

# IRS Provides Assistance to Taxpayers Seeking to Take Advantage of Increased Exemption from Gift and Estate Tax

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During last year's holiday season, the 2017 Tax Act provided a gift in the form of increases to the amounts that could be transferred without incurring federal estate, gift or generation-skipping taxes. The exempt amount was increased from \$5 million to \$10 million per person. After applying inflation indices, the exemption amount actually available for transfers made as of today is \$11.18 million.

This was good news for high net worth individuals, however it was coupled with bad news regarding the duration of these changes. Under the Act, the exemption increases would expire or "sunset" for transfers occurring after December 31, 2025. This led to the inevitable question regarding whether lifetime gifts in excess of the sunset amount might be subject to taxation upon the later death of the gift giver (a so-called "clawback").

In keeping with the holiday spirit evidenced last year, today the IRS has issued proposed regulations that confirm there will be no "clawback" for lifetime gifts made within the exemptions applicable at the time of the gift was made. This means that high net worth individuals are wise to consider using the increased exemption prior to their expiration. This is important not only for avoiding the 40% tax that may be imposed under the gift and estate tax regime, but also the 40% generation-skipping transfer tax that can apply to gifts made to grandchildren or further generations whether outright or in trust. Details regarding the proposed regulations can be found at <https://federalregister.gov/d/2018-25538>. Individuals who might be subject to estate tax under the sunset provisions are encouraged to contact their professional tax advisor to address how best to take advantage of the 2017 Tax Act exemptions. Note that while the current sunset date is December 31, 2025, legislative revisions can affect the continued availability of current exemptions.

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