

Abstract: In 2025, legislation was signed into law that increases the gift and estate tax exemption to \$15 million for 2026, with annual inflation adjustments going forward and no expiration date. This provides more estate planning certainty, but not complete certainty. Lawmakers could still reduce the exemption in the future. This article provides two alternatives for leveraging the high exemption while building some flexibility into an estate plan.

Estate planning for 2026 and beyond

Until recently, much tax uncertainty surrounded estate planning. The Tax Cuts and Jobs Act doubled the federal gift and estate tax exemption to an inflation-adjusted \$10 million, but only for 2018 through 2025. Fortunately for those with larger estates, in 2025, legislation was signed into law that increases the exemption to \$15 million for 2026, with annual inflation adjustments going forward — and no expiration date. This provides more estate planning certainty, but not complete certainty. Lawmakers could still reduce the exemption in the future.

If your estate is large, transferring assets to loved ones or trusts sooner rather than later may be beneficial. It can lock in tax savings should the exemption be reduced in the future.

Building in flexibility

What if you're not currently ready to transfer significant amounts of wealth to the next generation? There are techniques you can use to take advantage of the higher exemption amount while retaining some flexibility to access your wealth. Here are two ways to build flexibility into your estate plan:

Spousal lifetime access trust (SLAT). If you're married, a SLAT can be an effective tool for removing wealth from your estate while retaining access to it. A SLAT is an irrevocable trust, established for the benefit of your children or other heirs, that permits the trustee to make distributions to your spouse if needed, indirectly benefiting you as well.

So long as you don't serve as trustee, the assets will be excluded from your estate and, if the trust is designed properly, from your spouse's estate as well. For this technique to work, you must fund the trust with your separate property, not marital or community property.

Keep in mind that if your spouse dies, you'll lose the safety net provided by a SLAT. To reduce that risk, many couples create two SLATs and name each other as beneficiaries. The arrangement must be planned carefully to avoid running afoul of the "reciprocal trust doctrine," which could cause the arrangement to be unwound and the tax benefits erased.

Special power of appointment trust (SPAT). A SPAT is an irrevocable trust in which you grant a special power of appointment to a spouse or trusted friend. This person has the power to direct the trustee to make distributions to you.

Not only are the trust assets removed from your estate (and shielded from gift taxes by the current exemption), but so long as you're neither a trustee nor a beneficiary, the assets will enjoy protection against creditors' claims.

Balancing tax savings with control

Many other estate planning strategies are available to minimize gift and estate taxes as well as other taxes, such as income taxes, while maintaining your own financial security. Contact us to discuss what's appropriate for your particular situation and goals.

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