

The Weekly Scenario: Uncertainty and Opportunity in 2021

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Is Now the Time to Make a Substantial Gift?

As I reported last week, we may soon see a rollback in the 'Trump' tax cuts. Such a roll-back might even be made effective retroactively to January 1, 2021.

Most of the changes made by the Tax Cuts and Jobs Act of 2017, as related to individuals, are already set to expire after 2025. Under this act, we now have an estate, gift, and generation-skipping transfer tax exemption amount of \$11,700,000 per person. This exemption amount is up from \$5,490,000, where it stood in 2017 prior to the 'Trump' tax cuts taking effect. This means that until the end of 2021, an individual dying or making a large gift can pass *up to \$11,700,000 free of any federal transfer tax*. Thereafter a roughly 40% tax on the fair market value of the estate or gift would be paid. For married couples, they can now pass *up to \$23,400,000 (federal estate/gift/generation-skipping)*.

The individual exemptions may likely roll back soon to around \$5 million per donor or even \$3.5 million per donor.

On November 26, 2019, the IRS issued a regulation under IR-2019-189 that there would have been no "clawback" for any gifts made in 2020. Thus, if an individual had given up to \$11.5 million in 2020, and the related exemption amount was reduced in 2021 to something less than that, then the difference between those amounts would not have been added back when computing the value of the taxable estate when the donor later dies. This is the "*use it or lose it*" approach that many people talk about in trying to figure out whether to make a large gift. While it is likely the IRS would do this again; there are no guarantees.

The analysis to figure out whether a gift might be beneficial to a family is difficult and requires many different factors. Some of the factors include the total estate value, the health of the family member, the income tax basis of the estate assets, the charitable giving goals, prior gifts, the desire to retain control over the use of assets, and the readiness of beneficiaries to receive a large gift.

Keep in mind that a gift doesn't have to be made directly to an individual beneficiary. It can be made in trust, for example, given a person access to the property but not ownership or control.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or 301.575.0313.