

On December 31, 2017 the Tax Cuts and Jobs Act of 2017 (TCJA) was passed that set estate tax and gift tax exemption to \$11,180,000 per person. The amount has been adjusted upward for inflation annually, and in 2023 the new exemption amount is set to be \$12,920,000 per person and \$25,840,000 per married couple. This amount is called the lifetime gift tax exemption. It allows you to give away the mentioned above amount of assets - money, stocks, property - during your lifetime without paying any taxes on it.

A short explanation is due here. When a person passes away an estate is created. This estate includes all the assets that belonged to the deceased. The total amount of the assets is appraised and the amount that exceeds the lifetime gift tax exemption is taxed to the estate at the rate of 40%. (Transfer of the estate to the surviving spouse usually is not subject to any taxation.) After the estate pays the taxes all the assets are transferred to the beneficiaries of the estate. Please note that for non-citizen spouses, the marital deduction that is not subject to taxes is only \$175,000 for 2023.

If during a calendar year you give a gift of more than \$17,000¹ to a person you are supposed to file a gift tax return that tracks the remaining amount of your lifetime gift tax exemption. For example, if in 2023 you will give away \$1,000,000 the amount of your lifetime gift tax exemption left will be \$11,920,000 = \$12,920,000 - \$1,000,000. To prepare a gift tax return you should file IRS Form 709 which is due by April 15. I want to emphasize that this is an information return that tracks the remaining balance of your lifetime gift tax exemption and you will owe taxes ONLY if your total gift exceeds \$12,920,000².

So far, I have been discussing the federal approach to gift taxation and exemption. Some states do have gift taxes, inheritance taxes, and assets transfer taxes. As always, please, check with you tax advisor.

What we have discussed above is a pretty straight forward approach to wealth transfer through gifting. Unfortunately, this is just the top of the iceberg. Gift tax exemption changes are coming soon. The Tax Cuts and Jobs Act (TCJA) of 2017 has a sunset provision in 2025 which means that the US congress has to either extend the law beyond 2025, or change the current law, or the law will revert to the one that existed in 2017 with previous exemption amount adjusted for inflation was closer to \$5 million. I cannot predict the wisdom of the US congress. There are quite a few proposals on the table starting from keeping the current law, or drastically decreasing the amount of lifetime gift tax exclusion, or even freezing the value of the asset for tax purposes and allowing future appreciation to pass to younger generations without additional transfer taxes.

¹ Amount that any individual can gift in 2023 to any person without incurring gift tax consequences or reducing her lifetime gift exemption.

² In 2023.

My advice to all of you is to check with your advisor if any changes or adjustments to your wealth transfer strategy should be made now and that you should engage in gift planning as soon as possible. If the laws changes in 2026 as scheduled, the IRS will be powerless to approach individuals who took advantage of pre-2026 gifting laws.