

Sunset of the Lifetime Gift and Estate Tax Provisions of the Tax Cuts and Jobs Act

Introduction to the Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act (“TCJA”) that was passed and signed into law in December 2017, made significant changes across multiple areas of the tax code. Since the TCJA was passed via the budget reconciliation process, sunset provisions had to be built in for some of the major components. Unless legislative action is taken, many key provisions of the TCJA are expected to sunset (or expire) on December 31, 2025.

Lifetime Gift and Estate Tax Sunset

One critical provision that is scheduled to sunset is the lifetime gift and estate tax exemption (“the exemption”) – this is the amount any individual can either gift¹ during their lifetime or leave to their heirs (other than a spouse²) after death, on a gift and estate tax-free basis. Any amount gifted or bequeathed above the exemption amount is taxed at a 40% federal rate³.

When the TCJA went into effect for tax year 2018, the exemption increased from \$5.49 million to \$11.8 million per person, and has since been adjusted annually for inflation. As of January 1, 2024, the exemption is \$13.61 million per person. Without further legislative action, the exemption will be adjusted for inflation again for tax year 2025, and subsequently decrease on January 1, 2026, to the pre-TCJA amount of \$5 million per person, adjusted annually for inflation. This amount is projected to be approximately \$7 million per person for tax-year 2026.

Estate Taxation Analysis: Before vs. After the Sunset

Let’s assume that a married couple has a net worth of \$30 million. If both spouses were to pass away and leave their entire estate to their heirs:

	As of Today	As of January 1, 2026
Total Estate Value	\$30,000,000	\$30,000,000
Combined Gift and Estate Tax Exemption	\$27,220,000	\$14,000,000
Taxable Estate	\$2,780,000	\$16,000,000
Estimated Estate Tax	(\$1,112,000)	(\$6,400,000)
Net to Heirs	\$28,888,000	\$23,600,000

Note: calculations are approximate

Without additional planning, the sunset of the gift and estate tax exemption may result in an increase in Estimated Estate Tax of \$5,288,000

Planning Opportunities

There are many significant opportunities available for individuals and families that may be impacted by the pending sunset of the TCJA gift and estate tax exemption. While the sunset is not scheduled to happen until January 1, 2026, below are some considerations when reviewing your current estate plan to determine if additional action steps are appropriate:

1. Transferring⁴ assets may reduce the size of your taxable estate and potentially minimize estate taxes for your heirs
2. Consider the possibility that future legislation may
 - › Further reduce the gift and estate tax exemption amount below current law amounts
 - › Limit the efficacy of strategies that are currently permitted
 - › Contain retroactive effective date(s) that may be earlier than January 1, 2026
3. As the sunset approaches, there may be a shortage of qualified legal and tax professionals available to draft necessary legal documents and implement your strategic plan

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¹ Amounts above annual exclusion gift limit (currently \$18,000 for tax year 2024).

² Transfers to a spouse are generally free of gift and estate tax.

³ This does not include any state estate tax or Generation Skipping Transfer (GST) tax, if applicable.

⁴ Transfer may mean gift, sale, or loan.

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