

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

What happens when large gifts made today exceed lower US estate tax limits later?



The USA applies an integrated gift and estate tax on transfers of large amounts of taxable property, money and assets made by US persons while they are alive and on large amounts of taxable property, money and assets when they pass away. The combined total of lifetime gifts and transfers made after death are subject to tax if they exceed the basic exclusion amount set by the government. It is adjusted annually for inflation. Individual states may apply their own gift and estate taxes on property located in their states. The basic exclusion amount can be doubled for married couples.

Tax reform law doubled the federal basic exclusion amount for tax years 2018-2025. The basic exclusion amount went from an inflation adjusted \$5 million USD to \$10 million USD. The exclusion amount is scheduled to drop in 2026 to the inflation adjusted limit in force before 2018. This temporary regulation was passed as part of the 2017 Tax Cuts and Jobs Act.

That begged a question that has been lingering for a year. What happens if someone takes advantage of the higher basic exclusion amount limit between the tax years 2018-2025 and then dies after the limit is scheduled to drop? Will the amount gifted in excess of the lower limit at that time be subject to estate tax?



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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He annually provides 100's of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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The US Treasury Department and IRS issued proposed regulations IR-2018-229 on Nov. 20, 2018 clarifying that an estate can calculate its estate tax credit using the higher of:

- the basic exclusion amount applicable to the cumulative value of gifts made during the individual's lifetimes or
- the basic exclusion amount applicable to the estate of the person on the date of his or her death

Again, remember that basic exclusion amount is an integrated amount applying to the cumulative value of lifetime gifts and transfers made on death.

All this will be of interest to Canadian residents who are deemed to be US persons for income tax purposes. These people have significant ties to the US because they may be US citizens, US passport holders, Green Card holders and/or spend more than 183 days in the US under the substantial presence test. If someone falls into any one of these categories, they must follow the same rules for reporting worldwide assets and income, filing income tax, gift and estate tax returns whether or not they live in the US.

Let's look at Sarah's scenario.

Sarah is an affluent, long-term Canadian resident who through inheritances and hard work has amassed a sizeable estate. She also falls into the definition of a US person. Sarah is now in her 70s and is engaged in estate planning with her advisors. She has decided to pass on significant amounts of her estate to her children and grandchildren while she is alive. She wants to minimize taxes at her death. How would her lifetime gifts impact her US estate tax calculations and basic exclusion amount?

	USD value
Basic exclusion amount 2018 (indexed)	\$11.2 Million
Taxable gifts made between tax year 2018-2015	\$8.0 Million
Basic exclusion amount 2025	\$12.9 Million
Unused basic exclusion amount at the end of 2025	\$4.9 Million
Basic exclusion amount 2026 when she dies	\$6.0 Million
Estate tax calculation based on	\$8.0 Million
Unused cumulative balance from 2025	lost

All values used for illustration purposes only and do not represent actual or projected values.

Clients subject to US gift and estate tax together with tax and estate planners can breathe a sigh of relief. They now have more clarity and certainty as they consider and implement any lifetime transfers of property, money and assets between the tax years 2018-2025. They do not have to be worried that they will be subject to claw backs of their tax benefits once the basic exclusion amount decreases.

Be sure to work with accredited tax and estate planners versed in US regulations and strategies to optimize any benefits you may be entitled to use.

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