

WHY YOU SHOULD SERIOUSLY CONSIDER GIFTING BEFORE 2021

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You may be familiar with some provisions of the 2017 Tax Cuts and Jobs Act (“TCJA”) which dramatically increased the amount U.S. citizens can gift or leave through inheritance (it also reduced individual and corporate income tax rates to the lowest level in decades). The TCJA allows each individual to gift or leave through inheritance \$11,580,000, indexed for inflation, without any gift or estate taxes. The gift and inheritance provisions will sunset on December 31, 2025, unless Congress extends them. On its face, it appears that you have another five years to undertake wealth transfer planning before expiration of the TCJA. But, that may not be true!

Given pressures on the economy due to the pandemic, as well as the potential impact on current tax laws resulting from the upcoming election, you may see changes in the tax laws in 2021 well before the expiration of the TCJA at the end of 2025. Gifting assets now, however, either outright or in trust, while the gift and estate tax exemptions are at historic levels, essentially allows you to “lock in” these high exemption amounts.

Some tax proposals now being floated contemplate a \$4 trillion tax plan that would raise taxes on wealthy taxpayers during life and at death. Many of the proposals could alter estate planning goals that have been in place for years. Some of these proposals include (i) reducing the gift and estate tax exclusion of \$11,580,000 per person to \$5,000,000 per person (\$10,000,000 for a married couple), or lower, (ii) terminating the “step up” in income tax basis of a decedent’s assets, and (iii) taxing the appreciation of a gift above the owner’s adjusted basis.

Should changes in the gift and estate tax laws occur, they may, as in the past, be retroactively applied, which in this case can be as soon as January 1, 2021. Gifting and sophisticated wealth transfer strategies require time to implement, including assessing the pros and cons of gifting during lifetime and obtaining asset appraisals and business valuation reports. Waiting until after the election to consider potential gifting may be too late to complete the gift or other wealth transfer strategies before the end of the year.

Now is the time to review your estate planning goals and consider gifting sooner than later. Keep in mind that, regardless of election results, if you gift before the end of 2020, you will receive the added benefit of reducing the size of your future estate by shifting appreciation to the recipient’s estate. Don’t delay in setting up an appointment with an attorney in our Estate Planning Department, William H. Davis, Jeanette M. Salkin or Hannah A. Shakin, to discuss wealth transfer strategies that make sense for you.