-NY**  
Center for Independence  
of the Disabled, NY

at the Center for Independence of the Disabled, New York (CID-NY) on the features of different types of Medicaid trusts.

**February 26:** Dan

teaches his second national continuing



legal education program with LawLine.com on "An In-Depth Look at Trusts: Answers to Your Most Commonly Asked Questions"

**April 14:** Dan speaks to the

public at the New York Public Library's Science, Industry, and Business



New York  
Public  
Library

Library on "Financial Planning and Medicaid for Disabled Parents and Special Need Beneficiaries"

**May 5:** Dan provides pro bono services at the



National Multiple Sclerosis Society's Ann Davis Legal Day in Manhattan.

**May 9:** Dan taught

undergraduate students at the



Borough of Manhattan Community College on the features and benefit of Wills



RATED BY

**Super Lawyers®**

Daniel A.  
Timins

For the fourth year in a row Dan was named a New York Super Lawyer Rising Star for Estate Planning Law by his colleagues in the Trusts and Estates Community.

Avvo Ratings

**10.0**

Daniel Alan Timins

Top Attorney

Dan continues to maintain a 10Rating, "Top Attorney" from Avvo.com, a web site devoted to informing the public of attorney's reputations amongst their peers, the public and their clients. A continued thanks to all of his clients who helped him achieve this achievement!

## Special Thanks - CEO Title Agency, Inc.

399 Knollwood Road  
White Plains, NY 10603  
www.ceotitle.com  
(914) 683-5313

For those of you who have drafted trusts with me, you know the importance of "funding" that trust with account assets, renaming beneficiary designation forms, and changing the owner on your Deed to your trust. However, while changing financial accounts is relatively easy, Deed Changes require filing at the County level and are a very low-profit item for Title Companies: Many law firms don't even bother changing their client's deed, and several Title Companies loath performing them or charge beyond-reasonable expenses. That has never been the case with my Title partner for over a decade, CEO Title, in White Plains, New York.

Founded by Roger Crawford in 1992. CEO Title was not only the Title Company that helped me change my first Deed, they actually taught me how to execute them and their associated paperwork. Since that time, I have worked with Roger, Kiowa, Florence, Bertha and Michael hundreds of times to help my clients achieve their financial desires. I cannot stress how lucky I and my clients are to work with CEO Title and encourage my clients and colleagues to speak with them the next time they are considering purchasing real estate or applying for a mortgage.



## Special Thanks - Rev Design, Inc.

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Patterson, NY 12563  
www.revyouup.com  
(845) 225-0770



Graphic Design & Printing - Rev Design, Inc.: Daniel DeFilippis and Anthony LoMeli help large and small business professionals with their marketing, print materials, web development, and social media.

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