Estate Planning Ideas for Clients in Anticipation of 2026

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What We Know:

Federal 2024 Current Estate & Gift Tax Status

- 2024 unified estate & gift tax exemption: $13,610,000.
    - $27,220,000 million / married couple
    - Increase of $690,000 from 2023
    - Tax is flat 40% over exemption amount
- 2024 Generation Skipping Transfer (GST) tax exemption: $13,610,000
    - A separate and additional flat 40%
- 2024 annual gift exclusion: $18,000/per donee
    - $36,000 / married couple to any individual
- Additional state death tax in certain states (NY, CT, etc.)

Riding into the sunset…

What does the future hold?

- New amounts released by IRS in Rev. Proc. around October/November of every year.
- Adjusted for inflation, thus increasing this year, until…
- **Midnight on December 31, 2025, reduced to pre-2018 numbers $5M indexed for inflation in 2026.**
  - Experts are putting this figure at ~7.2million for January 1, 2026.
  - Unless Congress acts before.
- No “claw back” for gifts made prior to the amount being reduced in 2026.

What can change?

- Exemption Amounts
- Tax Rates for Gift/Estate/GST
- Unification of Gift & Estate Tax
- Allowed Planning Techniques
  - Scary 2025 Green Book Revenue Proposals

2024 Election & Tax Reform

- TCJA set to sunset December 31, 2025.
- Need 60 votes in Senate, unless use reconciliation to effectuate change in law.
  - Schumer just needs to keep off Senate agenda and sunset will just happen.
  - Current law in his favor.
  - Very hard to avoid.
- The results of the election will determine possibilities.
- It is unlikely either political party obtains large majorities in Congress and/or secures unified control.
- As a result, it would take massive compromises to move any legislation forward.
- Animosity and hostility likely to deepen in light of a very contentious presidential election.

Use It or Lose It: Basic Exclusion Amount (BEA)

Old Exclusion	$6,805,000	2024 gifts use this portion of the exclusion first	
2018 Exclusion Increase	$6,805,000	2024 gifts use this portion of the exclusion second	Lost if not used before the law sunsets
2024 Estate Tax Exclusion	$13,610,000		

Basis Basics

- Donee's basis for computing gain is the same as the donor's basis.
- Donee's basis for computing loss is the lesser of—
  - Donor's basis, or
  - FMV of property on date of gift .
- Basis is generally FMV on date of decedent's death or, if elected, the alternate valuation date.
- Appreciated assets receive a "step-up" in basis at death:
  - saves income tax when the property is sold by beneficiary.
- Depreciated assets receive a "step-down" in basis at death:
  - deprives beneficiaries of the income tax benefit of claiming a loss when the property is sold.

The Planning Process: Part 1

Establish a Solid Foundation

- **Basic Components of an Estate Plan** (regardless of net worth)
    - Last Will and Testament
    - Revocable Trust
    - Statutory Durable Power of Attorney for Financial Matters
    - Medical Power of Attorney for Health Care
    - Advance Directive for Health Care
    - Coordinate Beneficiary Designations for Life Insurance and Retirement Benefits
- **Update old documents:**
    - make sure they align with client wishes & pay attention to funding clauses
- ***Where does your stuff go?***
    - One of 3 places:
        - Family & Intended/Unintended Beneficiaries
        - Charity
        - IRS

Steps of Estate Planning

BDITs, Sales to IDGTs, SLATs, GRATs

Charitable Planning:
- CLT & CRT
- DAF / Foundation

Family Limited Partnerships

Life Insurance Trusts (ILIT's)

Wills, Living Trusts with Tax Planning, Powers of Attorney

The Safe-ish Zone

Married Clients With $≤15 Million / Single Clients With $≤7.5 Million

- These clients are the least likely to face estate tax exposure through 2026.
- Wealth likely below BEA at death
- Capturing basis “step-up” critical
- Periodic planning discussions will continue to be important/
- May be too early to implement tax-motivated gifting strategies.

Very Wealthy >30M

- Planning to best use the BEA is often easy.
- Estate tax likely applies at death.
- Captue the "excess exemption" before sunset.
- *Shift and shield appreciation* of the taxable estate.
- Efficient use of GST exemption.
  - Make sure GST from prior gifts before auto allocation and in general add up to current gifts.
- Exemption gifts won't "bankrupt" client or cause cash flow issues.
- Solution: Lifetime exemption gifts to GST Exempt trusts.

Families with $10M-$30M of wealth

- Planning to best use the BEA is hard:
  - Unclear whether estate tax will apply at death: Will the “excess BEA” sunset?
  - Impossible due to clients net worth and assets to make $27.22M of traditional gifts to consume the “excess BEA”
  - Is the “step-up” worth more than incremental estate tax?
- Solutions from estate tax math standpoint:
  - Do nothing
  - “Bankrupt” client
  - SLAT/SLANT-spouse as beneficiary limits risk of over-gifting
    - Maybe 1 SLAT?
  - IRA burn: look at conversions and charitable solutions

Estate Planning in Light of Tax Reform

- Clients in the $6-13M range are at risk.
  - Should consider lifetime gifting or at minimum putting vehicles in place to be ready to gift to.
  - Use it or lose it:
    - $13,610,000 down to $7M= loss of ~$6-7M in tax free gifts.
    - Does no good to gift half = in same boat
- Current exemption amounts provide a limited window of opportunity to make larger tax-free gifts.
  - *When a completed irrevocable gift is made:*
    - Remove the gifted asset from donor's taxable estate.
    - Also remove the appreciation on that asset from the date of the gift until client's eventual death.

Financial Analysis & Plan Design

- Run the numbers
- How much does the client need to live on?
- Gross it up for income tax
- Weigh step up in basis vs. gifting
- Sell assets to children trust on private annuity
  - Provides for stream of income for grantor
  - SCINs: unclear if use life expectancy table or personal life table
- Know life expectancy and any illness/risks
  - Counsel clients on risk
  - Doctor Letter on life expectancy
  - Those who might die sooner=hold until later in year

Estate Tax Strategies

What can you do right now:

1. Review existing plans & simplify
   a. Portability
   b. Check funding clauses
   c. Disclaimers
2. Use lifetime exemption
   a. Could significantly decrease
   b. Gift now! Annual gifting adds up.
3. Take advantage of private interest rates (intrafamily loans and annuities)
4. Create a family limited partnership/entities
5. Set up/top off irrevocable trusts
6. Explore life insurance products
   a. *Maintain liquidity*
   b. Consider an ILIT
7. Explore charitable planning
8. Focus on income taxes vs. estate taxes
   1. Do the math, know your client's exposure depending on different scenarios.

Advanced Estate Planning Techniques

- **Irrevocable Dynasty/Heritage Trusts** – Helps clients leave assets to future generations and avoid being taxed more than once as assets pass from generation to generation.
- **Spousal Lifetime Access Trust (SLAT**) – Helps clients leave assets to future generations but gives a spouse access to assets should the spouse have an unanticipated financial need in the future.
- **Grantor Retained Annuity Trust (GRAT)** – Can help clients who want to transfer more than the gift/estate tax exemption amount to children by transferring asset appreciation.
- **Intentionally "Defective" Grantor Trust (IDGT)** – Freezes the value of appreciating assets to limit taxes as assets transfer to a client's heirs.
- **Charitable Remainder Trust (CRT) and Charitable Lead Trust (CLT)** – Combine income tax planning with philanthropy.

SLAT Techniques

- Prepare estate tax balance sheet before and after sunset to determine the amount of estate tax.
- Prepare cash-flow projections to determine if clients can truly afford to make large gifts.
- Ask client if they are comfortable gifting away this amount of their net worth?
- Texas allows for Back-End SLATs
  - Substitute surviving spouse as beneficiary
- Not all or nothing approach
  - Especially with gray divorce rates
  - Maybe consider 6M in SLAT and 6M in dynasty trust for children
  - Are you going to be the spouse that uses your exemption?

SLAT Issues

- **Avoid Section 2036 issues**
  - Retain possession or enjoyment of or the right to income form property or the right (alone or in conjunction with any person) to designate the persons who shall possess / enjoy the property or income therefrom
  - Put in writing that proper administration of the trust and entities is essential to avoid Section 2036.
- **Floating Spouse Clauses**
  - Define spouse as "whomever the settlor is married to"
    - Allows settlor to remarry and retain indirect access
    - Eliminates ex-spouse access
    - Income tax issues
  - Careful about who you are representing
    - Disclosures
    - Explanations and disclaimers about this mechanism
    - Divorce in general and related concerns
- **Targeted Property**
  - Sole property of settlor
    - CP or Joint may cause inclusion or creditor access
    - Can't gift split into a SLAT
  - Marital Agreement is key
    - Partition & Sit = As must time as possible between retitling assets and gifting

SLAT Issues

- **Step-Transaction Doctrine**
  - Time to cure
  - Time to break CP and either spouse making gift and time between that and next gift
- **Reciprocal Trust Doctrine**
  - More identical SLAT terms = more IRS can collapse transaction and treat trusts as self-settled
  - Nuanced drafting (different terms)
  - More time in between trusts for each spouse the better.
  - Different jurisdictions?
  - *Estate of Grace*, 395 U.S. 316 (1969)
- **Tax Reimbursement Clauses**
  - CCA Memorandum 202352018 (Nov. 28, 2023)
  - Gift tax consequences of modifying grantor trust to add tax reimbursement clause = taxable gift from beneficiaries to settlor
  - Maybe draft trusts with reimbursement clause just in case need it later if cash flow problems for settlor exist in future
    - Have forecasts done in advance of funding to identify possible future cash-flow issues.

Additional Considerations

- **Asset Protection**
  - But avoid fraudulent conveyances
    - Solvency affidavit before any large transfer to irrevocable trust
    - Have client sign balance sheet showing all assets and liabilities
    - Client projections demonstrating adequate resources to cover lifestyle expenses post-transfer
- **Income Tax Planning**
- **Weigh step up in basis ramifications**

What to Do Now?

- **Hope for the Best, Plan for the Worst**
  - 1.5 years is not a lot of time! (Exactly 1 year, 7 months, 17 days)
- **Early engagement:** Reach out and have in-depth conversations with potentially impacted clients
  - Discuss planning risks and opportunities
  - The importance of the time needed to prepare, work through advanced planning techniques, target assets, appraisals, etc.
  - Plant seed and prepare client to gift $23M
- **Plan for Solvency:**
  - Conducting and documenting solvency and sufficiency test procedures before moving forward
    - Seriously discussing or implementing any large transfers for the client so that donor's remorse doesn't come for your clients (and you)
- ***Is your client going to be upset if do all this if there is not a tax law change?***
  - Gift remorse
  - Lack of control
  - Lack of income
  - Structure gifts to maintain access to assets if needed
  - Included flexibility to account of future changes

Planning for the Future

- **Be Proactive:**
  - Planning now avoids last-minute jams and allows planning steps to be spread out if it is prudent to do so.
  - Ongoing maintenance and support of plans put into place.
  - Shelter future appreciation.
  - Plan now before an event happens for asset protection.

- **Put a team in place** – Advanced estate planning requires participation from:
  - Coordinate Calendars:
    - Financial Planner
    - CPAs
    - Estate Planning Attorney
    - Business Advisors
    - Banker
    - Life insurance agent
    - Certified Appraisers

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Planning for the Future

- **Create the vehicles and identify assets now = ready to gift.**
  - Gifting is a process; requires client understanding and acceptance, documents drafted, assets identified, family businesses recapitalized, Secretary of State for entity formation, valuations obtained, and timely transfers effected, acceptance by trustee or signed off by corporate trustee.

- **Alternatively: Gift →Swap/Sell**
  - Establish trusts and gifting easily valued property (e.g., cash or securities), then subsequently swap or sell discountable assets to the trust.
  - Include a defined value clause to guard against gift tax challenges.

Gift Tax Returns (709s)

- As you go about your gifting plan, remember the 709 form.
- Defend you fees and explain your value. A client pressuring you on fees should tell you a lot.
- Get all key documents early on.
  - Check dates, signatures, and party names.
  - If something doesn't make sense, seems wrong or missing, raise the issue.
  - A second set of eyes never hurts.
- Prepare a detailed table of contents for the exhibits.
  - Be sure the exhibits meet the requirements of adequate disclosure.
  - And that they flow in a logical order and make sense.
- Look at the instructions for form 709.

THANK YOU!

Questions?

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