



Wealth Planning ADVISORY ■

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Crystal Ball Gazing for the Federal Estate and Gift Tax After 2020 – Should I Act Now?

by Margaret Scott and Jake Kaplan

The combined federal estate and gift tax exemption was dramatically increased in December 2017 as part of the Tax Cuts and Jobs Act. Under current law, each person has an exemption from federal estate and gift tax of \$11.58 million, or \$23.16 million for married couples. However, this legislation is scheduled to expire at the end of 2025. Beginning in 2026, absent further legislation, the exemption will be essentially cut in half (reduced to \$5 million per person plus inflation since 2010).

Some prognosticators believe that the outcome of the 2020 elections could accelerate the timetable for new legislation bringing change to the federal estate and gift tax exemption as soon as 2021, possibly retroactive to January 1. Others cite proposals that would increase tax rates and threaten well-established transfer-tax techniques. Still others feel strongly that no changes are likely because Congress will have higher priorities.

Predictions abound before every presidential election, and the election of 2020 is no different except that pundits say the stakes are higher this time because of the vast differences among proposals being floated. Concern about potential changes that would be adverse for wealthy taxpayers is prompting calls to “use it or lose it” – meaning use exemptions or risk losing some of them to tax-law changes. Of course, no one in the world truly knows what will happen with the election or what federal estate and gift tax law will look like in 2021 and beyond, but where does this leave you? Should you do anything before the end of 2020?

Here are a few questions to frame your thinking:

- How much (if any) can I afford to give away now?
- If I choose to make large gifts this year, should I give those amounts directly to my children or make transfers in trust for descendants?
- Am I interested in generation-skipping transfer-tax planning to reduce the estate and gift taxes my children may have to pay in the future?

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- How much control can I keep over what I give away? Am I allowed to benefit from what I have given away? What about my spouse?
- Do any of the potential planning opportunities present risk of a tax audit or of unpleasant rigmarole? What is my appetite for risk and rigmarole?

Everyone will answer these questions differently, and there are a lot of other relevant issues – including critically important non-tax issues – that could affect your decision-making. There are myriad options available to those wishing to act either to transfer existing wealth or expected future wealth, but most strategies that accomplish your tax goals require willingness to give up some access to your assets or some control over them or both. All tax planning is best if it is tailor-made and done with careful consideration.

Because we are heading into a period of increased uncertainty, making gifts and/or considering other tax-saving ideas while the rules are fairly clear now is an especially good idea. We invite you to schedule a meeting with us to see if any planning opportunities are right for you and your family. The end of the year promises to be hectic not only for lawyers but also for our industry colleagues vital to the implementation of many strategies. Waiting until after the election may be too late.

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