

Impact of New \$15M 'Permanent' Estate/Gift Tax Exemption

A balancing process is needed.



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On July 4, 2025, President Trump signed a new tax law, Section 70106 of H.R. 1, which creates a new \$15 million “permanent” federal estate and gift tax exemption, effective for estates of decedents dying and gifts made after Dec. 31, 2025. As in the past, this exemption will be adjusted for inflation in the future. The question for estate planners and their clients is: What, if anything, is the impact of this new permanent federal estate and gift tax exemption on estate planning?

Permanency and Perception

One way of thinking is that this 2026 exemption amount isn’t much different than the 2025 amount, adjusted for inflation, so what, if anything, has really changed, especially given the obvious fact that the “permanency” of the new estate and gift tax exemption is only relevant until the next administration takes office, in 3 1/2 years? Why, for example, would transfers to spousal limited access trusts (SLATs), to grandfather the new \$15 million exemption not still make sense, if the estate and gift tax exemption amount could be cut in half (say from a \$16 million inflation-adjusted exemption level to \$8 million) in the year 2029, or a dozen years after the Tax Cuts and Jobs Act was passed?

The difference is no doubt a matter of perception. The prior law didn't require the party in control to advocate for an increase in estate and gift taxes to accomplish its ultimate goal. The sunset clause did that for them. Eliminating the use of a sunset clause this time around, however, to make any future change in the estate and gift tax exemption will require that a new administration affirmatively propose that federal estate and gift taxes be increased, with its consequent effect on business owners, farmers, etc.

A dozen years is a long time for a high federal estate and gift tax exemption to be in effect. To abruptly cut the federal estate and gift tax exemption in half in 2029, after 12 years of it being at a high level, would be very disruptive to many, if not most, families of business owners and farmers, or at least this would be a popular perception. It would seem that although a future administration may reduce the federal estate and gift tax exemption, such a dramatic reduction wouldn't be likely.

Lifetime Transfer Planning Re-examined

If the discussion in the previous section is correct and grandfathering the 2026 estate and gift tax exemption with a \$15 million lifetime transfer provides a more limited estate tax benefit than its anticipated potential, the question is whether large lifetime transfers can be self-defeating. Carryover income tax basis for gifted appreciated assets, when not accompanied by a significant estate tax benefit, could cost more total taxes in the long run.

Assume, for example, that an individual makes a transfer in 2026 of \$15 million worth of appreciated assets having a federal income tax basis of \$5 million. Assume further that the individual lives until 2030, at a time when a new Congress and President have reduced the federal estate tax exemption to \$12 million. Assume also that the \$15 million in gifted assets have appreciated to \$20 million at the time of the transferor's passing. The federal estate tax savings attributable to grandfathering the \$3 million additional exemption would be \$1.2 million, or 40% of \$3 million. There would also be a \$2 million federal estate tax savings on the appreciation in the value of the gifted assets after the transfer, or 40% of \$5

million, for a total estate tax savings of \$3.2 million, excluding potential state estate and inheritance tax savings.

Excluding state income tax savings, the eventual federal capital gain taxes on the \$15 million in appreciation, taxes which would have been avoided had the gifted assets been held by the individual until his passing, would range from between \$2.82 million (at the 18.8% rate, including the 3.8% net investment income tax) and \$3.57 million (at the 23.8% rate, including the 3.8% net investment income tax). (With the higher state and local income tax deduction ceiling available under the new law, the effective federal income tax liability could be somewhat smaller than these numbers.) Even assuming \$5 million in post-transfer appreciation, the transfer in the above example has become no more than a break-even proposition when viewed on an after estate and income tax basis.

One definite transfer tax advantage presented by the new tax law is that it's now easier for a married couple to avoid the reciprocal trust doctrine when establishing irrevocable SLATs for each other. Although a complete discussion of the topic is beyond the scope of this article, by establishing and funding one SLAT in, say, the year 2025 or 2026, and waiting until as late as 2028 to establish the second SLAT in favor of the transferor spouse of the first SLAT, it will be more difficult for the Internal Revenue Service to successfully argue that the two SLATs are "interrelated," (*United States v Estate of Grace*, 395 U.S.316, 324 (1969) and that the arrangement left the spouses in "approximately the same economic position as they would have been in had they created trusts naming themselves as life beneficiaries," (*Ibid.*) as for a period of up to three years, one of the spouses was in a detrimental position, economically.

A Balancing Process

In summary, estate planning after the new tax law, and the wisdom of making large lifetime gifts, has become a balancing process. This balancing involves an examination of the potential estate tax savings resulting from the transfer (including potential benefits resulting from grandfathering the \$15 million federal estate and gift tax exemption), on the one hand, and the loss of income tax basis step-up, on the other. When determining whether to make a large gift, no longer

should the estate planner focus primarily on the grandfathering of a much larger federal estate and gift tax exemption, because experience dictates that the chance of any future dramatic reduction in the size of the exemption becomes smaller the longer the large exemption remains in place.