

The Results of the 2020 Election Could Affect the Estate and Gift Tax Laws

Between now and November 3, we will vote in the next Presidential election. The outcome could result in a sharp decline in the amount of the federal estate and gift tax exemption (the “Exemption”).

The Exemption represents the aggregate amount an individual can give away during lifetime or at death without the imposition of gift or estate tax. Currently, the Exemption is at an all-time high of \$11.58 million (\$23.16 million for married couples). Under existing law, the Exemption sunsets on December 31, 2025, after which it will revert to \$5 million, adjusted for inflation.

If the upcoming election results in a change in control of both the Senate and the White House, Congress could reduce the Exemption before 2026. Here are some things you should know:

- Some recent proposals reduce the exemption back to \$5 million (or \$10 million for a married couple), or even as low as \$3.5 million (or \$7 million for a married couple).
- It is possible that Congress could make these changes retroactively, so that legislation passed next year would be effective as of January 1, 2021.
- Even if there is no change in the White House or Congress, or a new administration does not change the current gift and estate tax laws, the current \$11.58 million exemption will expire in 2026, by law.

To make effective use of the current high Exemption, you must use your “bonus exemption.” The bonus exemption is the difference between the current Exemption of \$11.58 million and whatever the new Exemption might be. Although we do not know the exact amount of the bonus exemption (because we do not yet know the amount of the potentially reduced Exemption), we do know that if the Exemption is reduced effective January 1, 2021, you must use the bonus exemption prior to that time or you will lose it.

In order to take advantage of the bonus exemption, in whole or in part, you must first use all of your base exemption (the amount to which the Exemption is reduced). In other words, if the exemption is reduced to \$5 million effective January 1, 2021, you must give away more than \$5 million, inclusive of all prior taxable gifts, before January 1, 2021 to capture any of the bonus exemption. As an example, if you give away \$5 million now, and the exemption reverts to \$5 million, you will lose all of the bonus exemption. If, however, you give away \$8 million before midnight December 31, 2020, and the Exemption reverts to \$5 million, you will have captured \$3 million of the bonus exemption. To use it, and not lose it, you will need to gift more than the potentially reduced exemption, before such reduction goes into effect.

For those with large taxable estates, planning for use of bonus exemption should be considered, and the time for planning is now.

Of course, there are many things to consider before making irrevocable gifts of your assets. **The most important consideration should be your current standard of living. Substantial giving should only occur if you have sufficient assets to give away and both maintain**

the standard of living to which you have become accustomed and provide for extenuating circumstances such as illness or market fluctuations.

There are many options for making use of your bonus exemption, which we can tailor to your unique circumstances. If you are interested in discussing your options for taking advantage of the current higher Exemption or have questions about how the potential change could impact your estate plan, please contact us as soon as possible. If you are interested in gifting hard-to-value assets, such as real property or interests in closely held entities, it is especially important to start the process right away, as a valuation will be necessary, and this could take some time.

To discuss your individual circumstances, please reach out to your Hahn Loeser attorney, or contact one of the firm's Trusts and Estates counsel listed below.

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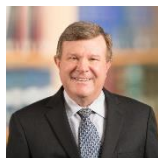
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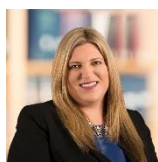
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