The Impact of One Big Beautiful Bill on Estate Planning

Herb Fineburg: We've had some very interesting news that's developed as a result of the passage of the One Big Beautiful Bill Act. We have been anticipating loss of 50% of our clients' lifetime exemptions as of January 1st, 2026, and instead the exemption is gonna be kept and it's gonna keep increasing.

What is the news? Right now the exemption is approximately $14 million per person. This is $28 million per couple. Beginning January one, the exemption will be $15 million per person, or $30 million per couple. The exemption is something that can pass through your estate to your children and your grandchildren, and not have to pay the currently 40% tax rate to the federal government.

Besides the federal government, there's also states that have inheritance taxes that we have to address. But that's been the major change that has taken place as a result of the One Big Beautiful Bill. Danielle, what is the situation now? Are we gonna stop making gifts and just wait until, when the person passes away? Or is it better to make a gift now?

Danielle Friedman: So a lot of practitioners would say that due to the fact that the exemption is as high as it is, you don't need to do planning or need to do as much planning, but I'm a big advocate of using the exemption during life rather than waiting until someone dies to apply the exemption to the value of their estate.

As we know, you can either use your exemption during life by gifting. Or if you don't make gifts or don't use all of your exemption during your lifetime through gifting, anything remaining at death and the exemption in the year of your death will apply to the value of your estate. We all learn that a dollar today is worth more than a dollar in the future, and given inflation and the ability of assets to appreciate in the future, I have been recommending that my clients continue to make gifts to irrevocable trusts in order to reduce the value of their estates, even if they don't have taxable estates now, and if their estates are not worth 15 or $30 million, they may very well be in the future given you know how the stock market is performing and things like that.

So always better to give the property away now if you can, and let it appreciate outside of your taxable estate.

Max McCauley: Two points to add to that, the exemption, as you said, applies to estate tax, gifting or the gift tax, and also a third to generation gifting taxes. So there's a lot of opportunity for planning there, I gather, Danielle.

Danielle Friedman: Yeah. A ton of planning opportunities, and we can't take for granted that this exemption is going to be around forever.

Max McCauley: Wait, I thought it's permanent now?

Danielle Friedman: As with any law, Congress can always change it. And of course it depends on what the appetite is in Congress and in the White House.

And while it's unlikely that the law will change during the current administration, there is no guarantee that the law could not change during future administrations. We saw proposals during the Biden administration to reduce the federal state tax exemption, it often comes up every time there's a change in power in Washington.

So right now it's high in 2026, it will be 15 million per person, but there's no guarantee for the future. And if you don't use exemption during your lifetime, then you are only stuck with what the exemption is in the year of your debt. So if you die in a year where the exemption is low, that's all you get.

Max McCauley: There's at least two advantages to using the exemption now, correct? One is we can make the gifts and report them on the tax returns and address the statute of limitations. You talk about that, right? And the second was, Biden's proposal actually not only was going to change the exemption, but it was going to be retroactive about six months.

And now, although this is permanent, it wasn't considering going clear back to when it changed in 2017 with the TCJA, correct? So if we actually made the change now made the gift now and the law changed in the future, say a year or two years. What's the odds of it being retroactive? So, two part question.

Danielle Friedman: There's no claw back. There's no chance that the government is going to claw back any gifts that you make that exceed the value of the exemption. So if, for example, the exemption is 15 million and you make $15 million worth of gifts in 2026, and then in 2027, the exemption is reduced to 10 million, they can't claw back that excess $5 million worth of gifts that you've made. The IRS has made that clear that they're not going to claw back gifts if the exemption was used correctly. But to your point, as far as starting with statute of limitation running among gifts. Always a good idea to get that statute running.

The IRS has three years from the date that a gift tax return is filed to challenge the valuation of the gift. And this is particularly important if you're using techniques like discounting or part gift, part sales where there's more I would say opportunity for aggressive gifting and, risks that the IRS may challenge your gift if you make a gift while the exemption is high you have more wiggle room.

If the IRS does come back and challenge the value of the gift. And of course, you have three years, so if you get that statute running, it's done after three years, you don't have to worry about it.

Max McCauley: So many practitioners are saying there's no rush to finish gift tax planning this year given that this exemption is now permanent.

Do you agree or disagree?

Danielle Friedman: There's no rush to do it before 12/31/2025, but I wouldn't, put it on the back burner and forget about gifting. I would say, if you don't have time this year, that's okay, but if you have an estate where you expect it to appreciate significantly, or you're a business owner and you're thinking that in the future you might sell your business for a significant gain, now's the time to make the gifts don't wait.

Max McCauley: And we can still run the statute of limitations as well,

Danielle Friedman: Of course.

And Herb, can you tell us even though there is less likelihood of families facing an estate tax, given the exemption, we still have state law to consider. And can you talk about the benefits of making gifts in light of state inheritance and estate tax laws?

Herb Fineburg: Sure. One of the major differences between a state inheritance tax or debt tax is that there is no such thing as an exemption. From dollar one, it's subject to state inheritance tax. However, unlike the federal government, which taxes both gifts during the lifetime as well as gifts upon death, the states generally do not tax gifts.

So you can, before you pass away, give something away and remove it from your estate and save all of the e state inheritance tax. So it's planning from a state level is still recommended for gifting purposes, and it's encouraged that people do that.

There are a couple of different rules. For example, in Pennsylvania, after you make a gift, you have to live one year before it's brought back into your estate. New York has a higher death tax rate that say Pennsylvania, New Jersey has more exemptions from the death tax than others. So you have to go from state to state to figure out how best to employ it. But in the end you're going to be saving a lot of state death taxes by doing gifting now, in part because states don't have any such thing as an exemption.

Danielle Friedman: Yeah, it's interesting. New York is a really interesting example because it has an estate tax exemption of 7 million.

The federal exemption, let's say it's gonna be 15 million, so you could give away $15 million worth of assets, not pay any federal estate tax, get your estate below the New York Estate tax exemption and not have to face any New York estate taxes either. New York doesn't have a gift tax, so there's no, no issue with giving away the 15 million during your lifetime, but if you own that 15 million at death, then half of it is gonna be subject to New York estate tax.

So it's very prudent, especially in states that do have death taxes to engage in gifting.

Max McCauley: Even if you have a current estate plan, maybe it was done since 2017 when the TCJ went into effect, wouldn't it be a good idea to have that estate plan reviewed to make sure you're fully taking advantage of the new $15 million exemption next year. Even if you have an estate plan and you think that you've addressed it, and that happened 5, 6, 7 years ago, it would be important to have your lawyers review your estate plan again to make sure you're fully taking advantage of the $15 million exemption for estate tax, gift tax, generations gift tax.

Danielle Friedman: Sure. I mean, think about the value of your assets in 2017 and think about the value of your assets now. Hopefully they have increased significantly despite COVID and downturns in the market. We're looking at record highs these days, so I'm assuming most of our clients have had significant appreciation in their portfolios and in their business interests. So it's always time to take a look and see how you can leverage tax laws to your advantage.

Herb Fineburg: And this is especially important for business owners who believe that their businesses are going to be worth a heck of a lot more than they might be valued today, so that they could get that out of their estate and through different techniques that we have, such as trust for spouses, still have a hundred percent access to those assets, but have those assets appreciating outside of their taxable estate.

Danielle Friedman: And I think to end it on this note, no matter what type of gifting you're gonna be engaging in, it's always better to gift something in trust rather than outright to the recipient. I think that we've gone into great detail about the benefits of why gifting into trust in prior episodes.

So, if you are gonna engage in gifting, please use a trust.

Herb Fineburg: Great. Thanks.

Danielle Friedman: Thank you guys. Till next time.