
The Federal Estate Tax - Dying a Slow Death?

By Geoffrey N. Taylor

Among the sweeping tax law changes made by the massive Tax Cuts and Jobs Act (“Act”) are provisions that will result in many fewer estates being subject to federal gift and estate taxes. Before the Act, the first \$5 million (as adjusted for inflation after 2011) of transferred property was exempt from federal gift and estate tax. This “basic exclusion amount” as adjusted for inflation would have been \$5.6 million or \$11.2 million for a married couple in 2018.

Effective January 1, 2018, the Act doubles the amount that can be excluded from federal gift and tax so for decedents dying in and gifts made from 2018 through 2025, the base estate and gift tax exclusion amount increases from \$5 million to \$10 million. Indexing for post-2011 inflation brings this amount to approximately \$11.2 million for 2018, or \$22.4 million for a married couple.

A related federal transfer tax called the generation-skipping transfer (“GST”) tax is designed to prevent avoidance of estate and gift taxes by skipping transfers to the next successive generation. The Tax Cuts and Jobs Act doesn’t specifically mention generation-skipping transfers, but since the GST exemption amount is based on the basic exclusion amount, generation-skipping transfers will also benefit from the post-2017 increased exclusion.

This increase is temporary, and the basic exclusion amount is scheduled to go back to pre-Act levels after 2025.

With the ink on the Act barely dry, people are already speculating about what might happen to the gift and estate tax exemption and what to do in light of it. Will it be reduced before the scheduled January 1, 2026 date? If so, will it go back to \$5 million, will it go to \$3.5 million as proposed by many democrats prior to the Act, or will it go to some lower amount? Will the estate tax be repealed entirely? If I know the exemption will go down if nothing further happens, should I take advantage of the increased exemption today before it goes away? If I take advantage of it today and the exemption gets cut in half as scheduled, will I owe a huge tax bill on January 1, 2026 or some later date?

Whatever its future, the federal estate tax affects even fewer families now than ever before (which wasn't a lot, even prior to the Act). That doesn't mean you should neglect your estate plan. Here is a recent list I prepared of [nontax reasons for estate planning](#).

For very wealthy families, the Act represents a major boon. Now even more wealth can be passed without Uncle Sam taking a (big) bite. For example, the strategy of creating and funding a "dynasty trust" to provide financial security to multiple generations without transfer taxes, including GST, is even more appealing.

For nearly all families, the Act provides another opportunity (or perhaps need) to review existing estate plans to determine whether they still make sense. In addition to income tax issues, including the "step-up" in basis on death, some factors include asset protection for the surviving spouse and other beneficiaries, protection of children from previous marriages and against diversion of assets to unintended beneficiaries, and the expense and administrative headaches that often accompany continuing trust administration. Only in rare cases will it be necessary for the estate tax tail to wag the estate planning dog.

Maddin Hauser's attorneys can discuss with you how the increase in the gift and estate tax exemption and any of the many other changes in the Act could affect your situation and the planning steps you might consider in response.