

TCJA sunset will increase number of people impacted by estate tax and their tax liability.

By Eva Stark, JD, LL.M.



The Tax Cuts and Jobs Act of 2017 (TCJA) doubled the federal estate tax lifetime exemption from \$5 million to \$10 million, subject to inflation adjustment. However, a multitude of TCJA provisions, including the doubling of the lifetime exemption, were not made permanent and are scheduled to sunset (i.e., revert back to prior law) at the end of 2025, absent congressional action.

With the TCJA sunset, the number of Americans burdened by federal estate tax will increase as will the amount of their estate tax liability. High-net-worth individuals will be most heavily impacted. With a limited window to implement strategies, now may be an opportune time for taxpayers to work with their financial advisors and plan for these changes.

What is the lifetime exemption?

The unified gift and estate tax lifetime exemption is the value of wealth an individual can transfer gratuitously, either during lifetime and/or upon death, before federal gift or estate tax is triggered.¹

Because the exemption applies on an individual basis, as a general rule, a married couple may be able to pass down double the amount of wealth that an unmarried individual could. The table shown at right illustrates the current and projected inflation-adjusted lifetime exemption amount based on current law:

Transfers of wealth in excess of the lifetime exemption are generally taxed at a rate of 40%. Certain states

Lifetime Exemption Amounts		
	Single	Married
2024	\$13,610,000	\$27,220,000
2025 (est.)	\$13,990,000	\$27,980,000
2026 (est.)	\$7,140,000	\$14,280,000

additionally impose state-level wealth transfer taxes with varying levels of exemptions and tax rates.

The tax burden for those affected can be very significant. The table below

¹ There is an annual exclusion to gift tax (\$18,000 in 2024 and an estimated \$19,000 in 2025, per recipient) which does not count toward the lifetime exemption. Certain qualifying healthcare or educational costs paid directly to an educational institution or healthcare provider on behalf of others also do not count toward the lifetime exemption or the annual gift tax exclusion.

illustrates the impact of TCJA sunset on the federal estate tax liability of three hypothetical married couples with a household net worth of \$10 million, \$20 million and \$30 million where both spouses pass away in the year indicated and both exemptions are successfully utilized:

Estate Tax Impact of TCJA Sunset by Net Worth		
	2024	2026
\$10 million	\$0	\$0
\$20 million	\$0	\$2,288,000
\$30 million	\$1,112,000	\$6,288,000

Can the lifetime exclusion, including the “bonus exemption,” be taken advantage of now?

Gift-giving during lifetime to descendants, other non-spouse family members, or certain trusts can utilize one’s lifetime exemption right now. In the most basic terms, when a donor makes an otherwise taxable gift, he or she can use a portion of his or her lifetime exemption (converted into a credit against gift tax) to shield the gift from gift tax. The donor would file a gift tax return reporting the gift and his or her then-existing exemption would be reduced by the value of the gift. Any gift after the full exemption is exhausted will generally trigger gift tax at a rate of 40%. If there is any exemption left at the individual’s death, it may be used to shield the donor’s taxable estate from estate tax. If the value of the taxable estate exceeds the decedent’s remaining lifetime exemption, estate taxes will generally be triggered on the excess at a rate of 40%.

For example, if an individual makes a taxable gift of \$1 million in 2024, he or she would have \$12,610,000 of lifetime exemption left for future gifting (2024 exemption amount of \$13,610,000 minus \$1 million). If the individual dies in 2025, he or she may generally pass on \$12,990,000 of additional wealth at death before

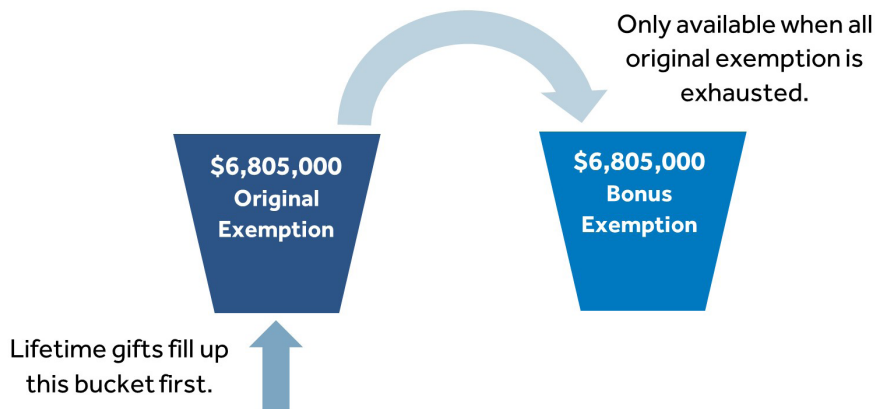


estate tax is triggered (est. 2025 exemption amount of \$13,990,000 minus \$1 million utilized prior to death).

A common misconception related to TCJA sunset is that individuals can utilize the “bonus” exemption, or the temporary increase in the lifetime exemption that is available until TCJA sunset, and that the original

exemption will remain available for future gifting. However, lifetime gifts utilize the original exemption amount first, before the “bonus” exemption can be accessed.

The bonus exemption can only be utilized once the original exemption has been exhausted. If the bonus exemption is not utilized prior to sunset, it will be lost.



Utilizing the full exemption prior to sunset may achieve substantial estate tax savings not only because it locks in the bonus exemption, but also because it may remove substantial future appreciation from the taxable estate.

The table shown at right illustrates the potential impact of estate taxes for a hypothetical unmarried taxpayer with a net worth of \$20 million who gifts the full \$13,610,000 exemption to an irrevocable trust for the benefit of his children in 2024. The calculations assume that assets appreciate at a modest annual rate of 5%, the annual inflation adjustment for the lifetime exemption is 2%, and that assets in the irrevocable trust are not includable in the donor's taxable estate.

Potential tax savings could be even more drastic if advanced wealth transfer strategies were utilized.

In summary.

The sunset of various TCJA provisions, particularly provisions related to the lifetime exemption, will have a substantial impact on high-net-worth individuals. Those interested in learning more or capitalizing on opportunities in preparation of TCJA sunset should consult with their professional advisors.

Impact of Utilizing Full Exemption

	Current (2024)	In 10 Years (2034)	In 20 years (2044)
No gifting			
Estate value	\$20,000,000	\$32,577,893	\$53,065,954
Tax due at death	\$2,556,000	\$9,687,157	\$17,150,382
With gifting			
Taxable estate	\$6,390,000	\$10,408,637	\$16,954,572
Assets outside taxable estate	\$13,610,000	\$22,169,256	\$36,111,382
Tax due at death	\$2,556,000	\$4,163,455	\$6,781,829
Tax savings	\$0	\$5,523,702	\$10,368,553



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As a result of the Tax Cuts and Jobs Act of 2017 (TCJA) the estate, gift and generation skipping transfer (GST) tax exemption amounts increased to approximately \$11.18 million per person (approximately \$22.36 million for a married couple). For assets transfers in excess of the applicable exemption amount and otherwise subject to such taxes, the highest applicable federal tax rate remains at 40 percent. While the exemption amounts are indexed for inflation, current law provides for an automatic sunset of these increased exemption amounts after 2025. As a result, the exemption amounts available in 2026 and beyond could be reduced to a level provided under prior law (\$5.49 million/single and \$10.98 million/couple in 2017, indexed for inflation) absent further action by Congress. In addition, under different rates, rules and exemption amounts (if any), there may be state and local estate, inheritance or gift taxes that apply in your circumstances. Please consult your own tax or legal advisor for advice pertaining to your specific situation. This material includes a discussion of one or more tax related topics. This tax related discussion was prepared to assist in the promotion or marketing of the transactions or matters addressed in this material. It is not intended (and cannot be used by any taxpayer) for the purposes of avoiding any IRS penalties that may be imposed upon the taxpayer. These materials are prepared by The Nautilus Group®, a service of New York Life Insurance Company, and are made available to all Nautilus Group member agents, and as a courtesy, to select agents of New York Life Insurance Company. Nautilus, New York Life Insurance Company, its employees or agents are not in the business of providing tax, legal, or accounting advice. Individuals should consult with their own tax, legal, or accounting advisors before implementing any planning strategies. SMRU 7073534 Exp 9/30/2027