

Estate and Gift Tax Exemption

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Our Presenters



Aaron Sherbin, Partner
Estate Planning



Bill Sider, Partner
Tax Planning

Today's Agenda

- Current estate and gift tax environment and potential legislation impacting/changing estate and gift tax
- Planning strategies to take advantage of current estate and gift tax exemption amounts before the laws change
- Issues to consider in order to pick the right strategy
- Questions and answers

Current Framework

The current federal lifetime estate and gift tax exemption is \$11.58 million per individual and \$23.16 million per married couple. This lifetime exemption amount is scheduled to remain in effect until December 31, 2025 when it reduces to \$5.49 million per individual and \$10.98 million per married couple, adjusted for annual inflation since 2017. The current rate of tax on transfers above the exemption amounts is 40%. The table below summarizes the current and future lifetime exemption amounts, as currently enacted:

	2020-2025	2026
Individuals	\$11.58 million	\$5.49 million*
Married Couples	\$23.16 million	\$10.98 million*

* Adjusted for inflation annually

Proposed Changes

I. Trump Proposals

A. Make TCJA changes permanent

II. Biden Proposals

A. Return exemption amounts and rates to 2009 levels

- i. \$3.5 million estate exemption
- ii. \$1.0 million gift tax exemption
- iii. Tax rate at 45%

B. Eliminate step-up in basis at death

- i. Tax unrealized gain at death
- ii. Carryover basis to heirs

C. Elimination of capital gains preference for income above \$1 million

Planning Strategies

1. Spousal Lifetime Access Trusts (SLATs)
2. Completed Gift Domestic Asset Protection Trusts (DAPTs)
3. Estate tax freeze of partnership, LLC and closely held C corporation interests

Planning Strategies (SLATs)

- Spousal Lifetime Access Trusts (SLATs)
 - Removes assets from the estate but allows for access to the assets
 - Irrevocable for gift/estate purposes and grantor trust for income tax purposes
 - Independent trustee given discretion to distribute assets

Planning Strategies (DAPTs)

- Completed Gift Domestic Asset Protection Trusts (DAPTs)
 - Permitted in approximately 19 states (Michigan is one of them)
 - Self-settled trust meaning grantor is a beneficiary of the trust along with family members
 - Irrevocable for gift/estate purposes and grantor trust for income tax purposes
 - Trustee must be a Michigan resident

Planning Strategies (Estate Freeze)

- Estate tax freeze of partnership, LLC and closely held C corporation interests
 - A partnership freeze allows a grantor to transfer the future appreciation of assets to younger generation family members while retaining a preferred interest.
 - The key structuring issue is the recapitalization of either an existing or new entity into preferred and common interests.

Planning Strategies (Estate Freeze)

- The three primary benefits of this strategy:
 1. First, since the grantor will continue to own a preferred partnership interest, his or her negative capital account will not be taxed and *may* be eliminated on death.
 2. Second, the future appreciation of transferred assets will be removed from a grantor's gross estate.
 3. Third, for the grantor's life, he or she would receive a fixed cash payment annually on their preferred interest, thus potentially generating a current return that did not previously exist.

Issues to Consider

- Reciprocal trust doctrine
- Carryover basis versus step-up in basis
- Grantor trust status for income tax purposes allows for “tax burn”
- Who is best suited to serve as trustee?
- Timing required to implement strategy – will an appraisal be necessary?
- Generation skipping transfer tax
- Effect of death of spouse or divorce from spouse
- Asset protection
- Power of substitution
- Ability to borrow trust assets
- Add back of gift tax if death occurs within 3 years of transfer

Resources

- [SLATs Alert](#)
- [DAPTs Alert](#)

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**EXEMPTION PLANNING FOR MARRIED
COPUPLES WITH SPOUSAL ACCESS TRUSTS**

The current federal lifetime estate and gift tax exemption is \$11.58 million per individual and \$23.16 million per married couple. This lifetime exemption amount is scheduled to remain in effect until December 31, 2025 when it reduces to \$5.49 million¹ per individual and \$10.98 million¹ per married couple. However, due to the economic pressures created by the pandemic, it appears likely that reductions in the lifetime exemption amounts may occur earlier, perhaps as soon as 2021, and be larger than provided by current law, regardless of who wins the election or who takes control of Congress.

In order to take advantage of the current increased lifetime exemption before it is reduced, high net worth clients should strongly consider gifting assets up to their remaining lifetime exemption amounts before the end of 2020.

By use of what is commonly referred to as a "Spousal Lifetime Access Trust" ("SLAT"), a donor spouse can contribute property to an irrevocable trust from which the non-donor spouse, as a permissible lifetime beneficiary, may receive discretionary distributions of trust property. Following the death of both spouses, the trust assets may pass either outright to or in trust for children and/or grandchildren. Depending on the family wealth and individual circumstances, one spouse can create a single SLAT to use one lifetime exemption or both spouses can each create a SLAT to use both lifetime exemptions.

The most significant benefit of creating a SLAT is to enable a married couple to reduce, or potentially eliminate, estate tax. Since a properly structured SLAT is designed to make use of the donor spouse's lifetime exemption amount and simultaneously to exclude the assets from the non-donor spouse's estate, the SLAT assets, including any appreciation in the assets, will avoid estate tax inclusion in both the donor spouse's estate and the non-donor spouse's estate. In addition, if the lifetime exemption decreases as it is scheduled to do, the SLAT will have locked-in the benefit of the current increased lifetime exemption. A SLAT can also be used for multi-generational planning (i.e. grandchildren and great-grandchildren) by allocating Generation Skipping Transfer Tax Exemption to the gifts contributed to the SLAT.

Although the donor spouse must give up control and direct access to the SLAT assets, the non-donor spouse, as a beneficiary of the trust, may have access to all SLAT assets during his or her lifetime. The non-donor spouse can also participate in the distribution and investment decisions of the SLAT assets by serving as a co-trustee of the SLAT as long as certain restrictions on who can make distributions, and under what circumstances they can be made, to the non-donor spouse are in place. Further, the donor spouse may be given the power to remove and replace the trustee of the SLAT under certain circumstances.

Depending on the terms of the trust, the SLAT assets can be protected from creditors of the non-donor spouse and the residual beneficiaries. In addition, with certain exceptions (e.g. fraudulent conveyance) SLAT assets are also protected from the creditors of the donor spouse.

¹ All exemption amounts are subject to inflation adjustments annually.

Contact Information



Aaron Sherbin leads our Estate & Wealth Planning practice group while also working closely with our Mergers & Acquisitions and Tax practice groups. He specializes in trust administration, wealth preservation and transfer, and strategic business planning services for closely-held companies and family businesses.

asherbin@jaffelaw.com

248.727.1547



Bill Sider is an attorney in our Tax practice group. He is a member of our Board of Directors and immediate past CEO of our firm. Bill concentrates his practice on tax structuring and implementing sophisticated transactions on behalf of our diverse client base, including private equity firms, venture capitalists, REITs, private foundations, and entrepreneurs.

bsider@jaffelaw.com

248.727.1451

