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## Lessons Learned From Celebrities: Make An Estate Plan and Keep It Current



## Highlights of the New Tax Reform Law

On December 20, 2017, Congress passed a comprehensive tax reform bill, the 2017 Tax Cuts and Jobs Act (TCJA), which President Trump signed into law two days later. It was effective on January 1, 2018 and will automatically expire on December 31, 2025. After that date, the rules for individuals revert back to the pre-existing tax code unless Congress enacts a new law.

The TCJA implements the most significant changes to the tax code in over 30 years. Whether the tax reductions encompassed by the TCJA lower your tax liability will depend upon whether you itemize deductions, and if you do itemize, what deductions you claim.

Certain provisions are beneficial to only some taxpayers. The standard deduction has increased. For individuals it was \$6,350.00 under the old tax code and it is now \$12,000.00. For couples filing jointly, the standard deduction has increased from \$12,700.00 to \$24,000.00. Medical

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The news frequently reports on fights that have arisen over the estates of celebrities who have either failed to establish a Will or have failed to update their Will to reflect existing circumstances. David Cassidy recently passed away. His Will was signed in 2004. It excluded his daughter who, at that time had been estranged but with whom he had since reconciled. Jerry Lewis is another celebrity whose estate has recently been in the news. His Will left nothing to his sons. Provisions such as these, that disinherit a close family member, are very likely to lead to contests over the Will and future litigation.

Feelings can change. Our relationships with family, friends and loved ones develop. Sometimes we grow closer and other times we grow apart - or worse. Your estate plan should reflect your intentions. If a particular friend or family member has been a constant source of help and comfort,

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expenses could previously be deducted only if they exceeded 10% of adjusted gross income. Now they will be deductible to the extent that they exceed 7.5% of adjusted gross income — but only for tax years 2017 and 2018. Deductions for cash contributions to charities are increased from 50% to 60% of adjusted gross income.

The child tax credit has been increased from \$1,000.00 to \$2,000.00 (\$1,400.00 of which is a refundable tax credit). Whereas distributions from a 529 plan could previously only be used for expenses relating to higher education (post-secondary), up to \$10,000.00 per student can be withdrawn per year to pay for tuition at an elementary or secondary public, private or religious school.

There are other provisions of the TCJA which are not beneficial to taxpayers. The TCJA imposes a new limit on the deduction for state and local taxes. Taxpayers can deduct an annual total of up to \$10,000 on property, state and local income tax and sales tax. The mortgage interest deduction on primary and secondary residences is reduced and applies only to loans under \$375,000 for single taxpayers and \$750,000 for married couples filing jointly. Formerly, these amounts were \$500,000 for single tax payers and \$1,000,000 for married couples filing jointly. Under the TCJA, the deduction only applies to debt incurred for the purchase, construction or substantial improvement of the home. Thus, interest on a

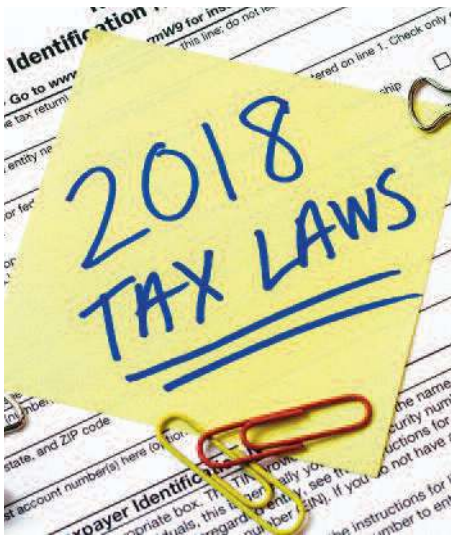
mortgage obtained for debt consolidation would not be deductible. Interest on home equity loans and home equity lines of credit is no longer deductible.

The current personal exemption of \$4,050 is eliminated. All miscellaneous itemized deductions, which had previously been subject to the 2% floor, such as investment management fees, tax preparation fees, safe deposit fees and union dues, have been suspended under the TCJA. Moving expenses will now only be deductible for those on active military duty and subject to a military order.

Interestingly, alimony, or “maintenance” as it is referred to in New York, will no longer be deductible by the payor or taxable to the recipient for those who sign divorce or separation agreements after December 31, 2018.

### Individual Tax Brackets Have Been Reduced As Follows:

Pre-Reform Rate	Single	Married	2018 Rate	Single	Married
10%	\$0 – \$9,525	\$0 – \$19,050	10%	\$0 – \$9,525	\$0 – \$19,050
15%	\$9,256 – \$38,700	\$19,051 – \$77,400	12%	\$9,525 – \$38,700	\$19,051 – \$77,400
25%	\$38,701 – \$93,700	\$77,401 – \$156,150	22%	\$38,701 – \$82,500	\$77,401 – \$165,000
28%	\$93,701 – \$195,450	\$156,151 – \$237,950	24%	\$82,501 – \$157,500	\$165,001 – \$315,000
33%	\$195,451 – \$424,950	\$237,951 – \$424,950	32%	\$157,501 – \$200,000	\$315,001 – \$400,000
35%	\$424,951 – \$426,700	\$424,951 – \$480,050	35%	\$157,501 – \$200,000	\$400,001 – \$600,000
39.6%	\$426,700 +	\$480,050 +	37%	\$500,000 +	\$600,000 +



Insurance losses are affected. The theft loss deduction and personal casualty loss deduction are eliminated with an exception for losses incurred in federally declared disaster areas. The tax on long-term capital gains is unchanged and the exclusion of gains from the sale of a principal residence, which has been occupied by the owners for 2 of the last 5 years, remains at \$250,000, \$500,000 for married couples filing jointly.

Your accountant can help you evaluate the impact that the new law has on your federal income tax liability. If you do not have an accountant and would like to speak with one, call Berwitz & DiTata LLP and we will refer you to an accountant who can help you.

In the realm of estate taxes, the federal estate tax exemption is doubled to \$11.2 million for a single decedent and \$22.4 million for couples and inheritors will continue to receive the benefit of a “step-up in basis” to date of death value. However, in 2026 the increased exemptions revert back to the levels available prior to the TCJA in 2012.

The significant increase in the exemption from federal estate tax liability is unquestionably beneficial as it eliminates *federal* estate tax liability on the first \$11.2 million dollars of a single person’s estate or up to \$22.4 million of the estate of a a married couple, provided their estate plans have incorporated proper tax planning. Unfortunately, there has been no comparable change enacted by the New York State Legislature. Consequently, estates of single individuals with assets worth in excess of \$5.4 million dollars and estates of couples worth more than \$10.8 million dollars may still be subject to New York State estate tax liability.

Even more troubling is the fact that unaware individuals may be misled into believing that, because the estate tax liability has been significantly reduced, it is unnecessary to have their estate plans reviewed. Failing to properly plan, or to adjust the plans that are in place, may have a severe impact not only on the assets available during lifetime but also on the wealth that is passed to beneficiaries. At Berwitz & DiTata LLP, we offer a complementary estate planning review to existing clients every three years after we have assisted them in implementing their plans. For new clients, the consultation fee is a small price to pay to start the process of ensuring that your plan works, that it takes advantage of the new tax laws and that you will finally achieve the peace of mind that comes from knowing that you have properly protected your loved ones. After all, if you are not ready now, when will you be ready? How much more of an incentive do you need? Just what are you waiting for?

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you may wish to honor them with a specific bequest. Perhaps your Will includes such a gift and that person, with whom you were very close, has disappeared from your life. It may be time to make a change. The only way your estate can be distributed in accordance with your wishes is if you establish a proper plan and then periodically review it. At Berwitz & DiTata LLP, we recommend reviewing your estate plan every three to five years.

Envisioning your plan, having it properly implemented and regularly reviewing it is key. Choosing the right attorneys to help you accomplish this is just as important. Attorneys whose practice includes litigation, who regularly handle contested estates and other disputes, can use their experience to inform the planning process. Especially if you have an unusual plan as to who should share in your estate, litigation after your death, when you are no longer here to explain your reasoning, can derail your design. If someone contests your Will, litigation costs and prolonged proceedings will tie up your estate for months or even years. Assets that you earmarked for your special beneficiaries will, instead, be spent defending your plan or bringing about a resolution. During the proceeding, the individuals whom you intended to benefit may have to spend time and energy producing documents and proof and may even be required to testify. But even if your plan is not out

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of the ordinary, sometimes hidden ambiguities will make the usual look unusual and create issues.

At Berwitz & DiTata LLP our extensive litigation experience helps us anticipate potential future issues which we can then help you to guard against. We can identify and help avoid the issues that may prolong litigation and we strive to prevent objections to a Will before they are contemplated. Our strategies not only reduce the possibility that potential objectants will prevail but diminish the chance of litigation altogether.

We make sure to maintain records of your visits with us so that, regardless of how much time has passed since you last discussed your goals with us or executed estate planning documents, we can confidently describe what occurred and establish that your estate plan was the result of a knowing decision, freely made by you.

Now that a new year has begun, it is time to review your documents and ensure that they reflect your wishes. At Berwitz & DiTata LLP we will help to protect you and discuss the best way to implement your wishes.

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