ROBERTSON STEPHENS®

**July 18, 2022 – Wealth Planning Commentary**

## Portability - More time to take advantage of unused gift and estate exclusion

Portability refers to a transfer of a deceased spouse's unused exclusion to the widow or widower. The surviving spouse may add it to their own unused exclusion and avoid paying gift or estate tax on the combined amount. Earlier this month the IRS released a new revenue procedure that extends the estate filing deadline for portability from 15 months to up to five years after the decedent's date of death. The new filing timeline applies to estates of those who died after Dec. 31, 2010 and who are survived by a spouse.

Keep in mind that the lifetime and estate exclusion is scheduled to reduce from $12.06mm today to around $6mm per person in 2026. The amount of exclusion ported over before then is grandfathered, there is no claw back. The regulations apply to estates of decedents dying after Nov. 26, 2019.

## What to do with an overfunded 529 plan

529 plans are one of the most popular vehicles to save for education. Anyone can contribute and they are double tax-advantaged: earnings grow tax free and withdrawals for qualified education expense are tax -free. The 529 is like a Roth IRA for education. Withdrawals can fund K through 12 private school, college, and grad school expenses. Some states allow for a tax-deductible contribution to a 529 plan. If the withdrawn funds are not used for qualified education expenses taxes and penalties are levied.

Funds beyond a beneficiary's education need may be redirected to another family member by changing the plans beneficiary. The definition of family member covers a wide range of relatives. Since the SECURE Act was passed, there is another option for unused funds: up to $10,000 may be withdrawn to pay the beneficiary's interest and principal on student loans. The student loan payment may also be made on the behalf of the beneficiary's siblings, including stepbrothers and stepsisters. The student-loan interest deduction may not be taken in the same year.

In June, Senators Burr and Casey introduced the College Savings Recovery Act. The legislation would permit penalty-free rollovers from 529 plans to Roth IRAs. Tax-free transfers to a Roth sound too good to be true and we expect Congress to limit the amount permitted. We will keep you informed as the legislation progresses.