

2021 Ushers in Decreased D.C. Estate Tax Exemption, Potential Additional Probate and Estate Tax Legislation

January 5, 2021

Last year, the D.C. Council passed the “Estate Tax Adjustment Amendment Act of 2020,” which broadens the reach of the D.C. estate tax to make up for other potential budget shortfalls.

Effective for people dying on or after January 1, 2021, this legislation will reduce the D.C. estate tax exemption to \$4 million per individual. In 2020, the D.C. estate tax exemption was \$5,762,400; therefore, the new legislation reduces the exemption by over \$1.7 million.

From 2022 onward, the new \$4 million exemption amount is scheduled to increase annually based on a cost of living adjustment.

The District of Columbia assesses an estate tax on decedents with includable assets that exceed the exemption amount. The tax is assessed using graduated rates, which reach a maximum rate of 16%.

As a consequence of the new legislation, estates that were already subject to the D.C. estate tax will face a higher tax bill, and some estates that would not have been subject to the estate tax under previous law will now face taxation. In addition, estate plans that use formulas incorporating the D.C. exemption amount will now result in different dispositions than were anticipated when the documents were signed. Those with D.C. assets should seek qualified counsel if they wish to review or revise their planning in light of the reduced exemption amount.

Even under the new law, the District of Columbia does not currently allow decedents to transfer their unused estate tax exemption to a surviving spouse or domestic partner at death. However, the D.C. Council is considering legislation that would bring this technique – known as “portability” – to the District. Portability already exists at the Federal level and in Maryland. The same proposed legislation would expand a surviving spouse’s “elective share” – the amount a spouse can elect to take regardless of what the Will says – to include both probate and non-probate assets and would allow real property held by spouses or domestic partners in tenancy by the entirety to be transferred to certain trusts while retaining creditor protection. This bill, the Trust and Estate Conformity Amendment Act of 2020 (B23-0919), is currently under consideration in the Committee on Judiciary and Public Safety.

Maryland and Virginia are not making similar changes for 2021. In Maryland, the exemption amount remains at \$5 million, with no adjustment for inflation. In Virginia, the state estate tax was repealed effective July 1, 2007, although there was legislation introduced in 2020 to reinstate an estate tax. Caplin & Drysdale will follow the legislative developments in Virginia.

[Caplin & Drysdale’s Private Client Group](#) is ready to assist you and your family in analyzing the impact of the change in the D.C. estate tax exemption. Please contact one of the team members below if you have any questions.

[Beth Shapiro Kaufman](#)
202.862.5062
bkaufman@capdale.com

[Anne J. O'Brien](#)
202.862.5033
aobrien@capdale.com

[Megan E. Wernke](#)
202.862.5088
mwernke@capdale.com

[Sarah J. Racicot](#)
202.862.7854
sracicot@capdale.com



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For more information, please visit us at www.caplindrysdale.com.

Washington, DC Office:
One Thomas Circle NW
Suite 1100
Washington, DC 20005
202.862.5000

New York, NY Office:
600 Lexington Avenue
21st Floor
New York, NY 10022
212.379.6000

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