

Insights

Higher Estate and Gift Tax Exemptions for 2024...But How Long Will This Last?

January 2, 2024

By: Micah J. Nichols and Rodney S. Retzner

The Internal Revenue Service ("IRS") recently announced the official estate and gift tax limits for 2024. For 2024, the estate and gift tax unified credit equivalent ("FET Equivalent") has increased to \$13.61 million per individual. With this FET Equivalent, a married couple can give up to \$27.22 million to heirs during life, at death or both, and pay no federal estate or gift tax.

The annual gift exclusion amount for 2024 increased to \$18,000 per donor, per recipient ("Annual Exclusion"). Each individual can give \$18,000 to any other individual with no federal gift tax consequences and no reporting required. Married couples can combine their Annual Exclusions to make \$36,000 gifts to each individual, doubling the impact. Those that have younger beneficiaries in mind can even "superfund" 529 qualified tuition plans can elect to apply 5-years-worth of Annual Exclusion to a 529 qualified tuition plan for each such beneficiary (\$90,000 per individual or \$180,000 per married couple), without any gift tax consequences. Beyond the Annual Exclusion amount above, the federal gift tax laws allows unlimited payments for medical and tuition expenses as long as those payments are made directly to the institution providing the service.

The 2024 FET Equivalent and Annual Exclusion are at all-time highs, but how long will this last? In both 2022 and 2023, Congress has discussed modifying or repealing the estate, gift, and generation skipping tax, introduced capital gains tax on the transfer of assets during life or at death, introduced law to strip away many of the techniques used by planners to more effectively utilize the tax credits and discussed enacting a form of wealth tax. As of January 2024, no such legislation has been enacted but the discussions happen regularly in Congress (depending on which political party has the Presidency and majority control of Congress).

The most important thing to remember with the FET Equivalent is that the current legislation that has adjusted the FET Equivalent to an all-time high will "sunset" on December 31, 2025, barring any action taken by Congress to extend it. If such legislation sunsets, tax experts are predicting that the FET Equivalent will be cut roughly in half to around \$7 million per individual (or \$14 million for a married couple).

As we start 2024, what can you do now about the unpredictability of Congress and potentially drastic changes in the FET Equivalent?

1) Consider using your all-time high FET Equivalent now through lifetime gifts. By making lifetime gifts over the Annual Exclusion (over \$18,000), you utilize the FET Equivalent. In recent years, the IRS finalized rules stating that it would not “claw back” lifetime gifts if/when the FET Equivalent is lowered. So an individual can give his or her entire FET Equivalent (\$13.61 million) in 2024 and not be affected by a change in the FET Equivalent at the end of 2025. In order to salvage the all-time high FET Equivalent, however, the gifts need to be substantial. In particular, if one believes the FET Equivalent will go down to around \$7 million at the end of 2025, then the gift needs to be above that amount to utilize what would be the “excess” FET Equivalent. If the excess is not used before the law sunsets at the end of 2025, that “excess” will be lost (unless Congress again changes the law). Different techniques exist to make these large gifts yet preserve access for a donor’s spouse (such as the “spousal lifetime asset trust” or “SLAT”).

2) For those not interested in giving away the entire or large portion of their FET Equivalent, there are several advanced, estate planning techniques available that can utilize a portion of that exemption or “estate freeze strategies” (i.e. where a donor gives away the upside (future appreciation) so such upside is not included in the donor’s gross taxable estate in the future.

3) Finally, for those who have family members that have recently lost a spouse, consider using a portability election, especially if the surviving spouse has a net worth of close to or over \$7 million. A surviving spouse may claim the unused FET Equivalent of a deceased spouse by timely filing IRS Form 706. If a deceased spouse made no reportable lifetime gifts, the surviving spouse could receive the decedent’s full FET Equivalent (\$13.61 million in 2024) and have the deceased spouse’s FET Equivalent along with his or her own during life or at death. Generally, an IRS Form 706 must be filed within nine (9) months of the date of death; however, a recent IRS revenue ruling has allowed a delayed filing of the IRS Form 706 up to five (5) years from date of death, so long as there was no requirement to file the IRS Form 706 at the deceased’s death and the only reason for filing is this portability election.

If you are interested in discussing how the change in laws surrounding the FET Equivalent could affect your planning, utilizing your FET Equivalent now, or implementing some wealth transfer strategies discussed above to minimize the impact of any tax law changes, please contact our estate planning attorneys **Micah J. Nichols** or **Rodney S. Retzner**.

Disclaimer: The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.