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Gift and Estate Taxes

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If you give away money or property during your life, those transfers may be subject to federal gift and estate tax and perhaps state gift tax. The money and property you own when you die (i.e., your estate) may also be subject to federal gift and estate tax and some form of state death tax. These property transfers may also be subject to generation-skipping transfer taxes. You should understand all of these taxes, especially since the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (the 2001 Tax Act), the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Act), the American Taxpayer Relief Act of 2012 (the 2012 Tax Act), and the Tax Cuts and Jobs Act. The recent Tax Acts contain several changes that make estate planning much easier.

Federal gift and estate tax — background

Under pre-2001 Tax Act law, no federal gift and estate tax was imposed on the first \$675,000 of combined transfers (those made during life and those made at death). The tax rate tables were unified into one — that is, the same rates applied to gifts made and property owned by persons who died in 2001. Like income tax rates, gift and estate tax rates were graduated. Under this unified system, the recipient of a lifetime gift received a carryover basis in the property received, while the recipient of a bequest, or gift made at death, got a step-up in basis (usually fair market value on the date of death of the person who made the bequest or gift).

The 2001 Tax Act, the 2010 Tax Act, the 2012 Tax Act, and the Tax Cuts and Jobs Act substantially changed this tax regime.

Federal gift and estate tax — current

The 2001 Tax Act increased the applicable exclusion amount for gift tax purposes to \$1 million through 2010. The applicable exclusion amount for estate tax purposes gradually increased over the years until it reached \$3.5 million in 2009. The 2010 Tax Act repealed the estate tax for 2010 (and taxpayers received a carryover income tax basis in the property transferred at death), or taxpayers could elect to pay the estate tax (and get the step-up in basis). The 2010 Tax Act also re-unified the gift and estate tax and increased the applicable exclusion amount to \$5,120,000 in 2012. The top gift and estate tax rate was 35 percent in 2012. The 2012 Tax Act increased the applicable exclusion amount to \$5,490,000 (in 2017) and the top gift and estate tax rate to 40 percent (in 2013 and later years). The Tax Cuts and Jobs Act, signed into law in December 2017, doubled the gift and estate tax exclusion amount and the GST tax exemption (see below) to about \$11,200,000 in 2018. After 2025, they are scheduled to revert to their pre-2018 levels and cut by about one-half.

However, many transfers can still be made tax free, including:

- Gifts to your U.S. citizen spouse; you may give up to \$152,000 in 2018 (\$149,000 in 2017) tax free to your noncitizen spouse

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- Gifts to qualified charities
 - Gifts totaling up to \$15,000 (in 2018, \$14,000 in 2017) to any one person or entity during the tax year, or \$30,000 (in 2018, \$28,000 in 2017) if the gift is made by both you and your spouse (and you are both U.S. citizens)
 - Amounts paid on behalf of any individual as tuition to an educational organization or to any person who provides medical care for an individual

Federal generation-skipping transfer tax

The federal generation-skipping transfer (GST) tax imposes tax on transfers of property you make, either during life or at death, to someone who is two or more generations below you, such as a grandchild. The GST tax is imposed in addition to, not instead of, federal gift and estate tax. You need to be aware of the GST tax if you make cumulative generation-skipping transfers in excess of the GST tax exemption (\$11,200,000 in 2018, \$5,490,000 in 2017). A flat tax equal to the highest estate tax bracket in effect in the year you make the transfer (40 percent in 2017 and 2018) is imposed on every transfer you make after your exemption has been exhausted.

State transfer taxes

Currently, a few states impose a gift tax, and a few states impose a generation-skipping transfer tax. Some states also impose a death tax, which could be in the form of estate tax, inheritance tax, or credit estate tax (also known as a sponge or pickup tax). Contact an attorney or your state's department of revenue or taxation to find out more information

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