

# Disappearing Act: What You Need to Know About the Estate and Gift Tax Provisions of the House Ways and Means Committee Tax Proposals

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On September 13, 2021, the House Ways and Means committee released its proposals to raise revenue, including increases to individual, trust and corporate income taxes, changes to retirement plan contributions and distributions, and changes to the estate and gift tax laws. We will continue to monitor this legislation and will provide relevant updates, but wanted to highlight the proposed estate and gift tax changes that may be most crucial to your immediate planning.

Good news first: There is no proposed change to the current system of adjusting the cost basis of property owned at death to the value of the property on the day of death (commonly referred to as basis step-up). This adjustment is useful in eliminating capital gains on the sale of assets held until death. For all who were worried about losing that advantage, we believe we have our answer.

Now for the not so good news: According to the proposals, the unified gift and estate tax exemption (currently \$11,700,000) will be cut in half. Those individuals with estates in excess of \$6 million (or couples with estates in excess of \$12 million) will face significant estate tax due upon death as a result of this reduction. In addition, the proposed legislation includes changes to the taxation of certain irrevocable trusts on death, which if passed would eliminate the effectiveness of some very common advanced planning techniques and for some create tax they did not anticipate. Both of these potential changes require immediate attention.

### **Disappearing Estate/Gift Tax Exemption**

Amounts passing to a spouse or charity during life or at death are and will continue to be free of gift/estate tax. But for all other transfers, the amount that can pass free of federal estate and gift tax is limited by the federal estate/gift tax exemption. This is currently \$11,700,000 per person and was scheduled to be reduced January 1, 2026. Under the proposal, the current exemption of \$11,700,000 will be reduced on **January 1, 2022** to an exemption that, after adjustment for inflation, will be approximately \$6 million. If the proposals are enacted, those wishing to maximize the benefit of the current available exemption levels would need to act before January 1, 2022. Specifically, this means clients who can afford to gift assets in excess of \$6 million now, and who desire to avoid or reduce the estate tax that will be due at death, should do so this year. If you fall into this category, and if you have been considering a large gift, time may be running out to utilize the current high exemptions.

### **Disappearing Trust Techniques**

One very common and useful technique to utilize exemption and maximize growth of the gifted assets has been to gift assets into irrevocable trusts called "grantor trusts". These trusts allow the grantor to remove assets from his or her estate by gifting them into irrevocable trusts for the benefit of a spouse, children, or others. In addition, the grantor retains the income tax liability on the gifted assets during his or her lifetime, which allows the trust assets to grow unreduced by the payment of taxes and thereby maximizes the value of the assets transferred. Common examples of these types of trusts include SLATs, IDGTs, GRATs, ILITs, and QPRTs. Under the proposal, assets held in grantor trusts created after the effective date would be includable in the grantor's estate, making these trusts ineffective techniques for utilizing exemptions. If you have been considering establishing one of these trusts, now may be the time.

### **Taxation on Contributions to Existing Irrevocable Trusts**

In addition to taking these techniques off the table moving forward, the proposal also creates concern for some clients who have already created an **irrevocable grantor trust**. This is not an issue that affects the revocable trust that you may have created as part of your estate plan, but a trust that is irrevocable into which you intend to make gifts/contributions after January 1, 2022. While the proposals related to grantor trusts outlined above affect trusts created after the date of enactment of the future legislation, they also affect future contributions to existing irrevocable trusts. If you have created an irrevocable insurance trust and continue to pay premiums due on the insurance policies owned by the trust, or if you have created an irrevocable gift trust and plan to make future gifts to that trust, the trust should be reviewed before legislation is enacted to make sure that the proposals will not affect the taxation of that trust.

Please contact your von Briesen Estate Planning Attorney if you would like to take advantage of the higher exemptions or current grantor trust techniques before they disappear. Please also contact us if you have created an irrevocable trust into which you plan to make future contributions

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