Here Comes the Sun(set of the TCJA): Taking Advantage of the 2025 Exclusion Amounts

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The 2017 Tax Cuts and Jobs Act (the "TCJA") brought significant changes to the federal estate and gift tax laws, marking a pivotal shift in the landscape of estate planning and wealth transfer. Enacted on December 22, 2017, during President Trump's first administration, the TCJA aimed to stimulate economic growth through various tax reforms, including substantial increases to the basic exclusion amount for federal estate and gift taxes.

Over the past seven years, the TCJA's changes have become the expectation for high-net-worth individuals/families and their advisors alike. Without legislative intervention, however, the TCJA will expire at the end of 2025. Now that President Trump's second term is underway, many are hopeful the TCJA's favorable estate and gift taxing rules will be extended. Nevertheless, with nine months left in 2025, whether the TCJA will be saved remains uncertain.

Specific Changes to the Estate and Gift Tax Exclusion Amount under the TCJA

Prior to the TCJA, the exclusion amount for an individual in 2017 was $5.49 million per individual or $10.98 million for married couples. The exclusion amount was effectively doubled under the TCJA. In the TCJA's first year, 2018, the basic exclusion amount for an individual was set at $11.18 million and continued to grow with yearly adjustments for inflation. As of 2025, the exclusion amount for an individual has reached $13.99 million or $27.98 million for married couples.

The Sunset

The TCJA stipulates that the increased estate and gift tax exclusions will expire at the end of 2025 and revert to pre-2018 levels ("Sunset"), without action by Congress. If the TCJA is allowed

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to Sunset, the exclusion amount for 2026 will revert back to the pre-2018 level of $5 million, adjusted for inflation, which is estimated to be half of the 2025 level at approximately $7 million for an individual or $14 million for a married couple.

The impending Sunset creates uncertainty for individuals and families who have structured their estate plans based on the current exclusion amount. As the federal estate tax rate is as high as 40%, the consequences of the drastic reduction following the Sunset could result in millions of dollars of estate tax liability for those with estates exceeding the exclusion amounts without proper planning.

Avoiding the Sunset and General Recommendations

Prudent individuals and families with multimillion dollar estates should consider capitalizing on the current exclusion amount before the Sunset. Based on the TCJA's language, the exclusion amount may be applied to gifts made during life in addition to, or in combination with, those made at death. The IRS has also clarified in final regulations issued late in 2019 that gifts made prior to the Sunset will be given full effect despite a lower exclusion amount at the time of the taxpayer's passing. In other words, individuals may take advantage of the full $13.99 million exclusion amount currently available before the Sunset without future adverse tax consequences from a reduced exclusion amount.

Fortunately, despite the impending Sunset, the full exclusion amount can still be used to reduce future estate tax liability without relying on a well-timed demise in 2025.

Regardless of whether the TCJA is saved by legislation, a pragmatic first step for those with estates in excess of the exclusion amount or the anticipated exclusion amount after Sunset should be to consult with an estate planning attorney to evaluate their options. An estate planning attorney should review your current estate plan (and your spouse's, if applicable) and recommend optimal solutions to leverage your exclusion amount (and your spouse's exclusion, if applicable) before the Sunset.

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There are many strategies available depending upon your, or your family's, situation. Typical strategies that could aid in capitalizing on the current exclusion amount before the TCJA Sunset include:

- **Irrevocable Gift Trusts:** A primary method of capitalizing on the current exclusion amount is establishing an irrevocable trust for the benefit of someone other than yourself. Irrevocable gift trusts can be used to gift assets to children, family members, or a spouse (known as a spousal lifetime access trust or "SLAT"). A gift made to an irrevocable gift trust during your lifetime can result in an immediate reduction in your overall taxable estate and thereby captures the exclusion amount available before the potential Sunset.
- **Charitable Donations:** Gifting assets to one or more charitable organizations in trust, or otherwise, can be used to obtain a charitable deduction and thus decrease the amount of your estate subject to tax.
- **Grantor Retained Annuity Trusts:** For individuals or families holding assets anticipated to increase in value, a grantor retained annuity trust ("GRAT") can be a useful strategy to move assets out of an individual's taxable estate while limiting exposure to estate taxes on the appreciation in value of the assets transferred to a GRAT. GRATs can also be used to capture all, or part, of the exclusion amount available.
- **Irrevocable Life Insurance Trusts:** If the value of your estate is comprised primarily of real estate, business interests or other illiquid assets, an irrevocable life insurance trust (known as an "ILIT") may be a good option for your estate plan. An ILIT can provide liquidity to purchase assets from an estate in the form of insurance death benefits. A properly structured ILIT can immediately remove the value of life insurance proceeds from one's estate.

The above strategies are not an exhaustive list of all potential avenues available to take advantage of the current exclusion amount but may serve as a starting point for discussions with your estate planning attorney and financial advisors.

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If you are interest in making the most of the current estate and gift tax exclusion amount before the Sunset, please contact the author of this article or any attorney with Frost Brown Todd's Private Client and Wealth Planning Group. You can also visit our Tax Law Defined® Blog for more insight into the latest developments in federal, state and local tax planning and tax administration.

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