

PUBLICATION

Is Your Estate Plan Getting the Most Out of the New Tax Laws?

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Sweeping changes to federal tax laws have introduced certain estate planning opportunities that can be implemented now and over the next few years. Here are tips to ensure your plans are as financially sound and tax efficient as possible under the new laws.

Estate, Gift, and Generation-Skipping Tax Exemptions

The Tax Cuts and Jobs Act (TCJA), signed into law on December 22, 2017, raised the basic exclusion amount from \$5 million to \$10 million for estates of decedents dying, gifts made, and generation-skipping transfers made after December 31, 2017, and before January 1, 2026. As indexed for inflation, the basic exclusion amount for these transfers in 2018 is \$11.18 million (\$22.36 million per married couple). The exclusion amount continues to be adjusted annually for inflation, and current projections estimate that the exclusion amount will be \$11.4 million in 2019 (\$22.8 million per married couple).

The increased exclusion amount is temporary, and absent new legislation, this change will expire on January 1, 2026. However, the IRS recently announced that it will not "clawback" gifts covered by current exclusion amounts, even if the estate tax exclusion amount has decreased by the time of the donor's death. For example, if after January 1, 2026, the basic exclusion amount reverts back to \$5 million, the IRS represents that it will not penalize taxpayers for lifetime transfers made to maximize the current exclusion of over \$11 million. This creates immediate opportunities for you to use your increased exclusion amount to make gifts with relatively low risk. You may wish to use your additional exclusion amount to make gifts to trusts for the benefit of your family, equalize prior unequal gifts made to children or grandchildren, or forgive intra-family loans.

Planning for Basis Adjustments

However, if you are looking to make gifts to take advantage of increased exclusion amounts, you must take into account the loss of a step-up in basis on appreciated assets given away prior to death. Thus, individuals planning to make present of gifts should consider the types of assets that should be gifted (i.e., high-basis assets) and the types of assets that would most benefit from the step-up in basis at death (i.e., low-basis stock, copyrights, trademarks, oil and gas investments, and other low-basis assets). For individuals who are unlikely to owe estate tax, due to the combination of portability and an exclusion amount now exceeding \$11 million, planning for basis adjustments at death is of paramount importance. Some individuals may have the option to distribute low-basis assets from existing trusts to obtain a step-up in basis of those assets at death. Some may be able to modify existing trusts to obtain a step-up in basis of trust assets upon the death of the grantor or a beneficiary. In taking advantage of the increased exclusion amounts, careful consideration should not only be given to the type of asset being gifted, but also the structure and timing of the transfer.

Charitable and Annual Giving

The end of the year and the holiday season tend to inspire annual gifts to charity and family. In 2018 and 2019, the gift tax annual exclusion for gifts made to individuals is \$15,000 per donee. As with basis planning, the timing of gifts is key; if you intend to make use of the annual exclusion, you must complete such gifts within any given calendar year.

Additionally, TCJA retained the income tax charitable deduction for taxpayers who itemize their deductions. For taxpayers taking the standard deduction (\$24,000 in 2018 for married taxpayers filing jointly), consideration

could be given to bundling charitable deductions into a particular year in order to receive an income tax benefit. For instance, you may wish to make several years' worth of charitable gifts in a single year and itemize your deductions on that year's income tax return. In other years when no charitable gifts are made, you could use the increased standard deduction.

It is important for you to evaluate how the changes presented by TCJA impact your current estate planning. Unless amended by legislation, the basic exclusion amount will remain at \$10 million until January 1, 2026, as indexed annually for inflation. While TCJA presents new planning opportunities for the next several years, you must routinely evaluate these opportunities in tandem with your state's tax laws, as well as your individual estate planning goals.

Baker Donelson publishes periodic updates when changes in the law or other factors give rise to estate planning opportunities. For assistance with your estate plan, please contact any member of the Firm's [Estate Planning Group](#).