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Recent Developments in  
Estate Planning  
&  
Misconceptions about Elder Care Law

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# My Estate Planning Practice

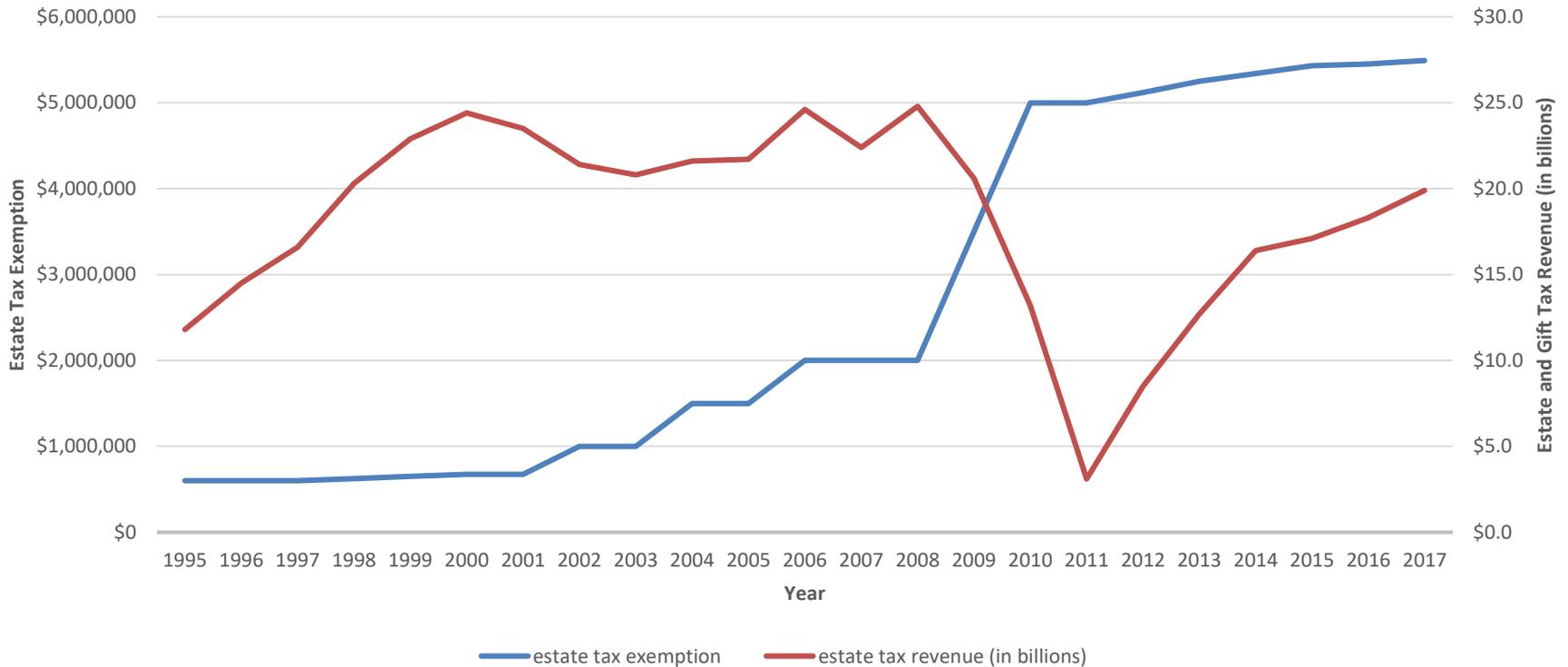
- 112 estate plans in first quarter of 2019.
- 341 estate plans in 2018.
- Over 2,000 estate plans in last 11+ years.
- Almost everything is done on a flat fee basis (\$800 to \$1400 for married couple, \$500 to \$1000 for unmarried clients).
- Drafts go out within 2-3 business days.
- Basic estate planning, as well as IDGTs, GRATs, CRTs, CLTs, private foundations, etc.

# Estate Taxes

- **2010 Tax Relief Act** – (i) \$5M exemption adjusted for inflation, (ii) “unification” of gift and estate tax, (iii) portability, and (iv) 35% flat rate.
- **American Taxpayer Relief Act of 2013** – Made permanent all of those points, except rate was increased to 40% from 35%.
- **Tax Cuts and Jobs Act of 2017** – For 2018 through 2025, exemption doubles, then it sunsets to ATRA of 2013.
- **Proposed Reg §20.2010-1(c)** – Prevents “clawback” if people make gifts at a time when the gift tax exemption is high, and then die when the estate tax exemption is lower. Proposed by Dept of Treasury on 11/20/2018. Has not yet become law.

# Recent History Exemption & Revenue

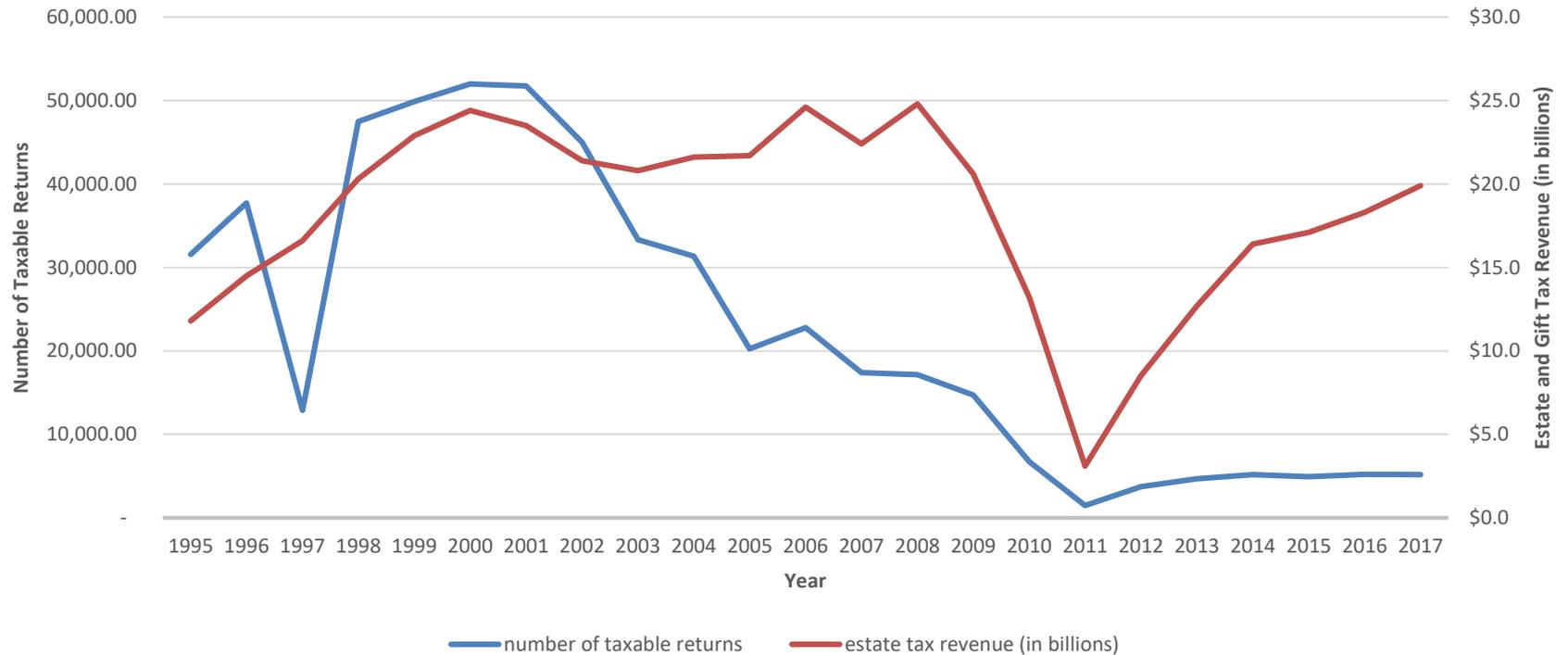
ESTATE TAX REVENUE  
VS. ESTATE TAX EXEMPTION  
1995-2017



# Recent History

## Revenue and Number of Returns

ESTATE TAX REVENUE  
VS. NUMBER OF TAXABLE RETURNS  
1995-2017



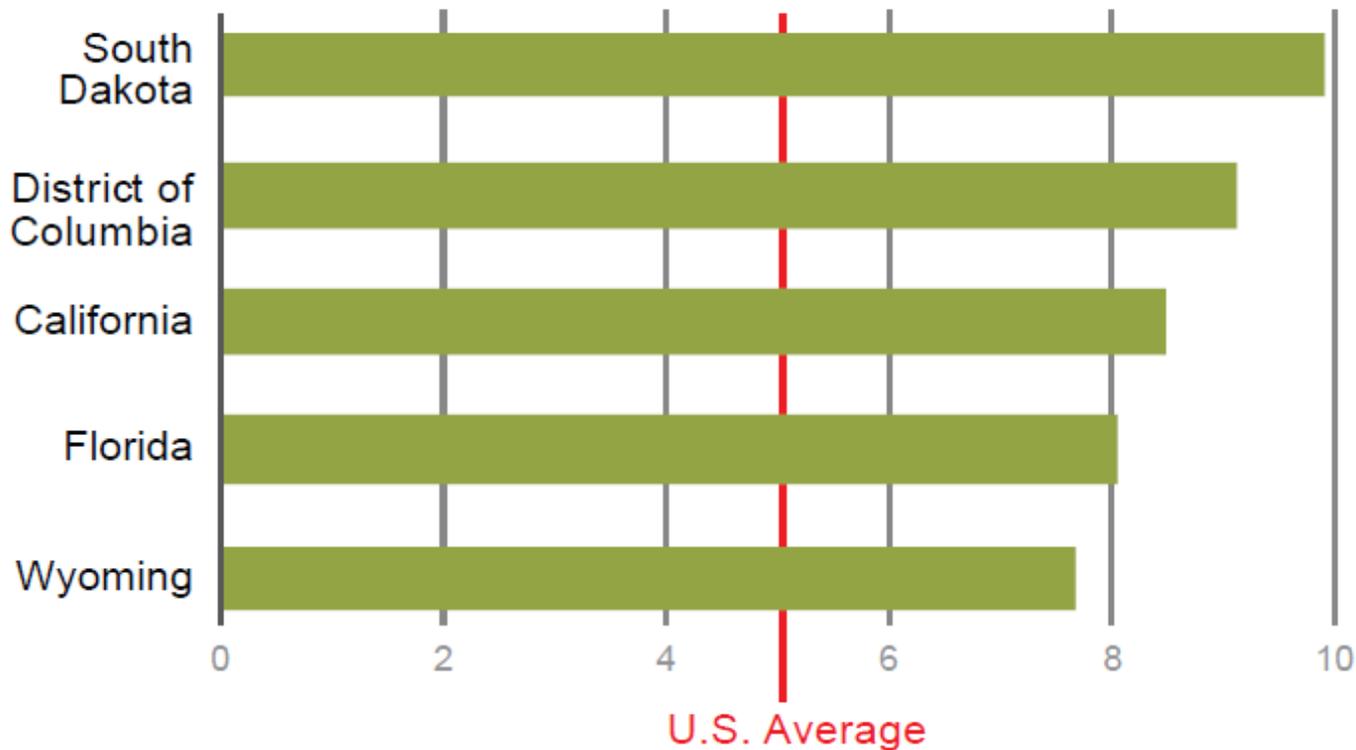
# Interesting Estate Tax Numbers

	<b>1997</b>	<b>2017</b>
estate tax exemption	\$600,000	\$5,490,000
number of taxable returns	42,901	5,185
estate tax revenue	\$16,637,379,000	\$19,939,525,000
revenue per taxable return	\$387,809	\$3,845,617

Estate tax rate was 37% to 55% in 1997 and was a flat 40% in 2017.

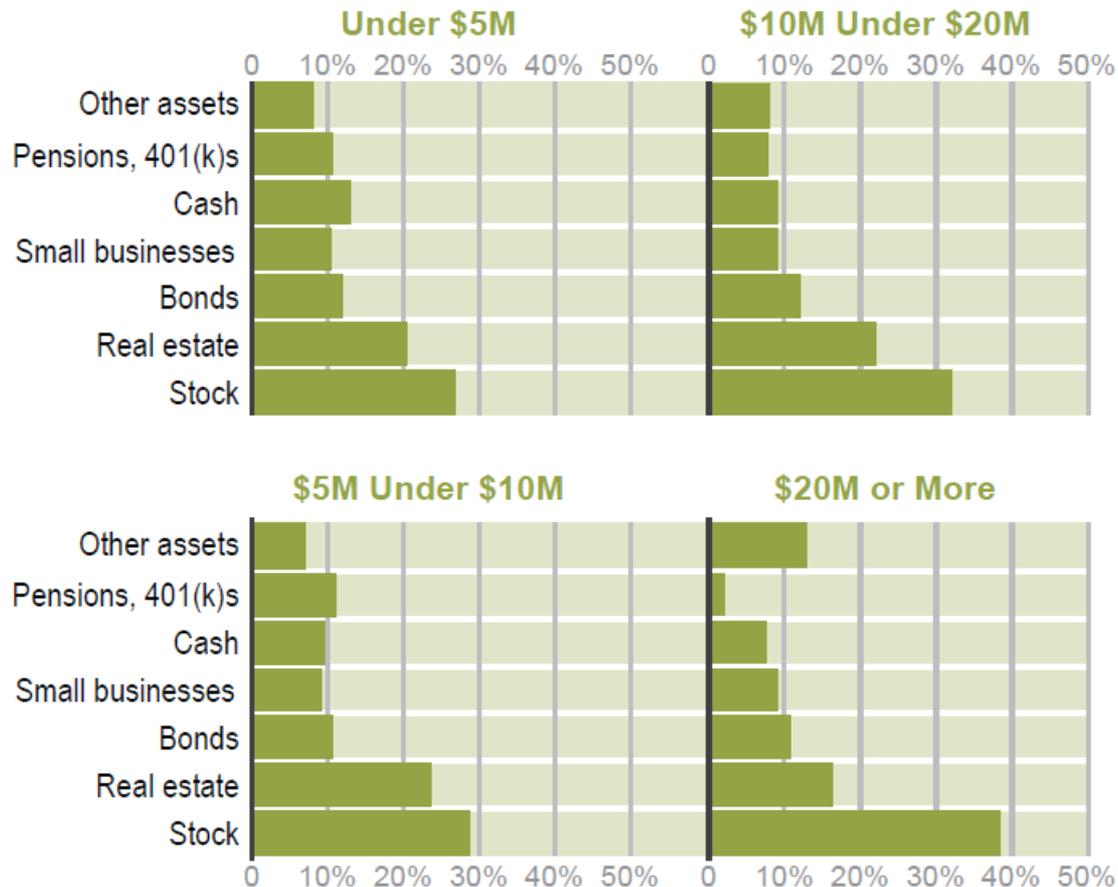
# More Interesting Estate Tax Tidbits

## Estate Tax Returns Filed in 2017 Per 100,000 Adult Residents, Top 5 U.S. States



# And Yet Even More Interesting Tidbits

## Portfolio Composition of Estates, by Size of Total Assets, Filing Year 2017



## §20.2010-1(c) and the Hype about SLATs

- SLAT (Spousal Lifetime Access Trust) – allows Spouse A to use exemption to fund a trust for Spouse B and possibly kids. Idea is to capitalize on high exemption now but make sure money can stay in the household if needed.
- The hype should have died down by now, but still lingers. The strategy will warrant the hype again if the estate tax exemption falls, but clients will have time to plan.

# Big Exemption = Big Changes

- For 2019, exemption is \$11.4 million per person, or \$22.8 million for a couple.
- Leaving assets outright to spouse has become far more common (and appropriate).
- For many, charitable deductions have become unnecessary (although still relevant for IRAs).
- For many, gifts up to the annual exclusion limit (\$15,000 for 2019) have become unnecessary.

# Effect of Increased Exemption on Existing Trusts

- Assets inside of “Bypass Trust,” “Family Trust,” “B Trust,” “QTIP Trust,” since they are not included in surviving spouse’s estate, do not receive a step-up in basis at surviving spouse’s death.
- If estate taxes are not a concern, moving assets out of the trust or even terminating the trust in order to achieve the step-up may be desirable.

# When Estate Taxes Still Matter

- People still may need to do planning during their lifetimes if:
  - They're above the exemption.
  - They have assets that might increase significantly in value, and could then be above the exemption.
  - There are state estate tax considerations.
  - They simply want to gift.

# When Estate Taxes Still Matter

- A married couple still may want to fund a trust at the first death (rather than leave assets outright to one another and rely on portability) if:
  - They're above the exemption.
  - They have assets that might increase significantly in value (since deceased spousal unused exclusion, or DSUE, does not change).
  - They want creditor protection or a limited power of appointment.
  - There are state estate tax considerations.

# Possible Changes?

- Unlikely estate tax is repealed given recent increase to exemption.
- Unlikely exemption drops too dramatically (Bernie Sanders has proposed a \$3.5 million per person exemption with rates from 45% to 77%, which kicks in at \$1 billion).
- If anything, expect changes on:
  - Trust rules (GRAT terms and “defective” grantor trusts),
  - Valuation discounts, and
  - Inherited IRA rules (H.R. 1994 came out of the House Ways and Means Committee on April 2, 2019, with bipartisan support, and would, among other changes, require inherited IRAs to be paid out within 10 years).

# IRA Beneficiary Designations

Rule # 1 – **Trusts aren't horrible**, and may be a good idea. To qualify as a “see through trust” so that the oldest beneficiary's life expectancy can be used:

- (1) The trust must be valid under state law,
- (2) The trust must be irrevocable or become irrevocable upon IRA owner's death,
- (3) The trust must have identifiable beneficiaries, and
- (4) A copy of the trust must be provided to the IRA custodian by 10/31 of the year following the IRA owner's death.

# IRA Beneficiary Designations

Rule # 2 – **Careful when naming minors** because (1) a guardianship is required if a beneficiary has not yet reached age 18, (2) the beneficiary may decide to blow the money despite the tax consequences, and (3) RMDs from inherited IRAs are subject to the kiddie tax rules.

If you're going to do it, name an UTMA account instead of the minor. UTMA accounts avoid guardianships, and can exist in Ohio until the beneficiary reaches age 25.

# Misconceptions About Elder Care Law

- Elder care law is all about Medicaid planning.
- Elder care law is just for the elderly.
- Elder care attorneys help clients “game the system.”
- It’s too early to talk to an elder care attorney.
- It’s too late to talk to an elder care attorney.

# Elder law is all about Medicaid planning.

- Most people equate elder care law with Medicaid planning.
- Medicaid planning is just one tool in a much larger kit that elder care attorneys utilize to address their clients' needs.
- Elder care law is defined by the needs of a particular type of client as opposed to a particular area of law.

# Elder care law is just for the elderly.

- Elder care lawyers clearly work with the elderly, but they also help individuals plan for legal, financial, and healthcare issues that we face due to living longer.
- Three stages to elder care planning are:
  - Protection Planning
  - Life Care Planning
  - Crisis Planning

# Elder care attorneys help clients “game the system.”

- Alzheimer’s and other forms of dementia can combine high care costs with an illness that can last for years without being fatal.
- A healthy spouse can face financial ruin without adequate planning.
- An individual may want a financial reserve to provide for items Medicare and Medicaid won’t cover (e.g., non-medical aides or a private room).

## It's too early to talk to an elder care attorney.

- Our practice is designed around providing legal counsel on a case-by-case basis. We do not “sell” clients based on their fear of a worst case scenario.
- Many clients have questions about elder care law that we can answer, and we may even have some basic and fairly easy planning steps to recommend, all while still making sure each client has their basic estate planning affairs in order.

## It's too late to talk to an elder care attorney.

- It's never too late to talk to an elder care law attorney.
- In fact, a long-term planning crisis (e.g., an Alzheimer's diagnosis), when a client thinks it may be too late, is often when an elder care attorney can provide the most clarity and advocacy.

# Help During Emergency Planning

- Help during emergency planning can include:
  - Coordinating and communicating with the client's existing financial planner;
  - Coordinating care;
  - Qualifying for public benefits;
  - Providing financial protection for healthy spouse;
  - Planning to avoid the nursing home (if desired); and
  - Protecting inheritance for loved ones.