

Important Considerations for Taking Advantage of the Current Transfer Tax Exemptions

By Suzanne S. Weston

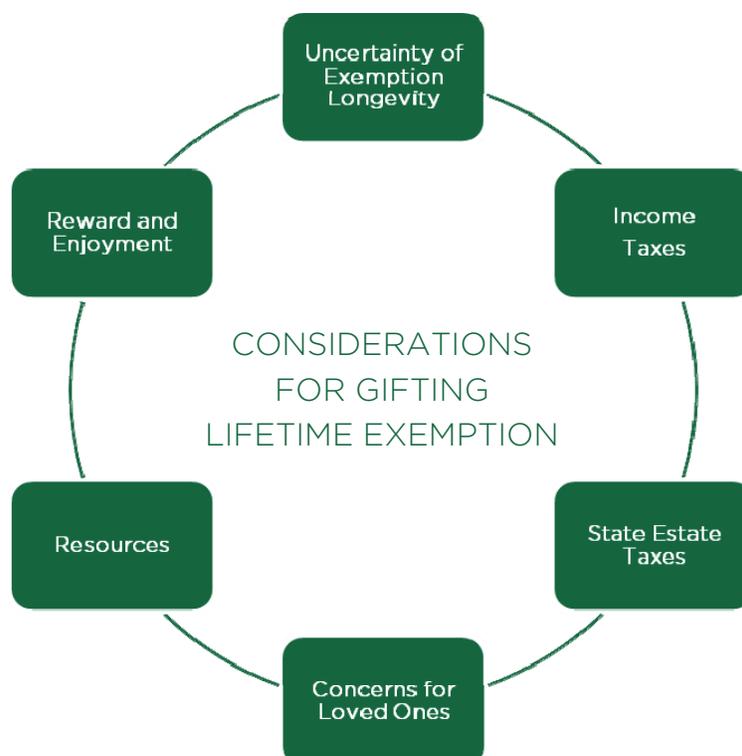
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Thanks to the Tax Cuts and Jobs Act (the “Act”) which passed in December 2017, you have a considerably greater opportunity to minimize your tax liability when transferring wealth to future generations.

The Act doubled your federal estate and gift tax exemption for tax years 2018 through 2025, indexed annually for inflation. Meaning, in 2018 you could give away \$11,180,000 (\$22,360,000 if married) and in 2019 up to \$11,400,000 (\$22,800,000 if married) during life and at death, without incurring federal estate or gift taxes. This is a significant increase from your allowable exemption in 2017, which was \$5,490,000 (\$10,980,000 if married). The highest marginal federal estate and gift tax rate will remain at 40%.

The Act also doubled your generation skipping transfer (“GST”) tax exemption to \$11,180,000 in 2018 and it increased to \$11,400,000 in 2019. The IRS levies a GST tax at a 40% flat rate when you transfer property to a relative who is at least two generations below you (“skip person”) or into a trust for the benefit of skip persons, such as your grandchildren. The GST tax is in addition to the federal estate and gift tax, and it was created to deter individuals from skipping a generation when gifting to avoid the federal transfer tax.

Whether it is beneficial to use your newly increased gift and GST tax exemptions depends on many factors and your individual circumstances. The following are some important considerations to



discuss with your advisors when making this significant gifting decision:

- **Uncertainty:** The increased federal estate, gift and GST transfer tax exemptions are not permanent. On December 31, 2025, the exemptions are scheduled to sunset, reverting back to the pre 2017 basic exemptions of \$5,000,000 per individual, adjusted for inflation. There is also a chance that Congress will amend the federal transfer tax exemptions before they sunset. Hence, with the uncertainty of the longevity of the available increased exemptions, gifting in 2019 may be a one time opportunity for you to remove up to \$11,400,000 (\$22,800,000 if married) plus any future appreciation from your estate, free of estate, gift and GST taxes.
- **Income Taxes:** Understanding whether the potential estate tax savings of lifetime gifting outweigh the income tax savings of holding your property and bequeathing it at death is essential. By making gifts using your available lifetime exemption, you will remove a substantial amount of property and any appreciation from your estate, free of estate and gift tax. However, depending on your age and the tax basis of the asset, it may not be beneficial to gift the property during your lifetime. This is because when you make lifetime gifts, the recipient receives your cost basis in the property (carry-over basis). Meaning, the recipient may realize large capital gains if the appreciated property is sold. On the other hand, if you hold the appreciated property in your estate at your death, then your heirs will receive a new cost basis in the property (step-up basis), which is the property's date of death value. Since your heirs will receive a step-up basis in potentially highly appreciated property, any large capital gains may be avoided when the property is sold.
- **State Estate Taxes:** In addition to the federal estate taxes, there are some states that continue to levy their own estate tax, including New York and Connecticut. If you live and die in one of these states, your estate may owe unexpected additional state estate taxes. By taking advantage of the increase federal exemptions in 2019 and decreasing the size of your estate, you may be able to avoid some state estate taxes upon your death.
- **Concerns For Loved Ones:** If you have reservations about giving such a sizable exemption amount outright to your loved ones, then you can make a gift to an irrevocable trust for their benefit. By creating a trust and naming a professional trustee, such as Chilton Trust, you can ensure that the trust property is administered and managed per your wishes. A properly drafted trust can also provide creditor protection to your loved ones, and by allocating your GST exemption to the gift, the trust can continue indefinitely for future generations, free of future transfer taxes.
- **Resources:** You may worry that you will not have sufficient resources to live comfortably if you remove over \$11,000,000 (over \$22,000,000 if married) from your estate. A married couple can alleviate this concern by each funding Spousal Lifetime Access Trusts ("SLAT") using their newly increased available exemptions. A SLAT is an irrevocable trust and the donor spouse names the other spouse and their descendants as beneficiaries. As a beneficiary, the spouse effectively has access to trust distributions during his or her lifetime, if needed. Creating and funding a SLAT can be a valuable estate planning technique in a married couples' estate plan, allowing them to remove up to \$22,800,000 from their combined estates for their future generations transfer tax free, and still providing them with the comfort that resources may be available for themselves if needed.
- **Reward and Enjoyment:** The benefits of gifting during your lifetime can be more than just saving taxes. With life expectancies being longer today than for our parents and grandparents, it is more likely that your children will inherit your property

much later in life. By gifting earlier, you can enjoy helping your children, grandchildren and great-grandchildren when they may need resources the most, including assisting with education, purchasing new homes and starting new businesses.

Taking advantage of your available increased federal exemptions by gifting to trusts may provide

significant tax savings and enjoyment for you and your loved ones for many years. However, since each individual's circumstances are unique and there are many other gifting techniques (*not mentioned in this article*), it is important to discuss your situation with your trusted advisor, tax and legal counsel to determine if a gifting strategy is appropriate for you.



Suzanne S. Weston is a Senior Vice President and Head of Fiduciary Services at Chilton Trust and has over 20 years of experience in trust and estate administration and relationship management. Prior to joining Chilton Trust, Ms. Weston served as a Relationship Manager and Sr. Trust Officer at Fiduciary Trust. Before Fiduciary Trust, Ms. Weston was a Trust Officer in the high net worth group at Citi Trust. Prior to Citi Trust, Ms. Weston spent over six years at US Trust, where she served as an Associate Estate Administrator and later a Client Relationship Manager and Fiduciary Planner. Before her career in wealth management, Ms. Weston served as Director of Major and Planned Giving for the National American Lung Association. Ms. Weston began her career practicing law in South Carolina, where her focus was trust and estate litigation, estate administration and estate

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