

## The Weekly Scenario: What to Know About the “For the 99.5% Act” and the “Sensible Taxation and Equity Promotion (STEP) Act”

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There are many potential tax law changes that may be coming to a theatre near you. I can't get too far into the weeds in this blog, but I'll address two current proposals that may be of interest.

About three weeks ago, Senators Bernie Sanders (D-VT) and Sheldon Whitehouse (D-RI) introduced what they refer to as the “*For the 99.5% Act*.” As the name implies, the Act is focused on the top 0.5% of Americans.

Under current law, the estate and gift tax lifetime exemption amount is \$11.7 million per person (indexed for inflation), with amounts transferred in excess of this amount (this does not include annual gift tax exclusion gifts of \$15,000 per person) subject to a 40% tax.

The estate and gift tax exemptions are currently unified, meaning amounts not used via gifts during one's life can be applied to offset estate tax upon death. The current exemption levels were doubled by the Tax Cuts and Jobs Act (TCJA) of 2017 and are expected to “sunset” or return to pre-TCJA 2017 amounts at the end of 2025.

Some of the most significant provisions of the 99.5% Act are as follows:

- Reduces the estate tax exemption amount to \$3.5 million per person but continues to index it for inflation.
- Reduces the gift tax exemption to \$1 million per person (the system would no longer be unified).
- Increases the estate and gift tax rate (40%) to:
  - **45%** of an estate between \$3.5 million and \$10 million.
  - **50%** of an estate between \$10 million and \$50 million.
  - **55%** of an estate between \$50 million and \$1 billion.
  - **65%** of an estate over \$1 billion.
- Eliminates valuation discounts for non-business assets.
- Eliminates the use of “Defective (for income tax purposes) Trusts.”
- Restricts the funding of Grantor Retained Annuity Trusts (GRATs) and imposes a minimum term of 10 years.

- Limits on "Generation-Skipping" while also imposing a maximum term of 50 years.
- Reduce the annual gift tax exemption (as mentioned above) from \$15,000 per donee per year to \$10,000 per donee per year.

About the same time, Senators Chris Van Hollen (D-MD), Corey Booker (D-NJ), Elizabeth Warren (D-MA), Bernie Sanders (D-VT), and Sheldon Whitehouse (D-RI) introduced what they call the *Sensible Taxation and Equity Promotion (STEP) Act*.

Under the current law, when an individual dies, the cost basis of property would receive a cost basis adjustment being adjusted to its Fair Market Value (FMV) at the date of death. When gifting appreciated property, the cost basis would carry over to the recipient.

Some of the most significant provisions of the STEP Act are as follows:

- Property transferred by gift or bequest is treated as sold for its FMV, with the gain (or loss, but only if transferred via bequest) being recognized currently. There would be a \$100,000 exclusion for gifts and a \$1 million exclusion for transfers at death. There is a deferral period of 15 years built in to pay the tax.
- The exclusion of up to \$250,000 per person on the sale of a principal residence would continue.
- All 'non-grantor' trusts would have to pay tax on unrealized gains every 21 years (although trusts created in 2005 or earlier would have their first "deemed realization" in 2026).
- Gifts or bequests to spouses or charities would be exempt.

The effective date of these proposed changes would be January 1, 2022.

**As always, if you have any questions or would like to learn more, please contact Steve Shane at [sshane@offitkurman.com](mailto:sshane@offitkurman.com) or 301.575.0313.**