

Insights

IRS Announces Higher Estate and Gift Tax Rates for 2021...But...?

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On October 26, 2020, the Internal Revenue Service (“IRS”) announced the official estate and gift tax limits for 2021. Currently, the estate and gift tax exemption equivalent is \$11.58 million per individual (or \$23.16 million for a married couple). For 2021, the exemption equivalent will increase to \$11.7 million per individual (or \$23.4 million for a married couple). With these exemptions, a married couple can give up to \$23.4 million to heirs and pay no federal estate or gift tax.

The annual gift exclusion amount for 2021 stays the same at \$15,000 per donor, per recipient. Each individual can give away \$15,000 to any individual they desire with no federal gift tax consequences. Married couples can combine these amounts and make \$30,000 gifts to each individual, doubling the impact. In addition to the \$15,000 amount, each individual can make unlimited payments for medical and tuition expenses as long as such payments are made directly to the institution providing the service. It should be noted that these gifts are not limited to children, grandchildren, etc. but can be made to anyone you choose.

But what might occur under a Biden administration? In a relatively short period of time, we will have finality with the Presidential election. Everything above will stay the same if President Trump remains in office. However, President Biden has proposed increasing the estate and gift tax rates to a top rate of 45% (currently, it is at 40%) and lowering the estate tax exemption equivalent to \$3.5 million per individual (\$7 million per married couple). These proposals would take Congressional support. The Democratic majority in the House of Representatives has been determined but the majority in the United States Senate will remain undecided until January 5, 2021, when a run-off election in Georgia will determine control of the Senate. If Democrats win both Georgia Senate seats and the seats in Alaska and North Carolina are officially called in favor of Republicans, Democrats would have 50 Senate seats, with Vice-President Kamala Harris serving as the tie-breaker, giving Democrats a majority in the Senate and the House of Representatives, and allowing a Biden administration to make significant changes to the estate and gift tax laws.

If you are concerned about this potentially drastic change in federal estate and gift tax rates and a decreasing estate and gift tax exemption equivalent, it is time to use your estate and gift tax exemption through lifetime gifts. By making lifetime gifts over the annual exclusion (over \$15,000), you utilize the estate and gift tax exemption. The IRS finalized rules last year stating that it would not “claw back” lifetime gifts if/when the exemption is lowered. So an individual can give his or her entire estate and gift tax exemption (\$11.58 million) in 2020 and not be affected by a change in the estate and gift tax exemption under a Biden administration. In order to salvage the larger estate and gift tax exemption from a lowered number in 2021, however, the gifts need to be substantial. In particular, if one believes the exemption will go down to \$3.5 million then the gift needs to be above that amount to utilize what would be “excess” exemption. If one believes the exemption would go down to the Obama era exemption, as an example, then the exemption would drop to \$5,585,000 on



January 1st and any gift now would need to be above that amount to utilize what would be “excess” exemption. If the excess exemption is not used before the exemption is lowered by Congress, then that “excess” would be lost (at least until the next Presidential election). Different techniques exist to make such gifts yet preserve access for a donor’s spouse (such as the “spousal lifetime asset trust” or “SLAT”).

For those not interested in giving away the entire or large portion of their estate and gift tax exemption amount, there are several advanced, estate planning techniques available that can utilize a portion of that exemption or “estate freeze strategies” (i.e. where you give away the upside (appreciation)). These strategies include establishing grantor-retained annuity trusts (GRATs) and/or doing installment sales to grantor trusts.

If you are interested in utilizing your lifetime estate and gift tax exemption now or implementing some wealth transfer strategies discussed above to minimize the impact a Biden administration might cause, please contact our estate planning attorneys, **Micah J. Nichols** or **Rodney S. Retzner**.