



# GUNSTER'S

# Family Wealth Compass

## Charting A Course For Your Family's Future

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### Trump Tax Plan

As many of you already know, the Trump Administration, with input from Republican leaders, recently issued a framework for tax reform. The framework represents a preliminary step in the legislative process. The next step in the process would be the development of a proposed bill. Please note that one of the items in the framework is the elimination of the estate tax and the generation skipping transfer tax. We will keep you advised of any significant developments on our website [www.gunster.com](http://www.gunster.com).

### IRS RELIEF FOR HURRICANE IRMA

We hope that everyone and their families remained safe during Hurricane Irma. As we continue on the path to recovery, we just wanted to let you know that the Internal Revenue Service ("IRS") recently provided relief for certain taxpayers who may have been affected by Hurricane Irma. Generally speaking, certain taxpayers residing in (or who has business in) any Florida county who has a tax return or tax payment due on or after September 4, 2017 is granted an extension of time until January 31, 2018. The relief

also applies to certain taxpayers who are not located in a Florida county but whose tax practitioners or record keepers are located in a Florida county. Although this relief does not apply to any state tax returns, it is anticipated that individual states will follow the IRS relief. Prior to availing yourself of the IRS relief, we strongly urge you to consult your tax professionals.

We are available to help you with any questions regarding this IRS relief, or any other Hurricane Irma related matter. 

### ESTATE PLANNING IN TIMES OF UNCERTAINTY

With the combination of a Republican president and a Republican controlled House of Representatives and Senate, it was widely believed by many commentators that a significant change in the estate, gift and/or generation-skipping transfer ("GST") tax laws was imminent. These potential changes included the immediate repeal of the estate, gift and/or GST taxes, a gradual repeal of the estate, gift and/or GST taxes over a number of years, or a repeal of the estate tax but not the gift and/or GST taxes. In addition, if the estate tax were to be repealed, it was widely believed that some form of a capital gains tax would be implemented to tax the amount of appreciation in a decedent's estate.

Due to the strong possibility of tax law changes, many commentators thought it would be prudent to take a "wait and see" approach and hold off on any major estate planning until there was more certainty with the transfer tax laws. Now that we are approximately nine months into the new administration, one thing is clear – it is less certain today than it was nine months

ago that there will be some sort of estate, gift and/or GST tax reform. Furthermore, because of the technical budget reconciliation rules, it is possible that any change in the estate, gift and/or GST tax laws that cannot garner the approval of sixty Senators would likely only apply for ten years (i.e., the current estate, gift and GST tax laws would once again apply after this ten year period).

It is our opinion that some form of the estate tax will either exist for the foreseeable future or temporarily disappear and then re-emerge over a longer time horizon. As a result, we would recommend that clients continue with their estate planning and meet with their estate planning professionals to develop an appropriate estate plan. 



# THE HIDDEN TRAPS OF HIRING HOUSEHOLD HELP

Hiring someone to come into your home to assist with your own personal care or to assist with children or to perform daily chores associated with maintaining a residence can be a very freeing proposition. There can be significant peace of mind and satisfaction that comes with having a reliable person routinely provide these types of services in the home. However, there are several potential legal traps that are associated with hiring household help, or "domestic servants" as the law refers to them. While some of these legal traps may be intuitive, others are not. The following is a list of the four most prevalent legal traps associated with hiring domestic servants:

## Payment of Overtime

Often, when a domestic servant is good at his or her job, he or she tends to work a lot of hours each week. The better they are at their job, the more desirable it is to have them in the home. The legal trap here is, if the domestic servant does not live in the residence, he or she is considered a non-exempt employee. Being a non-exempt employee means the employee is entitled to overtime, or one and a half times his or her hourly pay rate, for every hour he or she works over 40 hours in a work week.

Many times domestic servants are paid a salary and are not paid overtime. This too is a violation of federal law. There is a widely-held misconception that paying someone a salary means they are not entitled to overtime. Unfortunately, whether an employee is entitled to overtime depends on the employee's classification as exempt or non-exempt. This can be an especially costly trap for employers because overtime calculated based on the employee's salary can be significant.

Another related issue is the tracking of hours worked. If the domestic servant is non-exempt, the law requires the employer to accurately track and record all hours worked by the employee. Generally, domestic servants are paid a salary so their hours are not tracked or recorded. Under the applicable federal law, when an employer fails to accurately track and record the hours worked by an employee, the law permits the employee's "best recollection" of the hours he or she worked to be presumed correct. Once an employee learns that he or she is entitled to overtime pay for all hours worked over 40 hours in a week, their recollection of the number of hours they worked in the past tends to increase.

*Takeaway* – make sure that your domestic servant is properly classified as exempt or non-exempt and if non-exempt, that you are tracking all hours worked and paying in accordance with the applicable law.

## Disclosure of Personal Information

In most circumstances, domestic servants come into contact with or are given access to personal, sensitive information of those who reside in the home in which they work. This information may include medical or health related issues, doctors, medications, names and contact information of family members, friends, and associates, business matters, travel schedules or the like.

In today's world, everyone has a cell phone with a camera that is connected to the Internet and most are users of social media. Too often, domestic servants share or disclose information about their employers

through social media or the internet that their employers would never want disclosed. And most of the time, the employers never know of the disclosure because they are not on the same social media and/or do not have the time to monitor their domestic servants posts or feeds.

The best way to handle this is to address it in the very beginning through the appropriate employment agreement signed by the domestic servant. Not only should the employment agreement identify prohibited actions, but it should specify consequences and legal action that may follow.

*Takeaway* – Implement a solid employment agreement or review your existing employment agreement for protection of personal information and make sure that as many legal protections as possible are built into the agreement and discuss these issues with your domestic servant.

## Use of a Vehicle

Many domestic servants are asked to use their employer's car to transport the individual for whom they are providing care or to run errands for their employer. While giving the domestic servant means of transportation can be very helpful to you, it also carries significant legal exposure. Should the domestic servant get into a car accident while operating your vehicle, you will likely be sued for any alleged damage caused by the accident. Although you have car insurance, you may have coverage problems if the domestic servant was not on your insurance. Additionally, not all domestic servants carry their own car insurance, which may create additional exposure for you.

*Takeaway* – Check with your insurance agent about adding your domestic servant to your car insurance if he or she must use your vehicle in the course and scope of his or her job. Check to confirm that your domestic servant has his or her own car insurance with sufficient coverage for his or her operation of your vehicle. Consider whether use of the domestic servants' vehicle with reimbursement for gas and wear and tear would provide greater liability protection for you.

## Immigration Matters

For the most part, U.S. companies are mindful of the immigration, tax and labor and employment implications of hiring foreign workers. However, the consequences of hiring foreign workers are regularly overlooked in the private sphere. It is a common misconception that immigration, tax and labor and employment implications do not apply to the hiring of domestic workers in an individual's home.

Under U.S. immigration laws there are potential penalties for employing persons who are not authorized to work in the U.S. Generally, all employers must verify the identity and employment authorization for every person they hire, including U.S. citizens, and document such verification on Employment Eligibility Verification Form I-9. Completion of a Form I-9 is generally required for a domestic worker who performs child care, household tasks, and/or upkeep of a home or surrounding yard or similar services on a regular basis in return for wages or other benefits. However, you would not be required to complete a Form I-9 for the domestic worker if the domestic worker

*(continued on page three)*

## HIRING (*continued from page two*)

is providing services as an independent contractor or such services are sporadic, meaning they occur occasionally, singly or in random instances; irregular, meaning the occurrence or activity lacks continuity or regularity; or intermittent, meaning they do not occur continuously but instead come and go at intervals. Independent contractors include individuals or entities who carry on independent business, contract to do a project according to their own means and methods, and are subject to control only as to the results of the work and not how it will be done. Many factors are considered when determining whether or not an individual or entity is an independent contractor. Regardless of who completes the Form I-9, employers or persons using contract services must not employ or use the services of a domestic worker knowing that person is not authorized to work in the U.S.

It is also important to note that the provisions of the Federal Criminal Statute entitled "Bringing in and Harboring Certain Aliens" ("The Harboring Statute") are among those which might apply in the case of a domestic household employee who is not authorized to work. It is a violation of law for any person to conceal, harbor, or shield from detection in any place, including any building or means of transportation, any alien who is in the U.S. in violation of law. Key aspects of the Harboring Statute include:

- The prohibition against harboring applies to anyone.
- Interpretations of Harboring proscribe a very broad range of

engagement activities with regard to interactions with illegal aliens.

- Harboring can include:
  - Providing shelter;
  - Instructing illegal aliens on how to avoid arrest and detection; and
  - Conduct that impedes a government investigation.

Although mere employment of an illegal alien appears to fall within the ambit of the harboring statute, most courts seem to require affirmative conduct beyond such employment. There are substantial potential criminal penalties for conviction of harboring including imprisonment, fine, and forfeiture of property.

*Takeaway* – In today's climate of increased enforcement activity with regard to persons unlawfully in the U.S., it is prudent for individuals utilizing the services of a domestic worker to review the circumstances of their particular situations in the context of the employment eligibility verification requirements. It is also reasonable to expect that the prosecution of harboring cases will continue and that prosecutors will argue for the broadest possible ambit of the statute.

Gunster's immigration attorneys are available to consult with regard to the employment of domestic workers, whether foreign or U.S. citizens. A future Compass Newsletter will address some income tax issues regarding the employment of domestic workers. 

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## SUCCESSION PLANNING FOR CLOSELY HELD BUSINESSES

Although the trend for the last ten to twenty years has been for larger companies to acquire smaller closely held companies, in the last few years this trend seems to be slowing, leaving many family businesses to proactively plan for its succession or to close their doors. Normally, these closely held businesses are owned entirely (or almost entirely) by one family. These family businesses (which include many Fortune 500 companies) account for about one-half of the United States gross domestic product, more than one-half of all jobs, and three-quarters of all new jobs. Often overlooked in these family businesses is a succession plan to pass the business from one generation to another. This article will discuss, in no particular order, some key issues in developing a succession plan.

First, the senior family members in the family business need to develop a collective vision of their own future and the future of the business. Do they want to continue working in the family business for a few years, many years or until they no longer have the mental and physical ability to do so? Do they envision the family business continuing from generation to generation or is a sale of the business more likely? The answers to these questions will impact at what point new decision makers should be groomed and whether the new decision makers should be family members, outside advisors, or a combination of the two.

Second, the senior family members need to develop a decision-making process for business decisions. Many of these family businesses have an informal decision making process whereby the senior family member "makes all the big decisions." After the senior family member

is no longer in control, the decision making process often gets divided among many individuals often resulting in factionalization among the family members involved in the business. A formal decision making process, including a dispute resolution procedure, should be adopted and implemented by the senior family members sooner rather than later.

Third, the appropriate second generation family members should be identified to inherit control of the family business. This is often the most difficult part of the process. Many times, the second generation has no interest in working in the family business. In these situations, the senior family members may need to consider hiring outside professionals to learn the business and one day run the business. If there are second generation family members who are capable of running the business, they should be brought into the decision making process while the senior family members are still actively involved in the business. In addition, consideration should be given to having a combination of family members and outside professionals involved in the decision making process.

Fourth, an estate plan should be implemented to carry out the goals set forth above. Often, for estate tax minimization purposes (i.e., transferring the business at its current value before any substantial growth in the value, and/or taking advantage of valuation discounts for lack of marketability and lack of control), it may make sense to transfer all or a portion of the equity interests in the family business to the second generation during the lifetime of the senior family members.

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## SUCCESSION PLANNING (*continued from page three*)

Also, if there is one particular second generation family member who will be taking over the management of the business, consideration should be given as to whether that individual receives a greater share of the family business. If so, additional thought should be given to whether the other second generation family members receive a greater share of the non-business assets to equalize the amounts that the second generation receives.

Finally, there are many additional factors that will need to be considered in developing an appropriate succession plan. These factors

include the need for life insurance to assist with the payment of estate taxes and to fund any buy/sell agreements, the use of trusts as a vehicle to transfer equity interests in the family business rather than outright transfers which may expose the assets to creditors or divorce claims, planning for the surviving spouse, and the need for a buy/sell agreement for the family business depending on the ownership structure.

If you would like assistance in developing a comprehensive succession plan for your family business, please let us know. 

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## PLANNING TO SELL YOUR HOME SOON? DON'T FORGET ABOUT YOUR PORTABILITY RIGHTS

If you are planning to move from your current Florida homestead anytime soon, the property appraiser's determination of your home's current market value could directly impact the property taxes you pay at your new homestead. The reason has to do with your portability rights under the Florida Constitution. Florida's portability laws permit property owners the right to transfer (or port) to their new homestead the difference between the fair market value and the assessed value of their immediate prior homestead, up to a maximum difference of \$500,000. For example, if someone was living in a home with a fair market value of \$800,000 (as determined by the property appraiser), but the home only had an assessed value of \$300,000, the property owner could move to a new homestead residence and still "port" the tax savings of the \$500,000 difference between the market value and the assessed value. This could result in property tax savings of more than \$10,000 per year.

The term "fair market value" of a property is defined under the Florida Statutes to mean "the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length." The term "assessed value" refers to the market value of property minus any limitations as a result of the Florida Constitution, such as

the "Save our Homes" amendment which limits increases in the annual assessed value of a home to a maximum of 3% (or the percent change in the consumer price index, whichever is lower) regardless of any increases in market value. Because annual increases in assessed values on homesteaded properties are capped at a maximum of 3%, market values of homestead properties often outpace and exceed their assessed values. The larger the difference between the market value and the assessed value, the larger the portability rights (up to a maximum of \$500,000) that you may be entitled to transfer to your new homestead.

Therefore, a key factor in determining your portability rights is whether the property appraiser has correctly determined the "fair market value" of your current homestead in the year of sale. If the property appraiser undervalues the market value of your current homestead, it may cause your portability rights to be unnecessarily reduced, thereby causing you to pay higher property taxes at your new homestead.

If you are considering selling your residence anytime soon and believe your portability rights may be affected by the property appraiser's market value determination of your homestead, please contact us before selling to determine what you can do to fully protect and maximize your portability rights. 

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1. All references to available/allowable estate tax exemptions and credits relate only to persons who are U.S. citizens; references to gift tax exemptions/exclusions generally apply to U.S. citizens and U.S. Lawful Permanent Residents (i.e., "green card" holders). While most transfer tax savings techniques discussed can be fine-tuned to benefit non-U.S. citizens, the results will differ and must be addressed on a case-by-case basis.

2. The **2017 Annual Exclusion** is an aggregate of \$14,000 per donee, from each donor; or \$28,000 per couple, if a husband and wife file a "split gift" Gift Tax Return on gifts made from either of their assets this year. **Medical/Tuition ["ed/med"] Exclusion Gifts** allow a donor to pay an unlimited amount for anyone's medical or tuition expenses (including health insurance premiums), if paid directly to the service provider, without incurring any gift tax or use of their unified credit; and, if properly structured, ed/med gifts should not reduce the \$14,000 amount available to be given to the same person by a donor each year.

*This publication is for general information only. It is not legal advice, and legal counsel should be contacted before any action is taken that might be influenced by this publication.*

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