

Gift and Estate Tax Planning in 2021

BY RANDI SCHUSTER AND PAUL DILLON

WITH THE ELECTION of President Joseph Biden, coupled with Democratic control of both the House and Senate, we may possibly see changes to the estate and gift tax regime.

As the tax currently exists, each individual has a lifetime credit of \$11.7 million. The current exemption will sunset on Dec. 31, 2025, and will return to \$5 million, adjusted for inflation. The maximum gift and estate tax rate is 40% and will increase to 45% in 2026. The tax is imposed on the fair market value of all assets valued at death. Beneficiaries receive a step-up in basis to the fair market value — all capital gains are eliminated.

Biden's proposal includes:

- Reducing lifetime exemption to \$3.5 million
- Increasing rate to 45%
- Eliminating step-up in basis to fair market value on death

Individuals should continue to plan and use the exemptions that currently exist. Many did planning before year-end fearing a retroactive change. While there is no way to predict whether any estate tax changes will be retroactive, most have not been in the past. Even for those who managed to use all their exemption before year-end, making additional gifts now will use the increased exemption of \$120,000.

As part of the Tax Cuts and Jobs Act (TCJA), there is a provision that prevents a clawback of the exemption amount if the exemption decreases either because of the sunset or due to a change in the law. Taxpayers can move forward with planning without the specter of taxes being charged on gifts when the exemption amount changes.

All estate planning techniques are available. Deciding which ones to use will require an analysis of the situation for each individual. However, since the goal is to use the exemption, grantor retained annuity trusts (GRATs) are not the best devices to use since they are usually created in a way that uses no exemption amount.

A popular technique to use for married couples is a spousal lifetime access trust (SLAT). This allows a donor to contribute assets to a trust, use exemption, and still have access to the assets if desired because the spouse is a beneficiary.

However the gift is made, the gift must be large enough to exceed the projected exemption of \$3.5 million or nothing has been accomplished. If nothing is given away prior to any changes to the exemption, all gifts



will be limited to \$3.5 million. If gifts of \$5 million are made prior to any changes, \$1.5 million of the “old” exemption has been used and the “new” exemption is exhausted. Although the full \$11.7 million has not been used, the individual has still taken advantage of some of the existing large lifetime exemption amount.

The important thing is to make use of as much of the exemption as possible because the only thing that is clear is that it will be reduced.

For more information about this topic, connect with Baker Tilly's trust and estate professionals. ■



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