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Quick questions about your estate plan

Q: Do you expect tax law changes to affect estate planning?

Yes. The Biden administration and Congressional Democrats have pursued new tax legislation that could drastically change the estate planning landscape. Specifically, they have proposed reducing the estate and gift tax exemptions – the maximum amount of wealth that an individual can transfer to heirs tax-free – from \$12,060,000 to approximately \$6,000,000. In addition, they have sought to curb the benefits of popular estate planning techniques, such as intentionally defective grantor trusts (IDGTs) and valuation discounts for closely-held business interests.

Q: When might these changes take effect?

Last year's legislative proposals, which would have made the changes effective immediately, have stalled in Congress, and it seems unlikely that they will be revisited in this year. However, the current law includes a "sunset" provision that would automatically cut the estate and gift tax exemptions in half on January 1, 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 \$12,060,000 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 nonincome 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.