

Planning for the Potential Repeal of the Estate Tax

Since the election of President Trump, there has been intense discussion among estate tax planning professionals as to whether and, if so, when, the new Administration and the Republican-controlled House and Senate might eliminate the federal estate tax.

Republican lawmakers in the House revealed on November 2 what the New York Times labeled, "the most sweeping rewrite of the tax code in decades." Not surprisingly, the plan includes complete repeal of the federal estate tax. The Senate GOP plan retains the federal estate tax, but the ultimate resolution of this matter is not yet clear.

The chart below summarizes the current law, House proposal, and Senate proposal:

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Estate and Generation-Skipping Transfer Taxes	<p>\$5 million basic combined exclusion from estate and gift taxes, indexed for inflation to \$5.6 million in 2018</p> <p>\$5 million exclusion from Generation-Skipping Transfer (GST) Tax, indexed for inflation to \$5.6 million in 2018</p>	<p>Basic exclusion amount increased to \$10 million, with indexing for inflation the total exclusion from estate and gift tax will be \$11.2 million (same for the GST Tax)</p> <p>Both the estate tax and the Generation-Skipping Tax repeal to become "permanent" for transfers after December 31, 2023</p>	<p>Basic exclusion amount increased to \$10 million, with indexing for inflation the total exclusion from estate and gift tax will be \$11.2 million (same for the GST Tax)</p> <p>Gift tax capped at 35% on transfers over \$500,000</p>
Basis Adjustment on Death	Estate assets are adjusted to the date of death value.	No change	No change
Gift Taxes	<p>\$5 million basic combined exclusion from estate and gift taxes, indexed for inflation to \$5.6 million in 2018</p> <p>Gift tax capped at 40% on transfers over \$1 million</p>	<p>Basic exclusion amount increased to \$10 million, with indexing for inflation the total exclusion from estate and gift tax will be \$11.2 million (same for the GST Tax)</p> <p>The gift tax is retained on transfers made after December 31, 2023, but capped at 35% on transfers over \$500,000.</p>	No change

What Does CohnReznick Think?

There are some important reasons why ongoing estate planning should continue, including:

- Transferring assets to trusts is still an important strategy for asset protection and business succession purposes, as well as ensuring that assets will be devised as the owner directs.
- With the proposed doubling of the exemption amounts in both bills, taxpayers may have an opportunity to accomplish significant gifting after the effective date of the tax plan, depending on the final legislation enacted.
- The increased exemption may provide opportunities to reduce overall income tax by shifting assets to taxpayers in lower income tax brackets.
- Several states will retain an estate or inheritance tax. Taxpayers should continue to plan in order to minimize such state taxes, as a repeal of the federal estate tax would mean that there would be no federal benefit for paying state estate or inheritance taxes.
- Insurance planning remains relevant in order to ensure that there will be sufficient liquidity. Whether there is an estate tax, we recommend that life insurance always be held within a life insurance trust, primarily for asset protection purposes.

As Republicans maintain majorities in both houses of Congress, arguably, some form of the current GOP tax plan could be presented to President Trump for signature. However, the proposals described above are still subject to reconciliation and will likely face revisions.

Even if some of the legislation is enacted, Republicans hold a slim, 52-seat, majority in the Senate, so the permanence of any such plan is very much in question. Indeed, by its terms, the Senate proposal requires a reversion back to current exemption amounts of \$5.6 million on transfers made after December 31, 2025. Further, since the House plan does not provide for full repeal of the estate tax until 2024—after the next presidential election—there is a possibility that a new administration will replace the law before full repeal.

Given the sweeping nature of the proposed tax changes, it is unclear what the final form of the legislation (if any) will be. We recommend that taxpayers stay abreast of potential changes impacting their trusts and estate plans, as there may be a limited window for additional planning once the final provisions impacting trusts and estates are enacted. Stay tuned for upcoming tax updates from CohnReznick relating to other provisions.

Contact

For additional information, please contact CohnReznick's Trusts and Estates National Practice Leaders:

Joy Matak

862-245-5081

joy.matak@cohnreznick.com

Steven M. Dane

959-200-7103

steven.dane@cohnreznick.com

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