

The Exemption Also Rises (But Could Set Soon)

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The amount that you can give to your children during life or leave to them after death estate tax-free currently is at a historically high level.

As of January 1, 2021, an individual can give or leave \$11.7 million and a married couple can give or leave \$23.4 million free of federal gift or estate tax. Both current law and the 2020 elections, however, put these historically high amounts at risk of substantial reduction, possibly as soon as this year, and could result in more of your assets being subject to a 40% estate tax at death. If your financial circumstances warrant the use of this exemption to avoid this egregious tax, then you should consider taking appropriate action now.

The Risk

The exemption amount is at risk both because of current estate tax law and as a result of the 2020 elections. The risk and the need to proceed with appropriate planning are acute. First, the Tax Cuts and Jobs Act, which in 2018 increased the exemption amount from \$5 million to \$10 million, indexed for inflation, contains a "sunset provision." If there is no affirmative action to change the law before 2026, then the exemption amount effectively will be cut in half on January 1 of that year. Second, the current Democrat control of the Presidency, House, and Senate threatens to accelerate this reduction to \$5 million or less (President Joe Biden has floated a reduction to \$3.5 million and a rate increase to 45%), possibly as soon as even this year.

The Opportunity

While the risk of a more egregious estate tax is high, a window of opportunity currently appears to exist. Although it is possible that any gift and estate tax law change could be retroactive to January 1, 2021, the best opportunity to take advantage of the current exemption amount is to act now. A number of estate planning techniques are available not only to utilize the current exemption amount by gift, but also to create at least indirect access to the gifted assets. For example, the person making the gift could use a spousal lifetime access trust ("SLAT"). A SLAT can be designed to benefit the grantor's spouse for life and then children without estate tax at either generation. Implementation of proper techniques now could avoid substantial estate tax in the future.

For a number of years, the gift and estate tax exemption amount has continued to rise. The current law and makeup of the federal government, however, has created a significant risk of sunset. Planning and action now would create the best opportunity to use the current exemption amount to avoid future significant estate tax on your wealth.

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