

Estate Planning; A New Year's Reminder Of Where We Are, Where We Are Going, And What To Consider

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It seems like it was just yesterday that the 2017 Tax Cuts and Jobs Act was passed, aiming to usher in relief for middle-income Americans. Some of the act's changes are here to stay; however, from tax brackets to personal exemptions and deductions to estate tax exemptions, the act instituted many individual and estate tax changes that will sunset on December 31, 2025. As a result, prudent taxpayers will engage in certain planning now, to take advantage of existing laws before we revert to pre-2017 rules; one such notable planning opportunity exists in the world of estate and gift planning.

Spouses may give an unlimited amount to each other completely gift and estate tax-free. There is a limit on how much may be given to non-spouse recipients before such gifts incur gift tax (if given during life) or estate tax (if given at death). In 2024, this limit (the "exemption") is \$13,610,000. Collectively, spouses may give ~\$27,000,000 to their descendants, friends, and family without incurring any gift or estate tax. Amounts given in excess of this exemption are currently taxed at a forty percent rate. Under current law, the exemption is scheduled to increase with inflation in 2025, and then subsequently decrease to an estimated \$7 Million per donor on December 31, 2025.

Will this sunset *actually* happen? Educated guesses suggest yes. What to do with this knowledge? Consider gifts.

If you use your exemption today and the exemption decreases as scheduled, you will not be penalized later for the gift you make now; you can take advantage of today's more favorable tax laws. Consequently, many individuals are making gifts – either directly to individual recipients or in trust – now.

If you are reading this thinking, “There’s no chance I will ever give more than \$7 Million, so I do not need to rush to make gifts before 2025,” you are correct – you should be able to make such gifts after 2025; however, consider two ideas:

1. There is an advantage to using any amount of exemption – above or under \$7 Million - now. Removing value from your estate today also means removing growth from your future estate; if you give away \$1 today and that \$1 grows into \$5 tomorrow, \$4 of growth occurred outside of your estate. By making gifts today, you minimize or eliminate the potential estate tax to be assessed upon your death.
2. You might consider making a larger gift than contemplated understanding that you may make a gift to a trust that your spouse is a permissible beneficiary of; in other words, you give the assets away but have indirect access to the assets through your spouse (assuming you aren’t sleeping on the couch!)

Your financial advisor should be able to run a gift “stress test” for you. Considering your current assets, cash flow, anticipated financial events, and more, your advisor should be able to show you if you have enough to comfortably make a contemplated gift.

If you’re thinking “Maybe I’ll wait until 2025 to see if we have more certainty about the tax laws and potentially make a gift then,” don’t wait! Gifts often aren’t made in one day; they may require planning, valuations, trusts, corporate structures, and the movement of accounts. If you call your attorney in July 2025 to talk about your thoughts on a gifting plan, you may be met with the answer that your attorney is on oxygen, completing gifts for clients who called sooner, and she/he has no capacity to do your work then. What’s more, there’s nothing to prevent Congress from passing a law to take effect and change exemptions sooner than scheduled; perhaps this is not probable, but it is possible. Talk now! Establish the necessary legal entities and structures now, and you will be ready to easily make a gift later.

If you are not ready to make a “big” gift, you may consider annual exclusion gifts. Each individual is allowed to give the “annual exclusion” (currently \$18,000 per donor, per year) to as many recipients as s/he would like each year, and such gifts do not consume any of one’s gift or estate tax exemptions. If gifts are intended to be made to trusts, the trusts must incorporate special provisions to allow them to serve as valid receptacles for these gifts. \$18,000 may not seem like much in the grand scheme of tax-oriented gifting, but if a married couple has three children and nine grandchildren, they may give \$432,000 away in 2024 without using any gift exemption, potentially saving their family a minimum of \$172,000 in gift or estate tax.

Regardless of whether you make gifts, a new year should serve as a reminder that, if a few years have passed or there have been any major life events (e.g., a birth, divorce, death, marriage, or liquidity event in the family) since you reviewed your estate plan, now is the time to call your attorney for a review. Your plan may accomplish your personal goals but lack some advanced tax planning. It may perfectly accomplish your tax goals but fall short of honoring your wishes. It might accomplish your tax and personal goals, but documents may contain old, stale, boilerplate language in need of replacement. Let your estate planning check-in be a 2024 resolution you keep!

If you have any questions or would like to discuss further, please reach out to your client service team, or call 404.264.1400. You can also visit us on the web at [HomrichBerg.com](https://www.HomrichBerg.com).

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