LEGAL UPDATES

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Understanding the 2026 Changes to the Estate, Gift, and Generation-Skipping Tax Exemptions

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The Tax Cuts and Jobs Act of 2017 provided major changes to the Internal Revenue Code, specifically doubling the federal estate, gift, and generation-skipping transfer (GST) tax exemption (collectively, the Exemption) from $5,490,000 in 2017 to $11,180,000 in 2018. Since then, we have seen the exemption rise to $13,610,000 in 2024 due to inflation. However, on January 1, 2026, the exemption is scheduled to automatically reset (or sunset) to $5,000,000, indexed to inflation (approximately $7,000,000), unless Congress acts prior to then.

What are the federal estate, gift, and GST tax exemptions?

Federal estate tax exemption

The federal estate tax exemption is the maximum value of assets an individual can leave to their heirs upon death without incurring federal estate tax. The exemption effectively sets a threshold below which estates are not subject to federal estate tax. For example, since the current federal estate tax exemption is $13,610,000, an estate valued at $13,000,000 would not owe any federal estate tax because it falls below the exemption threshold. However, estates valued above the exemption would be subject to federal estate tax (at a 40% rate) on the amount that exceeds the exemption.

Several states also have a state level estate tax or inheritance tax (with rates as high as 16%) which can further add to your tax bill. Some state estate tax exemptions are indexed to the federal exemption, and some are assessed independently.

Federal gift tax exemption and annual gift tax exclusion

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The federal gift tax exemption applies to the total amount of gifts an individual can give to others during their lifetime without incurring gift tax. The federal gift tax exemption is unified with the federal estate tax exemption, meaning that an individual can use part of their lifetime gift tax exemption to make taxable gifts during their lifetime and the remaining portion to shelter their estate from federal estate tax after they pass away. Whenever a portion of the federal gift tax exemption is used, the amount must be reported to the IRS on a Form 709 (Gift Tax Return) the following year.

There is also the annual gift tax exclusion which is a set dollar amount that an individual may gift to another individual each year without needing to report it to the IRS and without reducing their federal gift tax exemption. Like the federal gift tax exemption, the annual gift tax exclusion is typically adjusted to account for inflation each year and is $18,000 (or $36,000 for married couples that choose to gift split) in 2024, up from $17,000 (or $34,000 for married couples that choose to gift split) in 2023. Fortunately, the annual gift tax exclusion is not scheduled to decrease in the near future.

Federal GST exemption

The federal GST exemption applies to the maximum value of assets that can be passed down to beneficiaries who are at least two generations younger than the donor without incurring GST tax. The purpose of the GST tax is to prevent individuals from avoiding estate taxes by transferring assets to younger generations. The exemption then allows individuals to transfer a certain amount free of GST tax.

How can you implement advanced estate planning techniques prior to the 2026 sunset?

Below are a few recommended ways for you to take advantage of the current Exemption amounts and implement more advanced estate planning techniques before the 2026 sunset.

Lifetime gifting

First, individuals should not forget about the annual gift tax exclusions that they are allowed each year. The number of annual exclusion gifts a donor can make is unlimited, so this method of gifting is an simple way to reduce future taxable estate without any gift tax consequences.

High net worth individuals should consider gifting assets up to current federal gift tax exemption amount while living. The Exemption has a “lose it or use it” philosophy, meaning, if the available federal gift tax exemption is not fully utilized while alive and the federal estate tax exemption is lower at death, you do not get to retain the previously higher gift tax exemption at death. By gifting up to the higher gift tax exemption now, you are ultimately able to transfer more wealth to your loved ones while not incurring gift taxes and while reducing your taxable estate at the time of your death.

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Irrevocable Life Insurance Trust (ILIT)

A popular technique in advanced estate planning is forming an irrevocable trust in the form of an ILIT to hold life insurance. An ILIT is created by an individual (known as the Grantor of the trust) who places a life insurance policy insuring the Grantor's life into the trust for a group of beneficiaries. The Grantor will make gifts to the ILIT each year (or sometimes initially fund the trust with a lump sum payment) in order for the ILIT to pay the annual premiums on the policy. Most often, the premium amounts are less than the annual gift exclusion amount so there are little to no gift tax consequences. The Grantor can also apply their federal gift tax and GST exemptions to the policy. At the Grantor's death, the life insurance proceeds would not be considered part of the grantor's taxable estate, and therefore not subject to any estate tax or GST tax. It is often overlooked that life insurance proceeds are typically included in an individual's taxable estate and count towards the federal estate tax exemption amount at death, so forming an ILIT to hold life insurance policies is an easy way to remove those proceeds from a taxable estate.

Dynasty Trust

If an individual wishes to take full advantage of lifetime gifting, gifting to an irrevocable trust in the form of a Dynasty Trust can also afford federal estate tax and GST tax savings. Upon creation, the Grantor creating the trust gifts certain assets to the trust, such as cash, investments, real estate, business interests, or any other valuable property. The individual could apply their federal gift tax and GST tax exemptions to those assets and, at the Grantor's death, the trust assets (including any appreciation or growth on such assets) would not be subject to any estate tax or GST tax. In most states, Dynasty Trusts can last for many generations.

Spousal Lifetime Access Trust (SLAT)

Another more advanced estate planning technique is an irrevocable trust in the form of a SLAT. A SLAT is created by one spouse for the lifetime benefit of the other spouse. The Grantor of the SLAT creates the trust and funds it with assets which are then considered transferred out of the Grantor's estate, thereby reducing the grantor's taxable estate at their death. The Grantor's spouse is named the primary beneficiary of the trust and thus can receive distributions from the trust during their lifetime. Once the trust is established, however, this means that the terms of the trust cannot be changed, or more importantly, the assets held in the trust cannot reclaimed or controlled by the Grantor. This ensures that the assets (including any appreciation or growth on such assets) are removed from the Grantor's estate (and if done properly, also from the beneficiary spouse's estate) for estate tax purposes.

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While the Grantor cannot access the trust assets, they may indirectly benefit from the trust through distributions to the beneficiary spouse. This indirect access provides the donor spouse with some added financial security.

What if you wait until 2026?

High net worth individuals who fail to implement advanced estate planning techniques prior to January 1, 2026 run the risk of a significantly higher tax bill at their death. There is less than a year and a half remaining to be able to utilize the record-high federal gift tax exemption before the Exemption is scheduled to be cut in half from roughly $14,000,000 in 2025 to roughly $7,000,000 in 2026.

For example, imagine you have a $20,000,000 estate in 2024 and utilize the $13,610,000 exemption to its fullest. If you were to pass away in 2024, your taxable estate at death would be $6,390,000. With the estate tax rate at 40%, your estate will have a tax bill of $2,556,000. The portion of your estate passing to your loved ones would be $17,444,000. However, if you didn't take advantage of the exemption in 2024 and waited until 2026 when the estimated exemption drops to $7,000,000, you would have a taxable estate at death of $13,000,000. By using the same 40% tax rate, your estate would have a tax bill of $5,200,000. Therefore, the portion of your estate passing to your loved ones would only be $14,800,000.

Ultimately, implementing more advanced estate planning prior to 2026 will not only reduce your estate's tax burden but, more importantly, will increase the amount ultimately received by your loved ones at your death and for future generations.

Contact us

Smart planning takes time and requires experienced professionals. If you have questions or would like to discuss next steps before the Exemption sunsets, please contact a member of the Husch Blackwell Private Wealth team or your Husch Blackwell attorney.

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