

McGuireWoods

# *Legacy Planning, Once Removed*

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## **Once Removed: How to Plan for “Sunset 2025” and a Possible Repeal of Estate Tax**

### **Episode 43 Summary**

The One Big Beautiful Bill Act being considered by Congress serves as a reminder of the uncertainty of tax law. Although tax law should not be the only consideration in an estate and legacy plan, clients should adopt such plans with tax issues in mind — which is difficult because tax laws often change. In a recent episode, “Countdown to Sunset 2025: Planning in the Face of Scheduled Changes in the Law,” Steve reviewed the possibility that estate and gift tax exclusions could “sunset” at the end of 2025 and how that could impact a client’s planning.

In addition to the One Big Beautiful Bill Act, there is another proposed bill that would repeal the entire estate tax. Although repeal seems unlikely, this bill shows what it could look like. Estate tax repeal is a possibility clients should consider, if for no other reason than to illuminate the role of tax considerations in decisions about estate and legacy planning.

In this episode, Steve discusses the state of the potential “sunset” and reviews the proposed bill that would repeal the estate tax. This episode explores the proposals and how clients can approach their planning in light of uncertainty.

### **Transcript:**

**(0:00):**

Hello and welcome. I'm Steve Murphy, a trust and estates attorney with McGuireWoods, LLP. And this is Legacy Planning, Once Removed – my podcast on trusts, legacy, family, taxes and everything else on my clients' minds.

For those of you who are returning, welcome back. And for those of you who are new to the podcast, again, welcome.

You'll find that this podcast is about more than just estate planning and about more than just taxes.

This is about legacy planning. This is about your legacy; how you affect others and how they affect you.

And we often have a tagline here. We say: Walk like you leave footprints.

Now all that said, this is an episode on taxes, which is an important part of the estate planning process. I try to make these episodes evergreen, so that clients can go back and listen to them months or years later and still find them helpful.

And I promise this episode will be evergreen. This will be helpful no matter the state of the law in the future.

But as I record this, this is May 2025, and there's been some proposed legislation.

This episode is about what would estate planning look like if there were no estate tax.

What would estate planning look like if this proposed bill to repeal the estate tax or actually passed?

As I'm recording this, the law is in flux, but if you've been listening to this podcast, you'll realize that seems like the law is always in flux and that's part of what we do here with the planning process to help our clients navigate these issues in the face of potentially changing laws.

**(01:55):**

Now for a full discussion of this concept of sunset, I'd refer you back to episode 30, but just by way of review, right now, each individual has an estate tax exclusion of an amount they can pass during life and upon death to essentially any individual free of any estate tax or free of any gift tax during life.

And that amount is \$10 million indexed for inflation.

So, it's currently \$13.99 million here in 2025.

However, at the end of 2025, that higher exclusion amount is scheduled to sunset. That is scheduled to go back to the prior law where each individual, each US citizen or resident had only \$5 million of a state tax exclusion index for inflation.

So, a lot of clients are struggling with this. They're in this position where if a new law is not passed, then in 2026 they'll have a lot less estate tax exclusion to work with.

Now also as I record this, the Republican party is in control of the Senate and the House of Representatives and President Trump is in the White House.

So, it seems like Republicans are going to make it a priority to keep that exclusion high.

But there is the potential that that higher exclusion will sunset at the end of 2025.

But recently another issue has come into the fray. Another example of how these laws are in flux.

There has been a proposal to repeal the estate tax altogether.

**(03:33):**

Now first let me say, it seems unlikely that that bill to repeal the estate tax would pass. This bill to repeal the estate tax, or a version of it is introduced almost every year by certain representatives or senators.

But given the Republican control of Congress and the White House, some individuals are wondering maybe there's more likelihood of that getting some traction this year.

It's a particular bill proposed in both the House and the Senate and it's got some additional credibility because one of the sponsors in the Senate is John Thune, a Republican from South Dakota, who is the Senate majority leader.

And he was co-sponsored by his colleague from just north of him, from north in North Dakota, Kevin Kramer.

Now these proposed bills in the house and the Senate would permanently repeal the estate tax.

Now when I give speeches on these issues, I make air quotes when I say, "Permanently repeal the estate tax."

What I mean by that is this proposed law would not have a sunset provision in it.

So, if it repealed the estate tax, the estate tax would stay repealed until Congress acted to maybe reinstate it.

This law would also "permanently repeal the generation skipping transfer tax."

Something I've talked a lot about in other episodes. This law would leave in place the gift tax subject to a \$10 million exclusion amount indexed for inflation and there's no reference to any changes in capital gains tax treatment upon death.

Before we take a few minutes to discuss this bill in more detail, let me remind you of three important elements.

**(05:25):**

First, the estate and gift tax exclusion.

I've already mentioned that under current law, US citizens and residents are able to pass a specific amount during life and upon death to others without triggering any gift or estate tax.

That's that estate and gift tax exclusion I mentioned at the beginning of this episode.

So, there is currently a federal estate tax, but there also is currently a federal gift tax.

This would impose transfer tax on transfers made during life.

Secondly, there is a concept called the step up in basis upon death.

This is an important tax benefit where if an individual holds certain assets upon death and if those assets are included in their estate for estate tax purposes, then whether or not those assets trigger a state tax, all the capital gain incurred before that individual's death is essentially forgiven.

The basis of those assets is what we call stepped up to the value as of that individual's date of death.

So, a tremendous tax benefit for certain assets with built-in capital gain that are still held by and in the control of an individual upon his or her death.

So, with all that as background, let's think for a moment, what if the estate tax were actually repealed?

What if this bill co-sponsored by John Thune were actually enacted?

**(06:58):**

Again, that might be unlikely that it would be enacted, but let's think about that.

If that bill were enacted in 2026, and there were no if estate tax in 2026, some people wonder: if this bill were enacted and there were no estate tax—let's say in 2026 —how would that affect estate planning?

Well, let me caution you about one way that this would not change estate planning.

Recall that under this bill as it's proposed, there would still be a gift tax.

So, an individual probably would not be well served to go out and make huge gifts trying to leave all the assets outside of their estate for estate tax purposes.

If there were no estate tax on—maybe on the assumption that if the estate tax is put back in place—then all these assets are already outside of their estate because remember under these proposals there would still be a gift tax, there would still be a limit of how much can be transferred during life.

But let's also think about how this proposal might affect what decisions individuals are making now.

Back in episode 30, I talked about some potential plans that people could put in place in light of this potential sunset of the estate tax exclusion at the end of this year.

**(08:20):**

Maybe they could make a large gift to use that exclusion while it's at the at that high watermark.

Well, but think about that client.

If that client gives away assets, assuming that it would otherwise trigger estate tax of death, and then suddenly it turns out that the estate taxes repealed, well, they might have maybe in their minds given away that property for nothing.

Here in this podcast, we talk about how transfers for tax purposes affect the owner's control over those assets, and we break that down into three different categories.

Making a transfer often means the donor has to give up access to that property. They typically cannot be a beneficiary of those assets.

Typically, the donor has to give up control of those assets. They typically can't be trustee of those assets.

And third, the donor typically has to give up flexibility of those assets they usually can't control who benefits from those assets during life or upon death.

So, my concern about this proposal of repealing the estate tax is it might put clients in difficult situation.

On the one hand, they might still feel that pressure to make a gift in light of the sunset at the end of 2025.

**(09:38):**

On the other hand, in the admittedly unlikely event that the estate taxes repealed, they might feel like they made that transfer for nothing, or they made that transfer to save the state tax, which based on new law might not exist.

So where does that leave us?

And maybe that comes back to how we like to end these episodes, which is with a thought experiment.

With a thought exercise, maybe think again about this issue of how taxes play a role in your own estate plan.

When you think about your desire to transfer assets to individuals during life or upon death, how much does tax efficiency play into that?

To what extent are you willing to maybe give up more access controlled or flexibility if it might result in tax savings?

Because here in 2025 with the planned sunset on the one hand and the proposed repeal of the estate tax on the other hand and in the middle, any number of potential new legislation maybe that could extend this high estate tax exclusion, we're here in this situation of uncertainty of that variable of tax.

And what I'd want my clients to all do is make sure that they're very clear in their minds so that if they make a transfer and the law changes, they still feel comfortable with that transfer.

Or at the very least, they feel like they made the decision based on all the available evidence and analysis at the time.

As we often say in this podcast, tax laws and other laws can and do change over time.

I'm Steve Murphy and this has been Legacy Planning, Once Removed my podcast on thoughtful estate planning

I'll see you next time. And in the meantime: Walk like you leave footprints.