BENJAMIN F. EDWARDS
INVESTMENTS for GENERATIONS

Estate Strategies

Here We Go Again

Estate Tax Laws Have Changed

Congress has passed, and the President has signed, the new Tax Cuts and Jobs Act ("Act"). In the Act are significant personal income and corporate tax changes. The estate and gift tax rules were not changed, but the exclusions have been doubled. This allows for an unprecedented amount of wealth to be transferred tax-free. However, the law is set to lapse in 2025.

This just shows, as the old proverb says, the only thing permanent in life is change. What this means is that you need to conduct ongoing reviews of your estate planning strategies to assure your intentions can still be met and to consider adjusting the plan as life and tax laws change.

So, What's the Current Law?[1]

Estate tax and exclusion amount – Federal estate tax remains with the Act. The law doubles the exclusion amount to $13.61 million in 2024 for all individuals (which is adjusted for inflation annually). What this means is you may be able to pass up to $13.61 million at death ($27.22) million for a married couple with proper planning) free from federal estate tax. The estate tax rate remains at 40%.

Gift tax and exclusion amount – The gift tax exclusion amount remains unified with the estate tax exclusion amount, so it is now $13.61 million as well in 2024 (which is adjusted for inflation annually). Again, this means you may be able to gift up to $13.61 million during your lifetime free from federal gift tax. The gift tax rate also mirrors the estate tax rate, 40% for taxable gifts. It is important to remember that any taxable gifts made during your lifetime will reduce your estate tax exclusion amount dollar for dollar.

"Portability" remains permanent – Portability is a provision for married couples originally introduced in 2010. Portability provides that when a married person passes away the surviving spouse may "retain" the deceased spouse's unused exclusion amount. Consequently, when a spouse dies, the survivor may be able to use the couple's full $27.22 million exclusion without formally planning for it in advance. The surviving spouse is required to file a timely federal estate tax return (Form 706) and proactively elect to use portability. Should this situation arise you should consult with your tax and legal counsel regarding your options.

Generation-skipping transfer tax (GST) and exclusion amount – GST may apply when assets are transferred to "skip" persons (generally someone more than one generation away from you, like grandchildren and more remote descendants).

[1]This discussion only involves federal estate and gift tax. Many states have their own transfer tax. Work with your local tax and legal advisors regarding your specific situations.

The GST exclusion amount for 2024 is $13.61 million (also adjusted for inflation annually). The GST tax rate is also 40% and is an additional tax to any previous estate or gift tax liability. Importantly, "portability" (above) does not apply to the GST exclusion amount. Therefore, gifts to "skip" persons who use the portable exclusion to limit or eliminate estate/gift taxes may still be subject to GST. You should discuss your situation with your tax and legal professionals to determine whether GST may apply and how you may plan efficient transfers to "skip" persons.

Current law is to sunset in 2025 – To pass the Act Congress used the "budget reconciliation rules." These rules allowed Congress to pass the Act via simple majority. However, what this means for the estate and gift tax (and many other new provisions) is that without further congressional action, all of the estate and gift tax exemptions will sunset on December 31, 2025. Upon sunset, the 2017 transfer tax laws will apply, meaning exclusion amounts will return to $5.49 million in 2026.

Cost Basis "Step-up" Remains

Current law allows cost basis "step-up". Cost basis is generally the price you pay for an asset. If you were to buy a stock for $10 per share, your cost basis in that stock would be $10. If you hold the stock at death, and the value of the stock has appreciated to $20 a share, your estate will get a "step-up" in basis to $20. The new basis allows your estate and/or your beneficiaries to potentially sell the asset with no capital gains tax liability.

Action Plan

Despite a significant change in the exclusion amounts, the Act is temporary in nature. Accordingly, now is the time to review your estate plan and your legacy goals to determine whether changes are needed or if immediate planning should be considered.

Review your current plan. The most important step in any estate planning process is to review where you are today. With the $13.61 million exclusion, you need to review how assets may pass under your existing plan to assure your goals will be met. For example, consider the standard trust planning for a married couple that may face an estate tax liability. Typically, after the first spouse dies, the trust calls for the creation and funding of a credit shelter trust up to the entire estate tax exclusion amount. With an exclusion amount of $13.61 million, is that still what you want? If all of a deceased spouse's estate would be held in a credit shelter trust does that meet your surviving spouse's needs? Work with your tax and legal professionals to review your plan to assure it still aligns with your legacy goals.

Is portability the best option? Many believe that with the portability rules there is no need to hire an attorney and proactively plan for possible estate tax liabilities. This may or may not be the case depending on your particular goals. There can be significant advantages to married couples utilizing portability, but credit shelter trusts continue to provide opportunities not available with portability. The following chart provides a few comparisons for these two planning techniques:

Portability	Credit Shelter Trust
Allows the surviving spouse to retain the deceased spouse's unused exclusion amount	Without portability, if the deceased spouse doesn't fully utilize their exclusion, the unused exclusion could be lost
Surviving spouse retains full use and control over all assets	The deceased spouse can control who will benefit from the trust along with how and when trust assets are distributed
Asset growth occurs inside the surviving spouse's estate and could become subject to estate taxes at surviving spouse's death	Properly drafted and administered, growth of assets in the trust is not taxed for estate tax purposes at the death of the surviving spouse
All assets, including those received from the deceased spouse, generally get a full step-up in basis at the deceased spouse's death	Assets do not get a step-up in basis at the surviving spouse's death
Assets can be subject to creditor claims	Assets typically protected from creditor claims
For state estate tax purposes, assets may be subject to tax	Assets can be protected from state estate tax
Does not apply to federal generation-skipping taxes (GST)	With proper planning, assets can be protected from federal generation-skipping taxes (GST)

It is also important to remember that portability and credit shelter trust planning are not mutually exclusive. Consider a married couple with $7 million each in their own revocable living trust ($14 million total marital estate). At the first spouse's death, all $7 million could pass to a credit shelter trust, with the surviving spouse electing portability on the remaining $6.61 million unused exclusion amount ($13.61 - $7 million = $6.61 million unused exclusion amount). The surviving spouse would then have a $20.22 million remaining exclusion (their own $13.61 + $6.61 million portable exclusion). Importantly, remember that the $6.61 million portable exclusion could not be used for any GST planning.Review your situation with your professional team to determine what blend of techniques works best for you.

Lifetime taxable gifts. You may recall that in 2012 many affluent individuals made significant taxable gifts to their beneficiaries in fear of the exclusion amounts reverting to $1 million thresholds.This type of logic again applies with the current sunset provisions. The current law allows for an unprecedented amount of assets to be transferred tax-free. The ability to make taxable gifts of up to $13.61 million can provide substantial opportunities to transfer wealth for those able to afford them.

Instead of part of a family vacation home or business, at these thresholds the entire asset may be able to be transferred. Moreover, gifting now shifts the future appreciation and income stream of the assets from your estate to your beneficiaries. These gifts can be outright to beneficiaries or structured in trusts. With proper planning, transfers to trust for your beneficiaries can allow you some control over the use of the gifted funds and perhaps the ability to protect the gifted assets from potential creditors of your beneficiaries. It is important to remember that use of the lifetime exclusion reduces your estate tax exclusion amount dollar for dollar. Also, your beneficiary receives your cost basis in the gifted asset, which may cause income tax consequences down the line should the asset be sold.

Time tested estate planning strategies continue. There remain many other estate strategies available to help you meet your legacy goals. Just a few of the long-tested techniques to consider are:

- ***Annual lifetime gifting:*** Currently you can gift up to $18,000 per person per year ($36,000 as a married couple) without gift tax consequences. Doing so lowers the value of your estate, and consequently your potential estate tax liability. This amount is also adjusted for inflation annually.
- ***Charitable giving:*** Giving to charities during your lifetime not only allows you to witness your donation's benefit to others, it also allows for a potential income tax deduction and helps reduce the total value of your estate. Gifting to qualified charities at death gives your estate a dollar for dollar estate tax deduction as well.
- ***Irrevocable Life Insurance Trust (ILIT):*** If you still face estate and/or income tax liability upon death, you may wish to consider the use of an ILIT. If properly structured, the life insurance death benefit of the policy can be excluded from income and estate tax upon your death or the death of your spouse. Among other planning needs, the life insurance death benefit proceeds could provide available cash to help with estate and income tax liabilities, replace wealth given to charity, equalize inheritances among heirs, and to provide funds to help transfer a family business.

> There are several other transfer tax techniques available to consider. Work with your planning professionals to see what options may be best for your particular situation.

IT AIN'T OVER TILL IT'S OVER

- Yogi Berra

Clearly the current rules will change. Either we will face a sunset, Congress could make things permanent, or a change in leadership could lead to some other tax regime. Regardless of the future changes, the current law allows for the greatest amount of tax-free wealth transfer in the history of the federal transfer tax era. It is important to remain proactive in your planning and diligent in the review of your situation to help you achieve your long-term investment and legacy goals.

With the tax law change it is time to review your plan now. Remember to also review your plan whenever you or your beneficiaries experience a life changing event (birth, death, marriage, divorce, etc.), or at least every three to five years.

Your Benjamin F. Edwards financial advisor, in partnership with your tax and legal professionals, is prepared to assist you in achieving your legacy goals. Work with your team to create a plan that is right for you, which can remain as flexible as possible in anticipation of unforeseen changes, and systematically review your situation to ensure you can achieve your ultimate legacy intentions. ■

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