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Legacy Planning, Once Removed

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Once Removed: Planning in the Face of Uncertainty of Tax Law: The One Big Beautiful Bill Act

Episode 44 Summary

Tax laws seem to regularly change, and clients face estate and tax planning challenges in the face of that uncertainty. For the last few years, estate and tax planners had one issue in mind: the scheduled “sunset” of the high estate, gift and generation-skipping transfer tax exemptions at the end of 2025. But the Trump administration’s One Big Beautiful Bill Act proposes to keep the exemptions high.

It remains to be seen whether this bill will pass, and whether its terms will be “permanent” or subject to another “sunset” that will leave taxpayers uncertain years from now. This episode explores the terms of the bill and offers suggestions on how to plan in the face of this proposed legislation — and other uncertainties in tax law.

Transcript:

(0:00):

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

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

From the title of this podcast, you can see that this is about legacy planning. But you'll soon find that this podcast is about more than just estate planning, more than just drafting a last will and testament.

This is about legacy planning, broadly speaking, and it's about that mindset of your legacy.

We like to think about how you affect others and how they affect you.

And with that in mind, we like to think about how to structure an estate plan and how to take other actions to create and solidify this legacy both during life and after your passing.

And because we think so much about this kind of legacy, we have a tagline here.

We say: Walk like you leave footprints.

So again, on this podcast we talk about a lot more than just taxes, but today this is another episode about taxes and that makes sense because taxes are on a lot of people's minds these days.

Right now, it's June 2025, and we are sifting through the proposed legislation called the One Big Beautiful Bill Act that is supported by the Trump administration.

But I try to make these episodes evergreen, so they're relevant no matter the state of the law.

So, in this episode we'll talk about the current state of proposed legislation, but as you'll see, this episode can also be helpful to revisit at any time in the future that you're wondering about potential changes in the law.

(02:08):

So, as a reminder, under current tax law, each individual citizen and resident has an amount they can pass free of estate and gift tax during life and upon death.

And that amount is reduced by the amount of taxable gifts made by that person.

That total starting amount right now is \$10 million indexed for inflation.

So as of 2025, that's \$13.99 million per person.

As I remind my students, that's obviously a lot of money. But also under current law, that is if no new tax legislation is passed, this lifetime gift and estate tax exemption is scheduled to go down as of January 1, 2026.

In 2026, the exemption is scheduled to be reduced to \$5 million index for inflation.

By the way, there are various other provisions of the current tax law that are also scheduled to sunset at the end of this year.

But for this episode, I'm focused on the estate gift and generation skipping transfer tax exemption.

So, in light of this schedule change, a lot of clients are feeling some time pressure perhaps to make gifts to use this estate and gift tax exemption at its high watermark before the scheduled reduction at the end of 2025.

I still get calls and emails from clients and advisors who are wondering about this sunset.

Some people are really worried about this and they call it the estate tax cliff.

But ever since the 2024 election, I've cautioned clients that although nothing is certain, it's a good working hypothesis that the Republicans will try to extend the currently high estate and gift tax exemption.

(04:00):

So, it's a good working hypothesis that there will be no sunset or as some people put it, there will be no cliff and that we'll just keep riding off.

I don't know—across the plateau, not off into the sunset, but in extended daylight. I don't know. I'm running out of metaphors here. Send me a note if you've got a good one for how to talk about this lack of a sunset.

Now again, there remains a lot of uncertainty here.

I talked about some other proposed bills that might actually repeal the estate tax but leave the gift tax in place.

That was in episode 43, *How to Plan for Sunset 2025 and a Possible Repeal of Estate Tax*.

And before the election, when there was even more uncertainty, I talked about this concept of the sunset, and that was in episode 30, *Countdown to Sunset 2025, Planning in the Face of Scheduled Changes in the Law*.

But based on the Trump administration's proposed One Big Beautiful Bill Act, which is a budget reconciliation bill that is making its way through Congress.

The estate tax exemption would be slightly increased in 2026 to be \$15 million index for inflation.

As you can see, that \$15 million is basically the same as the 2025 amount if it keeps getting indexed for inflation.

And under this proposed bill, this change would be permanent, meaning that there is no automatic sunset to the high exemption.

(05:36):

I you can't see me on video, but in my presentations, I always use air quotes when I talk about permanent legislation because legislation that is permanent can still be changed.

It's just that a permanent bill has no automatic sunset, and a permanent law can only be changed by future legislation.

As you can see, this proposal is pretty similar to what we expected. It was pretty similar to our working hypothesis.

So now that we have the draft One Big Beautiful Bill Act, this working hypothesis is now a working draft—but it remains to be seen.

First, will this bill pass?

Second, will the bill really change the exemption amount?

A lot of people feel confident that the bill will pass in some form and that it will keep the exemption high.

So maybe the important questions are the third and fourth.

Third, when will this bill pass and will it pass in time to give people comfort about steps they should be taking or not taking in 2025.

And fourth, will the bill have a sunset provision like the current law, which will provide that in several years we'll be having this conversation all over again.

(06:55):

Or will the bill be permanent, like the way it's proposed?

And then there's the real question that a lot of clients are asking.

Fifth, what should I do about it? What should I do about all this?

And I actually have an answer to this one, or at least I have a few things to consider.

Keep in mind that in order to make use of that high estate gift tax exemption, you have to make a gift.

And on this podcast, in our various episodes, we talk about these gifts as giving up three important elements: access, control and flexibility.

For the most part, you would have 100% access control and flexibility to your assets right now.

But if you give them a way in a way that makes use of your estate and gift tax exemption, you have to give up access, control and flexibility in a meaningful way.

But then those assets are outside of your estate for estate tax purposes, and those assets wouldn't trigger estate tax at your later death.

So first, given that the One Big Beautiful Bill Act is now a working draft, I don't think that you should feel the particular time pressure of the sunset at the end of 2025.

It doesn't seem like that time pressure should be the main driving force of whether you make a large gift or not, because again, in the seemingly likely scenario that the exemption stays high in 2026, we wouldn't want you to feel like you made that gift for no reason or at least the primary reason doesn't exist anymore.

But second, this is a great time to continue thinking about whether and when you would want to make gifts.

I've mentioned in other episodes that there are other elements of time pressure to make gifts, perhaps making a gift of some assets now that you think will appreciate over time.

So those assets and the appreciation are outside of your estate for estate tax purposes upon your death.

(08:52):

And with that in mind, you might consider evaluating these options and steps you might take now.

And third, keep in mind my questions earlier, we don't know when any bill will be passed, and we don't know whether it will have a sunset provision.

So, as you're having these conversations with your advisors, now is a great time to document those conversations and those decisions.

Maybe create an outline, maybe create a draft, maybe create a flow chart or a letter of wishes.

I talk about letters of wishes on episode 24, so that if you have to return to this in later 2025—if a bill hasn't been passed or years from now in case of another sunset or years from now in case of another change in law—you don't have to start over.

And then also keep in mind that you might want to start and evaluate these kinds of trusts no2. Lots of clients have taken this opportunity to actually put a trust in place and minimally fund it, maybe with some stock or cash with nothing near the full exemption amount and nothing near what the client would regret giving up.

One client had a great term for this.

They called it a starter trust, and I've used that on other episodes.

This exercise forced the client to think about the right structure of access, control and flexibility that they would feel comfortable with like perhaps a spousal lifetime access trust. I talk about that on episode 11. That's still our most popular episode.

(10:25):

Then that client is going to evaluate whether this small trust makes sense and whether the client likes the idea.

And then if they want to fund it more like later in 2025 or in the future, the terms are already in place and it can be funded with no need to open up new investment accounts or sign new trust documents, assuming the client likes those terms as they are.

So, on these episodes, we like to end with a thought exercise.

I've already sort of walked through one for the last few minutes, but this specific thought exercise is pretty simple in light of this proposed bill.

But in light of this potential uncertainty, keep thinking about that estate plan, keep thinking about that legacy plan.

Personally, I'd recommend working on that letter of wishes to solidify your guiding principles of access, control and flexibility for you and your beneficiaries.

But in general, keep working on all of this legacy plan and again, importantly, keep making notes that is, keep leaving footprints this time.

It's actually footprints for yourself as you return to this question later this year or in the future as you're updating your estate plan or in the future as you're staring down yet another change in tax law.

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

Until next time: Walk like you leave footprints.