

6 Quick questions about the future of your estate plan

Do you understand how current economic trends and future tax changes could potentially impact your estate and gift exemptions? With elections looming, interest rates trending upwards and other changes on the horizon, it's important to stay up to date on the latest developments and work with your tax advisors to update your estate plan as needed. There are steps you can take now to protect your assets for your beneficiaries and benefit from current laws before they change.

Q: What estate planning strategies work well when interest rates are high versus when interest rates are low?

As interest rates have risen, certain estate planning techniques have become more attractive. In particular, Qualified Personal Residence Trusts (QPRT) and Charitable Remainder Trusts (CRT) tend to achieve optimal results in a high interest rate environment. In the case of a QPRT, a high interest rate may result in the donor having to use less of his or her estate and gift tax exemption — the maximum amount of wealth that an individual can transfer to heirs tax-free. In the case of a CRT, a higher interest rate may result in a larger charitable deduction for the donor or may make it easier to increase the annual payout to the beneficiary or to lengthen the term of the trust, while still satisfying tax regulations that govern these trusts.

In contrast, in a low interest rate environment, high-net-worth individuals can benefit from estate planning techniques that take advantage of low interest rates to pass wealth to family members at little or no estate and gift tax cost. Those techniques include grantor retained annuity trusts (GRATs), charitable lead trusts (CLTs) and sales to intentionally defective grantor trusts (IDGTs).

Q: How do you expect the political landscape to affect estate planning in 2024?

The tax and estate planning climate may depend on the results on the 2024 elections. If Democrats have success in the elections, they are likely to continue to pursue changes to increase taxes on the estates of wealthy Americans. This might include revisiting prior proposals to reduce the estate and gift tax exemptions from \$12,920,000 to \$5,000,000 or even \$3,500,000. On the other hand, if Republicans gain control in Washington, they may seek to protect the super-sized exemption, so that the vast majority of estates would continue to be unaffected by estate and gift taxes.



Q: What if neither party gains control?

The current law includes a “sunset” provision that would automatically cut the estate and gift tax exemptions in half on January 1, 2026. So, if neither party gains control of both Congress and the White House, and the sides cannot reach a compromise, a significantly higher number of individuals will be exposed to the estate or gift tax, starting in 2026.



Q: What can I do to take advantage of the current law before it changes or expires?

You can gift all or part of the \$12,920,000 exemption before the law changes. The IRS clarified that it won’t claw back most types of gifts in that event. Gifts can be made directly to children or other heirs, or to IDGTs or other trusts for their benefit.

Generally, the best assets to gift are those for which you anticipate significant growth, because future appreciation is excluded from your taxable estate. If appreciation is likely over the next few years, you should strongly consider making gifts now, rather than waiting until late 2025, when the sunset of the old law is imminent.



Q: If I make a gift and later need the property back, can I reclaim it?

To utilize the estate and gift tax exemptions, you must make a “completed” gift, which means you cannot directly retain the right to reclaim the property. However, there are some techniques that may be acceptable substitutes.

For example, you and your spouse can gift assets to each other via trusts commonly referred to as spousal lifetime access trusts (SLATs). SLATS and other trusts, including those for the benefit of children and grandchildren, can be structured to permit you to swap non-income producing property for trust assets that generate cash flow. You can also grant your trustee the power to make loans to you.



Q: Should I review my estate plan, even if it won’t be subject to tax?

Regardless of what happens to estate and gift tax exemptions, proper estate planning is always important. There are several non-tax benefits to keeping your estate plan up to date, like avoiding or minimizing probate, planning for potential incapacity, protecting your loved ones from creditors and divorce claims, or having a plan for transitioning the control and economic benefits of your business. These non-tax elements of your estate plan should not be ignored.

Consult with your tax advisor about which estate planning techniques may make the most sense for you in this dynamic economic environment and tax climate.

