

Trusts & Estates

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Looking Ahead: What to Expect in 2023

What a difference a year can make. During 2022 interest rates and inflation increased, financial and real estate markets came under pressure and economic uncertainty prevailed. Despite these headwinds, Carter Ledyard's clients continued to make effective use of sophisticated estate planning techniques to transfer wealth to subsequent generations.

Looking ahead to 2023, we expect continued economic uncertainty, and our legal team will assist our clients to ensure that their estate planning strategies utilize the most effective strategies available. With interest rates currently higher than they have been for over a decade, tools such as qualified personal residence trusts and charitable remainder trusts have become more attractive. While higher interest rates may make grantor retained annuity trusts, charitable lead trusts and intra-family loans less attractive, depressed asset values can counteract the effect of higher interest rates. As discussed below, significant tax law developments provide planning opportunities. Our team will review with clients their specific assets and desires and craft a well-tailored plan to address individual needs.

A number of changes will facilitate estate planning in 2023 and beyond, in particular:

Five Years to Elect Portability. Transferring the first deceased spouse's unused exemption amount to the surviving spouse has been simplified. Pursuant to Rev. Proc. 2022-32, certain estates that do not otherwise need to file a federal estate tax return now have up to five years after the first spouse's death to elect portability (i.e. to transfer any unused estate and gift tax exemption from the deceased spouse to the surviving spouse), which can potentially result in significant estate tax savings on the death of the second spouse.

2023 Exemption Amounts.

- The federal annual gift tax exclusion amount increased from \$16,000 in 2022 to \$17,000 in 2023, meaning that couples can make gifts of up to \$34,000 to individuals in 2023. Consistent effective use of this exclusion for multiple beneficiaries can be a powerful estate planning tool.
- The federal estate, gift and generation-skipping transfer tax exemptions increased in 2023 to \$12.92 million per individual (\$25.84 million for married couples). Clients may wish to consider making use of these exemptions before they are scheduled to be cut in half beginning in 2026. Our team advises clients on the different techniques available to effectively and efficiently make use of these exemptions.

Keeping Current with Tax and Other Developments. Keeping a close eye on legislative developments, regulatory requirements and case law that affect our clients, our legal team analyzes the most relevant changes in the trusts and estates area. Led by Carter Ledyard's own legend, Richard Covey, our publication *Practical Drafting*, available on our firm website, has garnered the respect of peers and provides analysis and insights that add value to those practicing across the legal, tax and accounting areas. Our attorneys publish articles, give presentations and

participate in Bar and other professional organizations so that they can bring to our clients the most current information and help them understand the implications of changes in the law.

Estate Planning. As a cornerstone department of Carter Ledyard, we have a long, storied history of providing guidance to our clients across multiple generations. Our clients continue to receive the unwavering support and assistance we have provided for generations to help them navigate the evolving post-Covid world, uncertain economic conditions, and changing tax landscape. We are committed to crafting tailored estate planning instruments that build flexibility into our clients' estate plans, taking advantage of unprecedented exemption amounts while allowing for future strategic planning.

Domestic and International Estate and Trust Administration. In addition to estate planning, we represent clients in their roles as fiduciaries of a broad array of estates and trusts across the country and around the world. Carter Ledyard provides consistent guidance to assist with probate proceedings, estate administration, judicial accountings, decanting proceedings, the removal and replacement of trustees and executors, and the termination of estates and both personal and charitable trusts. Each of those areas involves tax opportunities and pitfalls, and we bring to bear our tax knowledge to achieve the best possible results for our clients. In the international arena we have dealt over the past year with the tax and legal systems of many countries, including the U.K., France, Italy, Switzerland, Luxembourg and South Africa, partnering with counsel in those jurisdictions to navigate the intersection of the rules in multiple jurisdictions and obtain the optimum results for our clients.

Fiduciary Litigation. Our clients continue to seek our advice in connection with fiduciary litigation matters in state (and sometimes federal) courts, ranging from contested probate proceedings, to challenges to improper decantings of trusts, to proceedings to remove and replace trustees. We are able to combine our deep knowledge of both substantive trusts and estates law and tax law, with our excellent litigation capabilities, to effectively represent our clients in litigated matters. Over the past year we have been successful in settling disputes to our clients great advantage, and we anticipate that our clients will continue to seek our advice in this area.

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