Estate Planning Exemptions Sunset

GLASS JACOBSON
WEALTH ADVISORS

d

Definitions

- **Estate Tax:** Tax on the right to transfer property at death. *(Transfer at Death)*
- **Gift Tax:** Tax on the transfer of property by one individual to another while receiving nothing or less than full value in return. *(Lifetime Transfer)*
- **Unified Credit (Lifetime Exemption):** The total amount an individual can transfer (during their life as a gift or at death as part of their estate) without incurring federal estate or gift taxes.
- **Annual Gift Tax Exclusion:** Amount you can give each year to any number of individuals without incurring the gift tax. $18,000 in 2024.
- **How the Lifetime Exemption Works:**
  - **Lifetime Gifts:**
    - If you gift $1 Million during your lifetime (above the annual gift tax exclusion amount) during your lifetime, this amount is subtracted from your lifetime exemption.
  - **Estate at Death:**
    - If you pass away with an estate worth $10 million which (along with the $1 Million you gave during your life) is less than the lifetime exemption amount, you are covered by the exemption and will owe no estate and gift taxes.
- **Portability:**
  - A surviving spouse can use the unused portion of a deceased spouse's exemption, essentially doubling the exemption for married couples.
- **Revocable vs. Irrevocable Trust:**
  - Revocable Trusts are trusts that can be amended or cancelled.
  - Irrevocable Trusts are trusts that cannot be changed without beneficiary or court approval.

Tax Cut and Jobs Act (TCJA) of 2017

- Increased the lifetime exemption amount from $5.6 million to $11.18 million (indexed for inflation).
- For 2024, the exemption amount is $13.61 million per individual or $27.22 million per married couple.
- The exemption amount is not permanent – It is scheduled to expire, "or sunset," on December 31, 2025, unless Congress acts to extend it or make it permanent.
- If no action is taken, the exemption will revert to its pre-TCJA level of $5.6 million per individual, adjusting for inflation from 2017.
- No one knows exactly what the new federal exemption will be in 2026 with the sunset, but most projections show that it will be somewhere in the $6-7 million range per person or $12-14 million per married couple.[1]

1. LPL Financial. "The Sunset of the Federal Estate Tax Exemption: Use It or Lose It." https://www.lpl.com/i/private-wealth-management/sunset-of-federal-estate-tax-exemption-use-it-lose-it.html.

Current Proposals for Exemption

- 2024 is an election year that will affect the make up of both the executive and legislative branches of government.
- U.S. National Debt over $34 Trillion.
- Democratic Proposal:
  - Lower current lifetime estate and gift tax exemption amount to around $3.5 million per individual.
  - Increase estate tax rate from 40% to 45% on amounts exceeding the exemption.
  - Repeal Basis Adjustment:
    - The Biden Administration signaled that I might seek to repeal the basis step-up at death.
  - Tax Capital Gains as Ordinary Income:
    - The Biden Administration proposed taxing long-term capital gains and qualified dividends as ordinary income.[2]
  - According to a survey, 50% of Americans supported this proposal.
- Republican Proposal:
  - Completely repeal the estate tax.
  - 33% of survey respondents favored completely repealing the estate tax.[3]

2. Franzen, W.R. "2024 Estate Planning Outlook: Transfer Tax Changes are on the Horizon," Nov. 20, 2023. https://www.afslaw.com/perspectives/alerts/2024-estate-planning-outlook-transfer-tax-changes-are-the-horizon.
3. Pozen, R. "Repeal or Replace: Two Opposing Estate Tax Proposals." Mar. 11, 2019. https://www.brookings.edu/articles/repeal-or-replace-two-opposing-estate-tax-proposals.

Who Is Affected By Estate Taxes

- In 2023, roughly 7,100 estate tax returns were filed and only 4,000 had taxable estates.
- The National Center for Health Statistics states that there were 3,279,857 deaths in the US in 2023.
- Roughly 0.22% of those who died in 2023 had to file estate taxes and only 0.12% of those who died in 2023 owed estate taxes.
- Prior to 2017, in 2016, 11,200 individuals were required to file estate taxes and 5,300 owed estate taxes.[4]

4. Tax Policy Center. "How Many People Pay the Estate Tax." https://www.taxpolicycenter.org/briefing-book/how-many-people-pay-estate-tax#:~:text=To%20put%20the%20number%20of,will%20pay%20any%20estate%20tax.

No Clawback

- No Clawback:
  - The IRS has said anyone who takes advantage of the current higher exemption will not be penalized if the amount drops in 2026.[5]
- Maximize the Expanded Gift Tax Exemption:
  - Make one or more gifts to lock in the expanded exemption before it sunsets in 2026.
  - Use more of your exemption than will be available after the expanded exemption sunsets.
  - Example: If the sunsetting exemption reverts to $7 million, a gift of $2 million will not use any of the expiring exemption, but a gift of $9 million would.
  - To use the full expiring exemption amount you would need to make gifts totaling $13.61 million per individual.[6]

5. Merrill Lynch. "Get Your Estate Ready for Potential Gift Tax Changes. Here's How." https://www.ml.com/articles/estate-gift-tax-exemption-sunset.html.
6. Ascent Private Capital Management of U.S. Bank. "Estate Tax Exemption Sunset: What You Need to Know." https://ascent.usbank.com/private-capital-management/ascent-resources-and-insights/personal-legacy-planning/estate-tax-exemption-sunset.html.

Leverage Current Gifting Limits

- The annual gift tax exclusion is $18,000 in 2024, $36,000 for couples per gift recipient (split gift).
- If you give less than the annual gift tax exclusion amount, it does not count towards your lifetime gift and estate tax exclusion amount.
- You can pay any amount without triggering gift taxes if you pay directly to a school for tuition or medical provider for health expenses without it being considered a gift.

Disclosures

This material is not intended to be a recommendation or investment advice, does not constitute a solicitation to buy, sell or hold a security or an investment strategy, and is not provided in a fiduciary capacity. The information provided does not take into account the specific objectives or circumstances of any particular investor, or suggest any specific course of action. Investment decisions should be made based on an investor's objectives and circumstances and in consultation with his or her advisors. The views and opinions expressed are for informational and educational purposes only as of the date of production/writing and may change without notice at any time based on numerous factors, such as market or other conditions, legal and regulatory developments, additional risks and uncertainties and may not come to pass. This material may contain "forward-looking" information that is not purely historical in nature. Such information may include, among other things, projections, forecasts, estimates of market returns, and proposed or expected portfolio composition. Any changes to assumptions that may have been made in preparing this material could have a material impact on the information presented herein by way of example. Past performance is no guarantee of future results. Investing involves risk; principal loss is possible. Investment in global, international or emerging markets may be significantly affected by political or economic conditions and regulatory requirements in a particular country. Investments in non-U.S. markets can involve risks of currency fluctuation, political and economic instability, different accounting standards and foreign taxation. Such securities may be less liquid and more volatile. Investments in emerging or developing markets involve exposure to economic structures that are generally less diverse and mature, and political systems with less stability than in more developed countries. Investments in non-U.S. markets can involve risks of currency fluctuation, political and economic instability, different accounting standards and foreign taxation. Bond investors should carefully consider risks such as interest rate, credit, default and duration risks. Greater risk, such as increased volatility, limited liquidity, prepayment, non-payment and increased default risk, is inherent in portfolios that invest in high yield ("junk") bonds or securities. Generally, when interest rates rise, prices of fixed income securities fall. Interest rates in the United States are at, or near, historic lows, which may increase exposure to risks associated with rising rates. The S&P 500, or the Standard & Poor's 500, is a stock market index based on the market capitalizations of 500 large companies having common stock listed on the NYSE or NASDAQ. Indexes are unmanaged and cannot be invested in directly.