von Briesen
von Briesen & Roper, s.c. | Attorneys at Law

Time to Turn Off the Cruise Control: Advanced Planning Considerations When Exemptions Are High

Jul 14 2025

Posted By: Megan L.W. Jerabek

Practice Area: Tax & Trusts and Estates & Estate Planning & Estate and Trust Administration

When estate and gift tax exemptions are high, clients may feel it's time to take their foot off the gas when it comes to their estate planning. In fact, these are perfect times to turn your attention to the non-tax portions of your planning to ensure that special assets and unique family circumstances are planned for properly. Business interests, family cabins or farms are just a few of the assets that require specific planning. It's also important for clients to consider how best to structure the inheritance for their descendants and other beneficiaries, as continuing trust planning for beneficiaries can provide important creditor and divorce protection in addition to the tax planning benefits. Long-term care planning is also a topic of concern for many, especially in times of economic instability. A well drafted estate plan should provide a comprehensive solution to your planning needs and now is a great time to dive deeper into these non-tax concepts to ensure your plan is complete.

Special Asset Planning

Business Interests

It is essential that business owners specifically address the succession of their businesses as part of their estate planning in order to ensure a smooth transition of ownership and management in the event of incapacity or death. Doing so will prevent unnecessary disruptions to the company's operations and allow you to define the process of transition for your chosen beneficiaries or successors in a way that stays true to the culture and values your company was built on.

Often the first step is to dust off that old operating or buy-sell agreement to refamiliarize yourself with the plan you put in place when you first began. It is not uncommon for these agreements to become outdated, either in the plan of distribution or the valuation method used to determine a redemption or purchase price at death, so revisiting and potentially revising the terms to bring them more in line with your current state of affairs is a vital step to ensuring a smooth transition at death. The terms of your operating agreement or buy-sell should be specifically considered by your estate planner when drafting your estate plan. If you did not provide your planner with a copy of these agreements at the time of the plan, you should consider setting up a follow-up meeting to specifically address how these agreements impact your planning. This is especially important in marital property states like Wisconsin, as the non-member/ shareholder spouse's death may have an impact on the ownership of the company at first death that should be carefully planned for.

Family Cabins/Farms

Joint ownership of real estate between non-spouses (i.e. siblings or cousins) requires careful consideration and often specific planning, especially if planning for a family farm or cabin that has both economic and sentimental value to the family. This type of real estate is often a treasured asset, but it comes with expenses and responsibilities that can cause stress and disagreement among owners if not planned for correctly. Creating real estate LLCs during your lifetime afford you the opportunity to turn over these assets in a structure that can help joint owners navigate co-ownership more effectively. Operating agreements for these entities can address how expenses are paid, how use is determined, what happens if an owner wants out of ownership, and how the property will transfer to future generations in a way that is both structured and flexible for the next generation of owners. Allocation rights, continuing trust planning, and other techniques can also be incorporated in your estate plan to help address ownership and management of these assets moving forward.

Protective Trust Planning

A common issue raised during the estate planning process is how best to keep assets out of reach of the creditors of your children, grandchildren and other beneficiaries. Often the answer is to incorporate lifetime trust planning into your estate plan, so that the inherited assets remain better protected during the lifetime of the beneficiary. A protective trust for a beneficiary, such as a child or grandchild, can be included within a joint revocable trust plan for spouses, within a revocable trust for an individual or as a standalone irrevocable trust for the benefit of your beneficiary.

While protective trusts were traditionally used for beneficiaries who could not or should not, for one reason or another, manage the inherited assets on their own, lifetime trusts are now commonly used to protect inheritance from the actions of third parties rather than the actions of the beneficiaries themselves. In most situations, while assets remain in a lifetime trust they are protected from the claims of the beneficiary's creditors and they are often insulated from division on the beneficiary's divorce or separation—both of which are important benefits to consider when determining how to structure inheritance even for the most trustworthy of beneficiaries.

In addition, with high estate tax and generation-skipping transfer tax exemptions, lifetime trusts also provide a way to further minimize estate and generation-skipping taxes as assets are passed down through generations. Specifically, lifetime trusts to which estate and generation-skipping transfer tax exemptions are allocated at death can remain outside of the taxable estates of the beneficiaries and pass to future generations in a tax efficient manner. For example, though federal estate tax exemptions are currently very high, and Wisconsin imposes no estate tax, we can't know what the state estate tax exemption may be in the state in which a child may live at his or her death, nor can we know the federal tax rates and exemptions at the death of a child. Allowing property that is remaining in a child's trust to move to the next generation without federal or state estate tax may create significant tax savings for grandchildren. Given the tax and non-tax benefits to this type of planning, it is a topic most clients should add to their next estate planning meeting agenda.

Long Term Care Considerations

Another form of advanced planning includes specialized planning for clients who are concerned with imminent or future long-term care costs. In certain situations, utilizing strategies like irrevocable trusts, special needs trusts, and strategic gifts can allow an individual to shield certain assets from spend down requirements and provide creditor protection. Certain steps can also be taken by the spouse of a person in need of long-term care to ensure that they retain sufficient assets to care for themselves, such as creating income through Medicaid-compliant annuity planning, re-titling of assets, and creatively designating other assets. This planning can both be accomplished in the "pre-planning" stage, when there are no imminent long-term health concerns (generally five years prior to an individual needing long-term care), or in the "crisis" stage, when the individual or loved one is already receiving or going to be receiving long term care services imminently. This can be an overwhelming and stressful situation for both parties, as they are often facing difficult decisions and evaluating their finances in a way that is new to them. Furthermore, the preferred technique and timing depends greatly on the totality of the client's circumstances and goals. In light of this, it is important to work with an experienced planner who specializes in this area of law and who is able to evaluate the client's current estate and planning goals in order to discuss how the current Medicaid eligibility rules apply to their unique situation.

Estate and Gift Tax Exclusions and Exemptions

2025 Annual Gift Tax Exclusion. The amount that can be transferred annually to any individual without gift tax consequence has been raised from $18,000 to $19,000 for gifts made in 2025. Remember, this is the gift tax annual exclusion for *present interest gifts* only. The exclusion will not apply to a gift of a future interest, so only outright gifts or gifts to certain types of trusts qualify for the exclusion. Be sure to give us a call if you have questions.

Estate/Gift Tax Exemption. The value of property that can be transferred by gift or at death without tax (the "lifetime exemption") is adjusted annually for inflation. After the inflation adjustment, the lifetime exemption for an individual for gifts made during 2025 or deaths occurring in 2025 is $13,990,000. Married couples can assume each other's unused exemption at the death of the first of them, so that a married couple can effectively transfer nearly $28 million without gift or estate tax. Transfers to spouses and charities continue to be free of tax (and will not use your lifetime exemption) as long as the transfers qualify for the gift or estate tax marital or charitable deduction.

The Future of the Estate and Gift Tax. The increased exemption was scheduled to expire on December 31, 2025, and revert to the levels before the Tax Cuts and Jobs Act. **On July 3, the House and Senate passed legislation that included a "permanent" increase to the federal estate tax exemption and in fact set that exemption for 2026 at $15,000,000 for a single taxpayer or $30,000,000 for a married couple, with an annual adjustment for inflation. Keep in mind, however, that "permanent" is only until the next legislature decides to change it.**

Please contact a von Briesen Trusts & Estates Attorney who will help you determine your objectives and create or update your estate plan to best meet your needs

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.