



DANIEL TIMINS, ESQ., CFP®

THE LEGAL BULLETIN

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Another year has come and gone, and to imagine that up until last month (and the most unexpected Presidential election results of my lifetime) I was concerned I would have nothing to write about. While 2016 was a snoozer in the world of estate planning, 2017 may well bring the most consequential alterations in estate planning law in our lifetimes. Like it or not, 2017 will be a year of changes which we still cannot predict that will likely shape our financial lives forever.

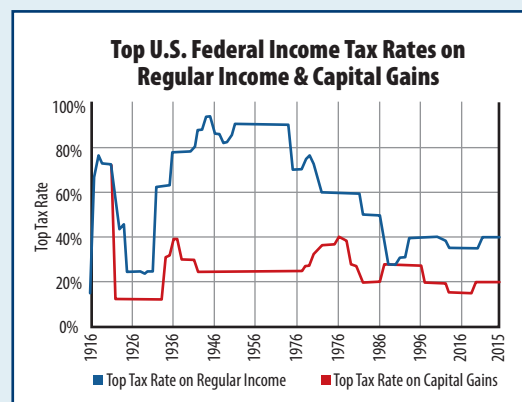
2017 Tax Law Changes (?)

The Trump Administration and Republican Legislature

Yes, you are (still) reading that correctly: Barring the unpredicted imminent heat death of our universe, Donald Trump shall be sworn into the office of President next month, and he will be accompanied by a Republican legislature. While it is difficult to get a bead on what President Trump's policy goals are, from a Congressional perspective it appears that *imminent* policy changes will be definitely happening:

- Cancelling (or, at a minimum, further reducing) federal gift, estate and generation skipping taxes

- Decreasing top income and capital gains tax rates
- Modifying aspects of the Affordable Care Act
- Complete cessation of proposed IRS limitation on discount valuations of minority interests



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It is somewhat likely that the following changes will take place:

- Cancellation of stepped-up basis at death (to be replaced by an intergenerational "transferred cost basis"?)
- Increased scrutiny of assets transferred in contemplation of Medicaid planning

It is unlikely that major changes will take place with Medicare and Social Security, but only time will tell: Both programs have questionable long-term solvency and require increasing on-going fiscal infusions, so even minor changes could simultaneously mean huge differences to both programs' viability, while potentially affecting all recipient's coverage.

Before you do something you might regret (like moving to Canada right before winter has begun), consider implementing the following suggestions to improve your financial health and wealth:

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Money Will Continue to Be the Great Equalizer, so Build & Protect Your Assets

No matter your politics, sexual orientation, gender, culture, religion or ethnicity, money has been, is, and will continue to be the greatest source of protection for you and your family. Money still buys access to the best health care, legal representation and education. Specifically, assets (*as opposed to an income stream*) allow you investment flexibility, ease of transfer, and accessibility. Focusing your efforts on building and maintaining family wealth is the best way for you to protect your interests in both good and uncertain times.

Benefits of Assets	Benefits of Income
<ul style="list-style-type: none">• Ease of Liquidity• Easy to Transfer• Easier to qualify for government programs• Capital gains rates often lower than income tax rates• The extent of your assets is private at life and at death unless an estate tax return is filed	<ul style="list-style-type: none">• Lower top tax rates on income taxes than on gift and estate taxes• Guaranteed income stream (Social Security, Pensions) makes life planning easier
Detriments of Assets	Detriments of Income
<ul style="list-style-type: none">• 3.8% additional Medicare tax on investment income	<ul style="list-style-type: none">• High Income causes higher Medicare Part B expense• High income means more Social Security is included as taxable income• Income must be reported annually

Keep Track of Your Cost Basis

Currently, if you purchase any property, such as a stock or a piece of real estate, the cost basis of your property is “stepped up” to its value on the date of your death. For example, the adjusted cost basis of the IBM stock you bought in 1997 for \$20 a share becomes the \$200 per share current stock price at the date of your death, meaning your beneficiaries do not pay capital gains. Under potential legislation, this step up may be phased out if there is no estate tax. For people with less than \$5.45 million to their name, this is actually WORSE for their over-all financial picture: While they faced no estate tax

due to modest wealth, they now would face a capital gains tax.

Be mindful that in 2010 there was also no federal estate tax. In its stead, there was no step-up in basis and instead a capital gains tax on estates, meaning your beneficiary would have to prove the value you purchased the stock / real estate / business for, or else the IRS assumed the asset had a ZERO basis, meaning they owed capital gains taxes on every penny of the stock. It is typically very difficult for you to track your own cost basis on property; you can only imagine how much harder it is for a child who has no idea when you purchased the property.

Track your cost basis. Give proof to your attorney, your accountant, your financial advisor and keep it in your records, clearly labeled for your beneficiaries.

(Some) State Estate Taxes No Longer Matter

After some sneaky bureaucrat in Albany slipped in the devious, infamous, nefarious, precarious, and buzz-killing “cliff tax”, which retroactively imposed a tax on an entire estate if it was even one dollar over the exempted amount, the New York Middle Class (*albeit, Upper Class in most other parts of the country*) finally got their revenge. New York’s estate tax exemption is due to be pegged to the federal exemption in 2019. Of course, this law was passed when it was assumed there would actually be a federal estate tax, meaning the state would collect some tax revenue when an ultra-wealthy New Yorker died. But if there is NO federal estate tax in 2019, there will be NO New York State estate tax either. Stay tuned for further updates on bureaucrat bunglings and *slight-of-hand* in Albany...

New Jersey FINALLY took action on its estate tax, which shall be repealed in 2018 (*and the exemption raises to \$2,000,000 in 2017*). However, the state kept its inheritance tax, meaning beneficiaries who are not immediate family members will still owe a death tax to the state.

And so, New York and New Jersey both pass the award for “Worst State to Die In” to Connecticut, which still imposes an estate tax on estates over \$2,000,000. However, look for Connecticut to rescind its own estate tax in the coming years to remain a competitive place to maintain domicile (*plus Trenton really want’s that award back*).



*Internet image... This is a image went viral and is very popular for memes.

Why Trusts Still Matter

If estate taxes are repealed, trusts will still have relevance: While trusts have been useful devices to preserve a spouse's estate tax exemption, this has never been their sole purpose. Indeed, most people utilize trusts for:

- **Family Creditor Protection:** You cannot always protect yourself from your creditors, but you can protect your beneficiaries from their creditors. A trust with a disinterested trustee is still the preferred way of accomplishing this.
- **Income Tax Planning:** In discretionary trusts, the trustee can choose which beneficiary receives trust income, meaning beneficiaries with higher income can receive principle and avoid paying a disproportionate share of trust income taxes.
- **Divorce Protection:** If your child believes that prenuptial agreements are

not romantic, you can still protect your asset transfers to him or her by utilizing a trust to protect the gift from your future Ex-In-Law.

- **Qualifying for Government Programs:** Medicaid, SSI, Food Stamps, and many other government programs limit a beneficiary's income and assets. By leaving a disabled beneficiary fund in a conforming trust they can still receive trust benefits while not having to give money to the government to qualify for the programs.
- **Avoiding Probate and Ancillary Probate:** Whether a government may or may not assess an estate tax is completely independent from the process (and costs) of transferring property. Real estate owned by your estate still needs to be probated through the Surrogate's Court, and real estate in other states will require an ancillary court proceeding...unless you hold that real estate in a trust.

NOT The End of Estate Attorneys

A colleague of mine bemoaned the fact that the end of estate taxes means her career is over, and she will be forced to panhandle on the subways for a living. Surely, my childhood bully and lifelong nemesis is scheming to harass me once again from his bedroom in his parent's basement.

While I appreciate those of you who are concerned. We may soon share an awkward moment when I ask you for spare change on the 6 Train, I can assure you that our relationship still has relevance.

The majority of my clients already had estates worth less than \$11,000,000, and still want to know how to protect their family wealth from creditors, courts, and the public's oversight. Truly, estate attorneys are better at dealing with dollars than cents (*if you still don't believe me, check your next invoice*).

I can only be helpful when I am contacted and fully informed by you. Reach out to me with your questions: A few minutes with me over the phone may save you thousands of dollars.



What Has Dan Been Doing?

May 15th: Dan provided pro bono services at the National Multiple Sclerosis Society's Legal Day in Manhattan.

June 27th: Dan moved the firm's location to join with his Of Counsel, Brian Zimmet, Esq., at 477 Madison Avenue, Suite 240, New York.

July 12th: Dan joins Business Networking International's "Boomin" Chapter 68, a networking group which meets by Union Square every Tuesday morning.

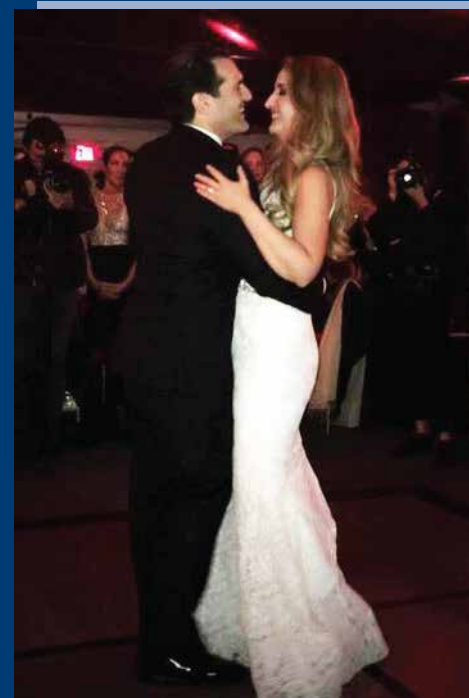
October 1st: Dan taught at the New York Financial Planning Association's Financial Fitness Workshop, teaching the public about comprehensive estate planning techniques.

October 10th: Dan spoke at the Elisabeth Haub School of Law's first Tax Alumni "Back to the Classroom" Session regarding the realities of being a tax law attorney.

October 22nd: Dan married Michelle Marie Apiar at the Hudson Hotel in Midtown Manhattan.

December 1st: Dan provided pro bono services to victims of domestic violence at New York's Family Justice Center in conjunction with the Financial Planning Association's Pro Bono Committee.

December 13: Dan spoke to the public at the New York Public Library's Science, Industry and Business Library about planning legally and financially for disabled parents and children.



RATED BY

Super Lawyers®

Daniel A.
Timins

I have been voted in once again as a New York Super Lawyer Rising Star in Estate Planning for the 2016-2017 year. Thank you for allowing me to pursue a job that I love while I simultaneously have the opportunity of helping you.

Special Thanks

Over the past two years I have had the privilege of working closely with Hedda and Burt Hurvich, principals of the public relations firm Mount & Nadler.

Founded in 1980, Mount & Nadler is a highly respected Public Relations company specializing in representing mutual fund companies, money managers and financial services firms. With an emphasis on media relations through print, broadcast and online outreach, Mount & Nadler helps build brand awareness for clients by identifying their peers, differentiating them, and targeting audiences for proper positioning. In addition, they

help clients augment marketing activities as needed, including advertising, web sites, speaking dates, internal and external communications.

Mount & Nadler consults with clients to answer questions, brief them for a press interview or broadcast appearance, analyze a sensitive situation and make recommendations, and accompany them to media meetings wherever possible.

You may contact them at (212) 759-4440, or ask Dan for an introduction.

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477 Madison Avenue - Suite 240 | New York, NY 10022 | P: (212) 683-3560 | P: (914) 819-0663

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