The Estate And Gift Tax Laws; Today, Tomorrow, And After November

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The estate tax has existed since 1916, though its rules have changed over the years. The most recent update occurred in 2017 with the Tax Cuts and Jobs Act ("TCJA"). One key rule remains unchanged: U.S. spouses can transfer assets to each other without incurring gift or estate tax. However, there is a limit on how much an individual can give to non-spouse beneficiaries (an individual's "exemption") in excess of the annual exclusion (described below). This exemption currently stands at $13.61 million (per donor; not per recipient) and applies to both lifetime gifts and transfers made at death. For example, if you give $3.61 million to a trust for your son in 2024, your remaining exemption will be $10 million for future gifts or bequests.

Will You Be Affected?

You might think estate taxes won't apply to you but remember: your "estate" includes everything you own—your home, investments, retirement accounts, and even life insurance. If you have, for example, a $1 million home, $3 million in investments, $1.5 million in retirement funds, and a $2.5 million life insurance policy, you could have a taxable estate by 2026.

Common Questions About Estate Tax Changes

I begin almost every gifting discussion with clients with a similar explanation of the estate and gift tax laws. These days, the questions I immediately receive are, "Do you think the exemption will actually decrease?" and "How do you think the election will affect these laws?"

Where We Were; Initial Standpoints On The TCJA

When the TCJA was passed, about half of estate experts proclaimed that there was no way the exemptions would ever sunset rationalizing that because the estate exemption had never in the 100-year history of the estate tax decreased, there is no possible way it would now. The other half of estate experts (including this author) thought a decrease would occur for a myriad of reasons; understanding that if the decrease does indeed occur, there's nothing to preclude a subsequent increase.

Where We Are; How Politics Factor In

First, remember that the President of the United States is powerless to pass legislation alone, so we aren't just waiting to see who the new President will be, but also the composition of the House and the Senate. The President's signature, however, is the signature that signs a bill into law, and here is what we currently know about the two leading candidates' positions:

- **Former President Trump:** Likely to push for permanency of the TCJA tax cuts he signed into law or eliminate the estate tax entirely.
- **Vice President Harris:** Harris' recent endorsement of the Housing and Economic Mobility Tax Act seems to confirm what many have expected; her support of policies like those proposed by President Biden, including a reduction of the exemption to $3.5 million and higher tax rates on large estates, as well as graduated estate tax rates.

Considerations For Planning

While we could weigh the significance of each apparent political position and its meaning, this exercise does not help you plan. The important question is: what action should you take now if your estate is sizable?

Annual Exclusion Gifts: In 2024, you can give up to $18,000 per person (or certain types of trusts) without using any of your exemption.

Medical and Educational Gifts: Payments made directly to healthcare providers or educational institutions on behalf of someone else do not count against your gift exemption.

Use Your Exemption Now: If you're concerned about the exemption decrease, you might consider making large gifts now. The IRS has confirmed that no additional tax will be due on gifts made under current law, even if the exemption drops later.

Lastly, there's charity. It doesn't matter if your name is Trump, Harris, Swift, or Kelce, seemingly no one wants to harm charity, and it is difficult to imagine that any politician would change the laws in a way that inflicts gift or estate tax on charitable gifts. Unlimited amounts may be given to charity without any gift or estate tax. There are, however, better and worse ways to structure charitable gifts, so careful planning is key.

If there is even the slightest possibility that the estate and gift laws may affect you or your family, then now is the time to speak with your wealth advisor who may run relevant projections and work with you, your attorney, and your CPA to construct a giving plan that works to meet your tax goals and feels right for you and your family.

If you have any questions or would like to discuss this further, please reach out to your client service team, call us at 404.264.1400, or visit us on the web at **HomrichBerg.com**.

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