

# Berkowitz Lichtstein

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## TAX CUTS AND JOBS ACT

On December 22, 2017, President Trump signed into law new tax reform legislation, generally referred to as the Tax Cuts and Jobs Act (the “Act”). The Act makes comprehensive revisions to the Internal Revenue Code, is complicated, and impacts almost every aspect of tax, estate, business, and other planning.

Significant changes made by the Act include:

- The estate, gift, and generation-skipping transfer (“GST”) tax exemptions have been increased to approximately \$11.2 million per person, or \$22.4 million per married couple (indexed for inflation). However, these higher amounts are temporary and are scheduled to return to 2017 amounts in 2026 (or possibly earlier if the political climate in Washington changes).
- Marginal individual income tax rates have been lowered. The Alternative Minimum Tax (“AMT”) has not been repealed but the thresholds for when it applies, is phased out, and items that may trigger it have all changed.
- The standard deduction has increased to \$12,000 per person, or \$24,000 per married couple.
- State and local taxes (property and income) will only be deductible up to a total of \$10,000.
- Mortgage interest deductions for new purchases of first or second homes will be capped at \$750,000 in mortgage debt (down from \$1 million) for mortgages incurred after December 15, 2017. There are no changes for preexisting mortgages, including those refinanced after December 15, 2017 as long as the resulting debt does not exceed the original debt amount. Home equity loan interest (even for preexisting debt) will only be deductible if the loan is used to buy, build, or substantially improve a first or second home that secures the loan. Deductions for interest on home equity loans will also be subject to the \$750,000 cap (rather than the lesser of \$100,000 or the equity in the home as under prior law).
- The limitation on deductibility of cash contributions to public charities increased to 60% of adjusted gross income (from 50%). This increase is scheduled to expire in 2026.
- 529 accounts can now be used for elementary and secondary schools.
- Alimony payments on divorces after 2018, or prior divorces that opt to apply the new rules, will no longer be deductible.
- The maximum corporate tax rate has been reduced to 21% and the corporate AMT has been repealed.
- Certain income from pass-through business entities (proprietorships, LLCs, partnerships, and S corporations) may qualify for a new 20% deduction.

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## State Law Considerations

Recent updates to state law should also be considered. In the absence of any further state law changes, New Jersey's estate tax has been repealed for New Jersey residents dying on or after January 1, 2018. New Jersey's inheritance tax, which is based on the relationship of the beneficiary to the decedent, remains unchanged. New York's exemption amount remains unchanged for 2018 at \$5.25 million, with a scheduled increase on January 1, 2019 to account for inflation.

## Estate Planning Remains Critical

In light of these new tax laws, every estate plan should be reviewed. Many wills and revocable trusts incorporate formulas for funding trusts and bequests that are designed to minimize federal and/or state estate tax. Updates to these documents may be necessary depending on whether such formulas now result in unintended consequences or unnecessary complications. New wills and trusts can be drafted with provisions that provide increased flexibility, including the ability to take advantage of opportunities to maximize income tax basis and minimize future capital gains (i.e., to take advantage of the "step-up" in basis). Existing "irrevocable" trusts should also be reviewed and, in certain circumstances, can even be modified to include such provisions. Additionally, individuals may wish to pursue planning opportunities to minimize future estate taxes in light of the higher exemption amounts before such increased amounts sunset.

Putting tax considerations aside, there are still many important reasons to be proactive with your estate planning. For example, trusts can continue to be used to ensure that assets pass to intended beneficiaries, control how and when distributions are made, and protect assets from creditors.

## Business Tax Planning

In light of the Act's changes to the way businesses are taxed, the choice of entity structure should be reviewed for all new and existing business ventures. For business owners who own multiple businesses, they should review the relationship among the various entities and whether steps can be taken to enhance tax results.

Please understand that this client alert merely provides an overview of some of the most significant changes made in this massive tax legislation. If you have any questions or would like additional information about how the Act may affect your estate planning, please consult your attorney at Berkowitz, Lichtstein, Kuritsky, Giasullo & Gross or any member of our Tax, Trusts, and Estates Department at 973-325-7800.

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