

Tax Update: The Impact of Newly Published Regulations on the Estate and Gift Tax Laws

In November 2019, almost two years after the enactment of the comprehensive overhaul of the Internal Revenue Code, the Department of the Treasury published regulations to clarify the impact of the new law on the estate and gift tax rules. The new law and the recently published regulations could have an impact on your estate plan and may require action.

But First, Remembering 2018 and Looking Forward to 2020

Annual Gift Amount Remains the Same. Under the new tax law, the annual gift tax exclusion for gifts to individuals increased from \$14,000 to \$15,000. In 2020, the annual gift tax exclusion remains at **\$15,000** (or **\$30,000** for a married couple).

Exemption Amount Doubled. As discussed in a prior tax update, the new tax law doubled each taxpayer's estate and gift tax exemption amount. With adjustment for inflation, each taxpayer's exemption for 2020 will be **\$11,580,000** (or **\$23,160,000** for a married couple). However, the increased exemption is only temporary and is scheduled to "sunset" and revert back to pre-2018 levels (\$5,000,000 per taxpayer, adjusted for inflation) on January 1, 2026, (or earlier, if Congress were to take action).

Now, What This All Means Between Now and 2026 and Beyond

The scheduled sunset of the estate and gift tax exemption amount raised several practical questions, including: (1) whether the increased exemption presents a "use it or lose it" situation; and (2) what happens to the unused increased exemption of a taxpayer who dies on or between January 1, 2018, and December 31, 2025.

Use It or Lose It Indeed. The new tax law made clear that on December 31, 2025, unless congressionally adjusted or extended, the increased estate and gift exemption (Increased Exemption Amount) will revert back to \$5,000,000, adjusted for inflation (Basic Exclusion Amount). Less clear was whether gifts made with the Increased Exemption Amount would be sheltered from estate tax if the taxpayer died after the exemption amount reverted back to a lower amount. The regulations confirm that such gifts will be sheltered from estate tax. Therefore, taxpayers are encouraged to use as much as their Basic Exclusion and Increased Exemption Amounts as practicable. However, this poses another question: how much does a taxpayer need to gift prior to the sunset in order to not lose his or her Increased Exemption Amount; that is, what is used first: the Basic Exclusion Amount or the Increased Exemption Amount? The regulations confirm that in general, a taxpayer's gift is deemed to be made first from his or her Basic Exclusion Amount, and second, from his or her Increased Exemption Amount.

But the DSUE Lives On. A deceased taxpayer can elect to transfer his or her deceased spousal unused exclusion (DSUE) to a surviving spouse under certain circumstances. The regulations confirm that the DSUE amount of a taxpayer who dies on or between January 1, 2018, and December 31, 2025, will **not** sunset. This means that although the surviving spouse's own estate and gift tax exemption would decrease on December 31, 2025 (absent congressional adjustment or extension), the DSUE amount received from his or her deceased spouse will not.

The regulations address other important rules as well and it is important to review your estate plan now.



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Related Practice Areas

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If you would like to discuss the impact of the new law and regulations on your estate plan, a member of Cozen O'Connor's Private Client Services team would be happy to assist.