



SLATs Provide Tax Savings and Leveraged Gifting Now That May Go Away Soon After the Election

With the election right around the corner, now is the time to understand what tax changes may occur and what can be done to take advantage of the current rules. One such planning strategy is a spousal lifetime access trust (SLAT). A SLAT is an important tool for married couples with estate assets generally in excess of \$20 million who are seeking tax savings now that may not be available in the future. Depending on the results of the November election, a potential reduction in the gift and estate tax exemption could substantially increase the federal taxes that are owed. Individuals and families should speak with their advisors as soon as possible to weigh the pros and cons of an estate planning strategy that utilizes SLATs.

Very often when there is a change from a Republican to a Democratic administration, estate and gift tax exemptions as well as tax rates become a political football. The estate and gift tax exemptions are currently \$11.58 million for each taxpayer and this amount is subject to yearly inflationary adjustments. These thresholds were established by the Tax Cuts and Jobs Act, which was signed into law under the current administration in 2017. This means an individual can currently make gifts of property or cash to others valued at or up to \$11.58 million over his or her lifetime without paying federal gift taxes. For purposes of federal estate taxes, this means an individual may currently have an estate of up to \$11.58 million without paying federal estate taxes at death. It should be noted that if the exemption amount is used with gifts, the estate tax exemption is reduced dollar for dollar and only the balance, if any, of the exemption is available to reduce estate taxes. Estates and gifts over the exemption amount are currently taxed at a federal rate of 40 percent.

Estate and gift tax exemptions are subject to attack on two fronts. First, the exemptions are slated to sunset on January 1, 2026, meaning the exemptions will return to around \$5 million, adjusted for

inflation; and second, in the event the Democrats take control of the White House and Senate, they could reduce the exemptions more drastically and sooner than 2026 or increase the tax rate. For instance, a recent proposal by Senator Bernie Sanders advocated for a reduction of the exemption to \$3.5 million. Other proposals are even more extreme, advocating for a reduction of the exemption amount to just \$1 million. Despite these potential drastic changes, establishing a SLAT now provides a defense from both potential attacks while still allowing access to assets and the added benefit of tax-free appreciation.

Most gifting strategies require the taxpayer to give assets away with no strings attached. Couples with assets valued from \$20 million to and as high as \$75 million typically are reluctant to give away \$10 million or \$20 million in case they someday need the gifted assets. A SLAT, coupled with the purchase of some life insurance, may provide the best of both worlds: a completed gift, removal of trust assets from a couple's gross estate, and a tax-favored leveraged death benefit, all while allowing a beneficiary spouse the flexibility of retaining access to trust investment values if needed in the future.

A SLAT allows one spouse to gift assets to the trust for the benefit of the other spouse or their dependents. This transfer to the SLAT removes the gifted assets from the estates of both spouses and depending on how the trust is structured, from the estates of the dependents. Further, SLATs are typically grantor trusts, meaning that the transferor-spouse is responsible for paying income taxes associated with the SLAT. This provides the transferor-spouse the option to pay the income taxes associated with the SLAT's investments without the government treating the payments as an additional gift. Generation-skipping transfer tax planning can also be included in a SLAT.

In short, a SLAT allows for the avoidance of probate, avoidance of estate taxes, the transfer of tax-free appreciation, ability to own policies and pay life insurance premiums, and asset protection while still allowing some access to the assets in the trust.

Because any assets transferred to the SLAT are removed from the transferor-spouse's estate, the spouse's estate, and possibly the estates of their children, the assets will not be subject to probate and will not trigger estate taxes upon the death of either spouse or upon the death of the children even if the assets have appreciated in value. Any assets transferred to the SLAT are well protected from claims of creditors of the spouses and other SLAT beneficiaries. In addition to all of these benefits, the transferor-spouse does not lose all access to the assets because he or she can still indirectly benefit from the use of trust assets through the other spouse. As mentioned above, a SLAT is also an excellent way to own life insurance that could leverage the benefits.

If you think a SLAT may benefit you, you should start speaking with your advisor now, as some believe tax law changes may be retroactively enacted to January 1, 2021. Although there are many benefits to utilizing a SLAT, the best option for you will depend on your specific situation. Although we cannot predict the future of the estate and gift tax exemptions, one thing is certain: uncertainty. Planning now with a SLAT can help you take advantage of current exemptions while hedging against future reductions.