



## Gift and Estate Taxes

If you give away money or property during your life, those transfers may be subject to federal gift and estate tax and perhaps state gift tax laws. The money and property you own when you die—also known as your estate—may also be subject to federal gift and estate tax and some form of state death tax. Additionally, these property transfers may be subject to generation-skipping transfer taxes.

To make the best financial decisions, it's important to understand each of these taxes, which are governed by a handful of tax laws, including these four: the Economic Growth and Tax Relief Reconciliation Act of 2001 (the 2001 Tax Act); the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Act); the American Taxpayer Relief Act of 2012 (the 2012 Tax Act); and the Tax Cuts and Jobs Act. Recent Acts contain several changes that make estate planning easier.

### **The Federal Gift and Estate Tax: Background Information**

Under pre-2001 tax law, no federal gift and estate tax was imposed on the first \$675,000 of combined transfers. The term *combined transfers* refers to all transfers made both during life and at death. At that point, the tax rate tables were unified so that the same tax rates applied to gifts made and property owned by people who died.

Like current income tax rates, gift and estate tax rates at this time were graduated. Under this unified system, the recipient of a lifetime gift received a carryover basis in the property received, while the recipient of a *bequest*—a gift made at death—received a step-up in basis: an adjustment in the cost basis of the inherited asset to its fair market value on the date of the gift-giver's death.

The 2001 Tax Act, the 2010 Tax Act, the 2012 Tax Act, and the Tax Cuts and Jobs Act substantially changed this tax regime.

The 2001 Tax Act increased the applicable exclusion amount for gift tax purposes to \$1 million



through 2010. The applicable exclusion amount for estate tax purposes gradually increased over the years until it reached \$3.5 million in 2009. The 2010 Tax Act repealed the estate tax for 2010 and taxpayers received a carryover income tax basis in the property transferred at death, or taxpayers could elect to pay the estate tax and get the step-up in basis.

The 2010 Tax Act also re-unified the gift and estate tax and increased the applicable exclusion amount to \$5,120,000 in 2012. The top gift and estate tax rate was 35 percent in 2012. The 2012 Tax Act increased the applicable exclusion amount to \$5,490,000 in 2017 and the top gift and estate tax rate to 40 percent in 2013 and later. The Tax Cuts and Jobs Act, signed into law in December 2017, doubled the gift and estate tax exclusion amount and increased the gift and estate tax exemption to \$11,180,000 in 2018.

## The Current Federal Gift and Estate Tax

In 2023, the gift and estate tax exemption—also known as the *unified credit*—is \$12,920,000, up from \$12,060,000 in 2022. After 2025, the gift and estate tax exemption rate and gift and estate tax exclusion amounts are both scheduled to revert to pre-2018 levels, cutting the amount in half to roughly \$6 million.

However, many transfers can still be made gift-tax free, including:

- Gifts to your U.S. citizen spouse
- Gifts up to \$175,000 to a noncitizen spouse
- Gifts to qualified charities
- Gifts totaling up to \$17,000 to any one person or entity during the tax year, or \$34,000 if the gift is made by both you and your spouse and you are both U.S. citizens
- Amounts paid on behalf of any individual as tuition to an educational organization, or to any person who provides medical care for an individual

## Federal Generation-Skipping Transfer Tax

The federal generation-skipping transfer tax imposes tax on transfers of property you make during life or at death to someone who is two or more generations behind you, such as a grandchild. It is important to note that the GST tax is imposed in addition to, not instead of, federal gift and estate tax.

You will need to be aware of the GST tax if you make cumulative generation-skipping transfers in excess of the GST tax exemption of \$12,920,000 in 2023. A flat tax equal to the highest estate tax bracket in effect in the year you make the transfer (40 percent in 2021 and 2022) is imposed on every transfer you make after your exemption has been exhausted.

## State Transfer Taxes

Currently, some states impose a gift tax, and others impose a generation-skipping transfer tax. Some



states also impose a separate death tax, which could be in the form of estate tax, inheritance tax, or credit estate tax (also known as a *sponge tax* or *pickup tax*). Contact an attorney or your state's department of revenue to find out more information.

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