

2017 SUPPLEMENT TO CALIFORNIA ESTATE PLANNING BOOK

As mentioned in the beginning of the book, Congress changed the various tax rates in 2010 and indexed the exemption for inflation, so that the various exemptions increase every year.

The estate tax, gift tax, and generation-skipping transfer tax now have equal exemption and rates. The exemptions for 2014-2017 are as follows for all three tax rates, with a tax rate of 40% above the exemption amount.

Estate tax, Gift Tax and Generation Skipping Transfer Tax exemptions

2014-Exemption-\$5,340,000-tax rate on excess-40%

2015-Exemption-\$5,430,000-tax rate on excess-40%

2016-Exemption-\$5,450,000-tax rate on excess-40%

2017-Exemption-\$5,490,000-tax rate on excess-40%

Portability, which was made permanent in 2013, still provides that upon the death of one spouse, the surviving spouse may increase his or her later estate exemption amount by the “unused” estate tax exemption amount from the first spouse. If one spouse died in 2016 and had \$2,250,000 in taxable assets but left all of these assets to the surviving spouse the exemption of \$5,450,000, would then go to the surviving spouse and increase his or her estate tax exemption at death by this amount, to \$10,940,000 in 2017. To obtain this exemption a timely federal estate tax return must be filed with the IRS after the first death.

Trust income taxes

In 2016, an irrevocable trust will pay the maximum federal income tax rate of 39.6% on undistributed net income of over \$12,400. In addition, an irrevocable trust will also pay a medicare surcharge of 3.8% on accumulated investment income of over \$12,400.

California also taxes undistributed net income of an irrevocable trust at a rate of 1 to 12.3%. The first \$8,015 is taxed at 1%, with increasing rates until the top tier tax rate of 12.3% is applied to undistributed net income over \$537,498. There is also a “mental health tax” of 1% on trust taxable income over \$1,000,000.

New transfer on death deed

A 2016 new law creates a revocable transfer on death (TOD) and allows a homeowner to transfer to a named beneficiary real property upon the owner’s death, without having to go through probate.

The law applies only to a residential property of:

1. One to four units,
2. A condominium, or
3. A single agricultural parcel of not more than 40 acres improved with a single family residence.

This revocable TOD deed must be signed, dated, and acknowledged before a notary public and must be recorded within 60 days after signing. The deed does not affect current ownership rights. It also is an alternative to putting someone on the property as a joint tenant, which then gives that joint tenant

certain rights regarding the property and the joint tenant cannot be removed from title to the property without his or her signature on a deed.

This deed can be revoked without the signature of the named beneficiary at any time.