



# CLIENT FOCUS

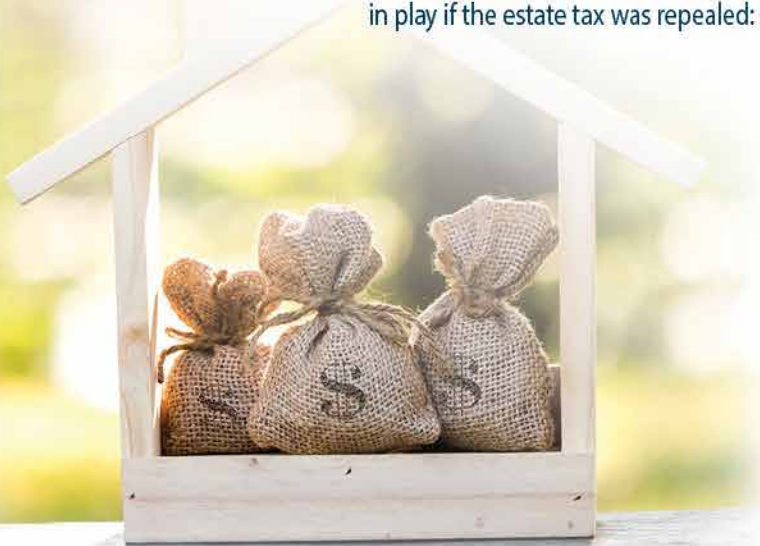
## Changes proposed by Trump could open up **BIG ESTATE PLANNING OPPORTUNITIES**

With proposals to repeal the federal estate tax and the generation-skipping transfer (GST) tax on the table, the new administration may be opening up some rare estate planning options. Under President Donald Trump's proposal, the current step-up in basis for income tax purposes on assets owned at death would be limited to \$10 million of assets. The intention, according to the proposal, is to exempt small businesses and family farms.

It's likely that assets exceeding \$10 million in value would be either subject to carryover basis rules of some kind or would be subject to capital gains tax at death. Under Trump's proposal, the current capital gains tax rate of 20 percent would be retained. Whether the gift tax would be repealed remains unclear. It's important to remember that for the estate tax and other transfer taxes, the devil is in the details, and many elements remain unknown. Speak to your estate planning lawyer to determine how any changes might affect your planning and to review your estate plan as a whole.

### Potential planning tools

Here is a look at some planning tools that would be in play if the estate tax was repealed:



### Dynasty trusts:

If the federal estate, gift and GST taxes are repealed for any length of time, taxpayers could create generation-skipping trusts known as dynasty trusts that could possibly last into perpetuity. Such trusts could be created to support future generations, allow for asset protection and avoid death taxes entirely. Dynasty trusts could also be created at death if the gift tax stays intact, but the estate and GST taxes are repealed.

### Income tax planning:

If the federal estate, gift and GST taxes are repealed, income tax planning may become more prominent. Especially if the gift tax is repealed, there may be a significant focus on ways to shift assets among family members in order to avoid or minimize the payment of capital gains taxes.

### Charitable giving:

The effect of the Trump proposal on charitable giving at death remains unclear. It seems logical that the elimination of the estate tax (and thus the deductions associated with charitable giving) will trigger a significant decline in charitable giving at death. Also, one controversial element of the Trump plan states: "To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed." This statement requires clarification, and might well never become law. But it does indicate an attempt to deter donations of appreciated assets to private foundations, which is allowed under current law.

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### How likely is repeal?

Keep in mind that we have been down this road before. So, how likely is repeal this time? The answer is that it depends.

A so-called "permanent" repeal of the estate tax requires 60 votes in the Senate to avoid a probable filibuster. However, a 10-year repeal of the estate, gift and/or GST taxes could move forward through the budget reconciliation process, which doesn't involve the usual procedures and would only require a majority vote. Regardless of what happens during Trump's term, keep in mind that a new Congress could always reverse any change that might be made. *B*



## DANGERS OF OUTRIGHT DISTRIBUTIONS

### WHY BENEFICIARY DIRECTED TRUSTS MAY BE THE SAFEST CHOICE

*M*any clients feel that once their children or grandchildren reach a certain age, those children or grandchildren will have obtained a financial maturity where they will make good financial decisions and not spend an entire inheritance. Thus, in many estate plans, beneficiaries are entitled to receive their inheritance all at once when they reach a certain age, have graduated from college, or are entitled to receive portions of their inheritance at certain ages. While a beneficiary at age 25 or 30 may very well be financially mature, there are dangers besides a beneficiary's propensity to spend money to consider when crafting how beneficiaries are to receive an inheritance.

When a beneficiary is entitled to an outright distribution, those assets may become subject to more than a beneficiary's spending habits; a judgment creditor can seize that inheritance to satisfy a claim, a bankruptcy court can seize an inheritance to pay creditors and costs of the bankruptcy proceeding, a divorce court may award some or all of an

inheritance to that beneficiary's soon-to-be ex-spouse, or if the beneficiary fails to create his or her own estate plan and something happens to him or her, the inheritance may become subject to a probate. If a minor is the beneficiary of an outright distribution, they will receive a check when they are 18, with no limitations in place for how they can spend it.

To avoid those potential dangers, among others, you can direct through your estate plan documents that a beneficiary must create his or her own separate property trust before distributions (which many of our clients have done), or direct that a beneficiary's inheritance be held in trust for his or her benefit, with distributions made in the sole discretion of the trustee. When the beneficiary reaches a certain age under the latter option, that beneficiary can become a co-trustee of his or her trust share and have complete use and enjoyment of the trust property. The beneficiary can also be given a special power of appointment to craft a plan for those assets for future generations and adjust the trust terms as needed (with certain limitations) to reflect changing family circumstances or changes in the tax law. In essence, the trust becomes a "beneficiary-controlled trust," in which the beneficiary has flexibility in the management of trust assets, can direct them upon his or her passing, and has the use and enjoyment of the property with all of the protections that a trust provides.

By making distributions to a beneficiary from his or her trust share discretionary rather than mandatory, and keeping assets in a beneficiary-directed trust, the inheritance is protected because the money is not in the beneficiary's pocket to spend or give away. Directing that distributions only be made to a beneficiary's separate property trust also provides protections for beneficiaries. Allowing the inheritance to stay in trust will also allow the assets to grow, enabling your beneficiary to receive more than what they were originally entitled to over time. *B*





# THE NEVADA PASSPORT TRUST™

Clients who come into our office looking for asset protection in the form of a domestic asset protection trust ("DAPT") often ask us what additional protections an offshore trust could offer them. Some of those additional protections include a shorter statute of limitations for creditors to attack assets after the assets have been transferred into the trust, a higher standard of proof that creditors must meet to undo a transfer into an offshore trust, and the fact that the creditor must go to the foreign jurisdiction to pursue their claims and bring an entirely new cause of action. After reviewing these benefits, many clients are anxious to set up an offshore trust, but that excitement wanes considerably when they learn they will need an offshore trustee, what the fees are for setting up an offshore trust, and the formalities and complexities that must be adhered to in order to enjoy those extra protections.

To obtain the additional protections for our clients, but reduce the upfront costs and eliminate the need for the appointment of an immediate offshore trustee and the more stringent formalities of an offshore trust, JEFFREY BURR, LTD. has created the Passport Trust™. The Passport Trust™ is an asset protection vehicle that combines the flexibility and simplicity of a DAPT with the advantages of an offshore jurisdiction's additional protections against creditors, if the need arises.

A Passport Trust™ includes "passport" provisions in the trust agreement that enable a DAPT to be redomiciled in a

foreign non-US jurisdiction such as the Cook Islands if there is ever a distress event. Typically, there will be no new waiting period for creditor claims in the offshore jurisdiction – the original transfer date of assets into the DAPT will also be used as the transfer date for purposes of the Cook Island's rules regarding creditor claims.

Passport Trusts™ lower the entry cost to obtain the additional protections an offshore jurisdiction can provide by allowing clients to begin with a DAPT and 'start the clock' on the state and offshore waiting period for protection from creditor claims and later convert to an offshore trust, if necessary, for the best of both worlds.



The Passport Trust™ begins as a DAPT with all the protections that Nevada's self-settled spendthrift law provides, but includes a special passport provision that enables the Trustee to move the trust's domicile to a foreign jurisdiction. In conjunction with this passport provision, application will be made to a foreign trust company (SouthPAC) upon the creation of the DAPT to pre-approve the DAPT for redomiciliation. The foreign trust company shares in the due diligence regarding the creation of the trust. As a result of their early involvement, the foreign trust company agrees to serve as a special trustee, dormant and waiting with 'open arms' to receive the trust assets if a distress event occurs. If a distress event does not occur, clients enjoy the flexibility and simplicity of a DAPT with the comfort of knowing that their assets are protected in the event of a lawsuit or other misfortune, and will pass that protection on to their children. *JB*



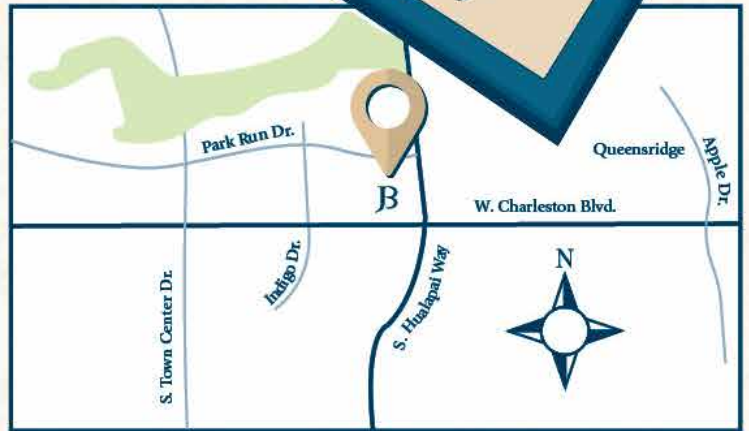


# WE'RE moving

Big changes are on the horizon for JEFFREY BURR, LTD! We're excited to announce that as of August 1, 2017, our West office will be moving to 10000 West Charleston Blvd., Suite 100, Las Vegas, NV 89135. Business will continue, as usual, at our East office. As always, our priority is to maintain a high level of service to our clients. We will continue to make appointments and meet with clients to create and update files; feel free to contact our office, as needed, to schedule appointments. With this move, JEFFREY BURR, LTD. will be able to protect families and their assets for many more years to come. **B**

Please update your files with our new West office address:  
10000 W. Charleston Blvd., Suite 100, Las Vegas, NV 89135

Our Henderson office remains open at:  
2600 Paseo Verde Pkwy., Henderson, NV 89074



## contact us

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