

Estate and Gift Tax: Post-2015 Developments

Since the Seventh Edition of the McDaniel casebook was published, a few things have changed in the world of the federal wealth transfer taxes. Some of the changes were routine. For example, the gift tax annual exclusion, which is adjusted automatically for inflation (*see* IRC § 2503(b)(2)), has been increased to \$17,000 a year. *See* Rev. Proc. 2022-38, § 3.43, 2022-45 IRB 445, 453.

More significantly, the Tax Cuts and Jobs Act of 2017 (Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017)) doubled the unified credit. It is now the equivalent of an exemption of \$10 million of property value per taxpayer, adjusted for inflation. *See* IRC § 2010(c)(3)(C).¹

With the inflation adjustment (calculated using 2011 as the base year), the exemption equivalent for decedents dying, and gifts made, in 2023 is \$12,920,000 per taxpayer. *See* Rev. Proc. 2022-38, § 3.41, 2022-45 IRB 445, 453. For a married couple, that allows \$25,840,000 to pass to the next generation free of wealth transfer tax. (As we will see in Chapter 29, there is “portability” of any unused exemption from a deceased spouse to a surviving spouse.)

Increasing the unified credit makes the federal wealth transfer taxes applicable to an even tinier segment of the population than previously. Prior to the 2017 amendment, it was estimated that 0.2 percent of U.S. residents had enough wealth to be liable for these taxes. After the 2017 amendment, that fraction has declined to less than 0.1 percent.

There are still some states with estate and inheritance taxes, however, and their exemptions are typically much lower than the current federal exemption. The Oregon estate tax (10 to 16 percent of the taxable estate) has an exemption of only \$1 million. (The median price of a home in Portland these days is around \$550,000.) The State of Washington’s estate tax (10 to 20 percent of the taxable estate) has an exemption of \$2,193,000 for 2023.

Additionally, there’s political will among members of the Democratic Party to reduce greatly the federal unified credit. That would make the federal estate and gift taxes applicable to more of the population.

¹ The unified credit is scheduled to drop back to \$5 million per taxpayer in 2026, but who knows if that will actually happen? The Code can be changed at any time.