

## **Estate and Gift Tax Calculations -- Is All This Really Necessary?**

In our exercise calculating taxpayers' estate and gift taxes, we made a number of assumptions necessitated by the limitations of our law school materials. And for purposes of our exam, we will make the same assumptions. We will assume, for example, that the tax rate table in Section 2001(c) is the only tax rate table that ever existed, and that it will remain in effect forever. Additionally, we will assume that the current \$15,000,000 unified credit exemption equivalent has always been the law, and that it will remain at exactly that amount forever.

With those as our assumptions, the many twists and turns in the Code's calculation of the taxes are unnecessary. Adding back prior gifts, calculating a tentative tax on the cumulative amount, and then subtracting out the gift tax on prior gifts, is circular. With our assumptions, one can just exclude \$15,000,000 from the cumulative amount of taxable transfers and apply a flat 40 percent rate to the rest.

In real life, however, our assumptions won't be correct. The tax rate schedule in Section 2001(c) hasn't always been the current version, and the unified credit hasn't always been \$15,000,000. Moreover, the \$15,000,000 amount is scheduled to be indexed for inflation in years after 2026. (For that matter, Congress might change the tax rates or the unified credit amount again someday.) And so it's best practice always to calculate the wealth transfer taxes in the manner specified by the statute. Do all the steps the way the Code requires, and you can't go wrong.

That said, in some cases "shortcuts" can still come in handy if they're carefully constructed. This handout explores some of the situations in which the "shortcuts" might be more, or less, useful.

\* \* \* \* \*

The current unified credit exemption equivalent, \$15,000,000, is far above the breakpoint between the two top brackets (39 percent and 40 percent) in Section 2001(c). That breakpoint is a mere \$1,000,000 of tax base. And since the unified credit is the tax on \$15,000,000, any tax that is actually owed is, in effect, imposed at the 40 percent rate. See our classroom problems.

But it hasn't always been that way. For example, in 2005, the unified credit exemption equivalent was \$1,000,000, and the tax rate schedule was as follows:

**(continued on next page)**

**Table for Computing Wealth Transfer Taxes, 2005**

| <b>Column A</b>     | <b>Column B</b>          | <b>Column C</b>           | <b>Column D</b>                               |
|---------------------|--------------------------|---------------------------|-----------------------------------------------|
| Taxable amount over | Taxable amount not over— | Tax on amount in Column A | Rate of tax on excess over amount in Column A |
| -----               | \$10,000                 | -----                     | 18%                                           |
| \$10,000            | 20,000                   | \$1,800                   | 20%                                           |
| 20,000              | 40,000                   | 3,800                     | 22%                                           |
| 40,000              | 60,000                   | 8,200                     | 24%                                           |
| 60,000              | 80,000                   | 13,000                    | 26%                                           |
| 80,000              | 100,000                  | 18,200                    | 28%                                           |
| 100,000             | 150,000                  | 23,800                    | 30%                                           |
| 150,000             | 250,000                  | 38,800                    | 32%                                           |
| 250,000             | 500,000                  | 70,800                    | 34%                                           |
| 500,000             | 750,000                  | 155,800                   | 37%                                           |
| 750,000             | 1,000,000                | 248,300                   | 39%                                           |
| 1,000,000           | 1,250,000                | 345,800                   | 41%                                           |
| 1,250,000           | 1,500,000                | 448,300                   | 43%                                           |
| 1,500,000           | 2,000,000                | 555,800                   | 45%                                           |
| 2,000,000           | — — —                    | 780,800                   | 48%                                           |

The unified credit that year was the equivalent of an exemption of \$1,000,000, or \$345,800.

Let's say that a wealthy individual, never married, made their first taxable gift in 2005, of \$1,300,000. It was not taxed at a flat rate. Under this table, the first \$250,000 above the \$1,000,000 exemption equivalent was taxed at 41 percent (a tax of \$102,500), and the other \$50,000 was taxed at 43 percent (\$21,500). And so a flat-rate assumption like the one we've been using wouldn't work. The gift tax (\$124,000) was actually paid at an effective rate of 41.333 percent.

The unified credit and the rate table have changed over the years, both by automatic inflation adjustments and by Congressional action. Starting in 2006, and continuing to this day, the unified credit exemption equivalent has been *greater than* the breakpoint between the two top tax brackets, and so for years after 2005, the flat-rate "shortcut" we've been using has generally "worked." But if the person in this illustration is your client in 2026, be aware that in their younger years they were subject to a progressive rate structure that actually affected how much tax they had to pay.

Does that ancient history matter for purposes of any planning you might do for them now? Let's say that the individual just discussed comes to you in 2026, now with tons of assets, and they haven't made any taxable gifts since 2005. What would be their gift tax if they made

taxable gifts of \$20,000,000 in 2026? Let's compute the gift tax the way the Code does it, and of course we'll use the \$15,000,000 unified credit in effect in 2026, and the tax tables (in our Code book) from the current version of Section 2001(c) (incorporated into the gift tax by Section 2502(a)). Then we can see how accurate and useful a "shortcut" might be.

Here's our template from class for the 2026 taxable gifts, with the first few lines filled in for our taxpayer:

### Gift Tax, 2026

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| 1. Gifts Current Year (§§ 2501(a), 2503(a))                                   | \$20,038,000 |
| 2. – Annual Exclusion (§ 2503(b))                                             | (38,000)     |
| 3. Deductions (§§ 2522–2524)                                                  | -0-          |
| 4. Taxable Gifts Current Year                                                 | \$20,000,000 |
| 5. + Prior Year's Taxable Gifts (§ 2504(a))                                   | 1,300,000    |
| 6. Cumulative Taxable Gifts                                                   | \$21,300,000 |
| 7. Tentative Gift Tax on Cumulative Taxable Gifts (Line 6) (§ 2502(a)(1))     |              |
| 8. – Tentative Gift Tax on Prior Year's Taxable Gifts (Line 5) (§ 2502(a)(2)) |              |
| 9. Tentative Gift Tax                                                         |              |
| 10. Current Year's Unified Credit (§§ 2505(a)(1), 2010(c))                    |              |
| 11. – Unified Credit Previously Used                                          |              |
| 12. Unified Credit Allowable                                                  |              |
| 13. Gift Tax (Line 9 – Line 12)                                               |              |

Things start to get interesting on line 7. Section 2502(a)(2) tells us to calculate a tax under Section 2001(c) on the aggregate sum of taxable gifts for this year and all previous years. That sum is \$21,300,000. But do we use the old, 2005, tax rates for any of that? No. When Section 2502(a)(2) refers to Section 2001(c), it means this year's version (2026).

The same thing is true on line 8. Although we're calculating a tax on previous year's gifts, we use this year's tax table. That gets us to this point:

### Gift Tax, 2026

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| 1. Gifts Current Year (§§ 2501(a), 2503(a))                                   | \$20,038,000 |
| 2. – Annual Exclusion (§ 2503(b))                                             | (38,000)     |
| 3. Deductions (§§ 2522–2524)                                                  | -0-          |
| 4. Taxable Gifts Current Year                                                 | \$20,000,000 |
| 5. + Prior Year's Taxable Gifts (§ 2504(a))                                   | 1,300,000    |
| 6. Cumulative Taxable Gifts                                                   | \$21,300,000 |
| 7. Tentative Gift Tax on Cumulative Taxable Gifts (Line 6) (§ 2502(a)(1))     | \$8,465,800  |
| 8. – Tentative Gift Tax on Prior Year's Taxable Gifts (Line 5) (§ 2502(a)(2)) | (465,800)    |
| 9. Tentative Gift Tax                                                         | \$8,000,000  |
| 10. Current Year's Unified Credit (§§ 2505(a)(1), 2010(c))                    |              |
| 11. – Unified Credit Previously Used                                          |              |
| 12. Unified Credit Allowable                                                  |              |
| 13. Gift Tax (Line 9 – Line 12)                                               |              |

Notice that the amount we subtracted on line 8 is not the same as the tax computed under the 2005 table back when the original gifts were made. Under that table, the tax on \$1,300,000 was \$448,300 plus 43 percent of \$50,000 (or \$21,500), for a tentative tax of \$469,800.

Onward we march. Next, we're going to allow the 2026 gift tax unified credit, on lines 10 through 12. We start in line 10 with the amount of this year's unified credit, the tax on \$15,000,000, or \$5,945,800 (a number we derived in class). Then, on line 11, we are told by Section 2505(a)(2) to subtract "the sum of the amounts allowable as a credit to the individual under this section for all preceding periods." Back in 2005, the unified credit was the tax on only \$1,000,000, and so that's what we're going to subtract on line 11. But do we use the 2005 tax rates, or the 2026 tax rates, in performing that calculation?

The "flush" language at the very end of Section 2505(a) supplies the answer. Although we're using the \$1,000,000 2005 exemption equivalent, in applying the tax rates we use the 2026 table for line 11. And under that table, the tax on \$1,000,000 is \$354,800. With that, we can finish the gift tax calculation for 2026:

### Gift Tax, 2026

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| 1. Gifts Current Year (§§ 2501(a), 2503(a))                                   | \$20,038,000 |
| 2. – Annual Exclusion (§ 2503(b))                                             | (38,000)     |
| 3. Deductions (§§ 2522–2524)                                                  | -0-          |
| 4. Taxable Gifts Current Year                                                 | \$20,000,000 |
| 5. + Prior Year's Taxable Gifts (§ 2504(a))                                   | 1,300,000    |
| 6. Cumulative Taxable Gifts                                                   | \$21,300,000 |
| 7. Tentative Gift Tax on Cumulative Taxable Gifts (Line 6) (§ 2502(a)(1))     | \$8,465,800  |
| 8. – Tentative Gift Tax on Prior Year's Taxable Gifts (Line 5) (§ 2502(a)(2)) | (465,800)    |
| 9. Tentative Gift Tax                                                         | \$8,000,000  |
| 10. Current Year's Unified Credit (§§ 2505(a)(1), 2010(c))                    | \$5,945,800  |
| 11. – Unified Credit Previously Used                                          | (345,800)    |
| 12. Unified Credit Allowable                                                  | \$5,600,000  |
| 13. Gift Tax (Line 9 – Line 12)                                               | \$2,400,000  |

Is this the “right” answer? Yes. Total taxable gifts in both years were \$21,300,000. Taking \$15,000,000 of unified credit exemption equivalent out of the base leaves \$6,300,000 of total gift tax base. Gift tax was already paid on \$300,000 of those gifts back in 2005, and so gift tax should be due now, in 2026, on \$6,000,000. In 2026, the tax is, in effect, a flat tax of 40 percent: Forty percent of \$6,000,000 is \$2,400,000.

If you consider the immediately preceding paragraph a “shortcut” to the right answer, then yes, you can use it, even though there were gifts made under the older, 2005 regime. But it isn't much simpler than doing it the “long” way, as we did in the steps in the template. And as between a not-so-short “shortcut” and the steps spelled out by the Code, the latter is preferable. The Code way is the safest way, so long as you understand how it works.

If you're still conscious at this point, you may notice that although the 40 percent flat rate applied in 2026, it didn't apply in 2005, and the 2026 calculation doesn't give any of the higher-rate tax from 2005 back. When you add up the 2005 gift tax (\$124,000) and the 2026 gift tax (\$2,400,000), you get \$2,524,000, which is slightly more than 40 percent of the “net” tax base of

\$6,300,000 (the \$21,300,000 “jumbo” amount minus the \$15,000,000 exemption equivalent). It’s 40.06 percent.

\* \* \* \* \*

How about “shortcuts” in calculating estate tax? Let’s assume that the individual just discussed makes no further taxable gifts, and dies in 2030 with a taxable estate of \$40,000,000. Let’s assume hypothetically that the table in Section 2001(c) is different at that time, and that the unified credit in effect for decedents dying in 2030 is the tax on \$17,000,000. Everything else in Chapters 11 and 12 of the Code is the same as it was in 2026.

Suppose that Section 2001(c) rate table for decedents dying in 2030 looks like this:

**Table for Computing Estate Tax, 2030**

| <b>Column A</b>     | <b>Column B</b>          | <b>Column C</b>           | <b>Column D</b>                               |
|---------------------|--------------------------|---------------------------|-----------------------------------------------|
| Taxable amount over | Taxable amount not over— | Tax on amount in Column A | Rate of tax on excess over amount in Column A |
| -----               | \$10,000                 | -----                     | 18%                                           |
| \$10,000            | 20,000                   | \$1,800                   | 20%                                           |
| 20,000              | 40,000                   | 3,800                     | 22%                                           |
| 40,000              | 60,000                   | 8,200                     | 24%                                           |
| 60,000              | 80,000                   | 13,000                    | 26%                                           |
| 80,000              | 100,000                  | 18,200                    | 28%                                           |
| 100,000             | 150,000                  | 23,800                    | 30%                                           |
| 150,000             | 250,000                  | 38,800                    | 32%                                           |
| 250,000             | 500,000                  | 70,800                    | 34%                                           |
| 500,000             | — — —                    | 155,800                   | 37%                                           |

Note that in this futuristic fantasy, Congress has reduced the top rate to 37 percent.

Let’s walk through the estate tax calculation and see whether a “shortcut” is safe and helpful. Here’s our estate tax calculation template (used in our first-week problems), applied to this decedent’s estate:

**(continued on next page)**

**Estate Tax (2030)**

|                                                                             |              |
|-----------------------------------------------------------------------------|--------------|
| 1. Gross Estate (§§ 2032–2044)                                              | \$44,000,000 |
| 2. – Deductions (§§ 2053–2058)                                              | (4,000,000)  |
| 3. Taxable Estate (§§ 2051,<br>2001(b)(1)(A))                               | \$40,000,000 |
| 4. + Adjusted Taxable Gifts<br>(§ 2001(b)(1)(B))                            |              |
| 5. Tentative Estate Tax Base                                                |              |
| 6. Tentative Estate Tax (§ 2001(b)(1))                                      |              |
| 7. – Tax on Lifetime Taxable Gifts at Date<br>of Death Rates (§ 2001(b)(2)) |              |
| 8. Gross Estate Tax (§ 2001(b))                                             |              |
| 9. – Unified Credit & Other Credits (§§ 2010–<br>2016)                      |              |
| 10. Estate Tax                                                              |              |

On line 4, we obey Section 2001(b)(1)(B), adding “adjusted taxable gifts” into the base (lifetime gifts, unless the same property is also included in the gross estate, which let’s assume is not the case here). That brings our “jumbo” base (line 5) to \$61,300,000.

**(continued on next page)**

**Estate Tax (2030)**

|                                                                             |              |
|-----------------------------------------------------------------------------|--------------|
| 1. Gross Estate (§§ 2032–2044)                                              | \$44,000,000 |
| 2. – Deductions (§§ 2053–2058)                                              | (4,000,000)  |
| 3. Taxable Estate (§§ 2051,<br>2001(b)(1)(A))                               | \$40,000,000 |
| 4. + Adjusted Taxable Gifts<br>(§ 2001(b)(1)(B))                            | 21,300,000   |
| 5. Tentative Estate Tax Base                                                | \$61,300,000 |
| 6. Tentative Estate Tax (§ 2001(b)(1))                                      |              |
| 7. – Tax on Lifetime Taxable Gifts at Date<br>of Death Rates (§ 2001(b)(2)) |              |
| 8. Gross Estate Tax (§ 2001(b))                                             |              |
| 9. – Unified Credit & Other Credits (§§ 2010–<br>2016)                      |              |
| 10. Estate Tax                                                              |              |

Now Section 2001(b)(1)(A) tells us to compute the tax on the big base under section 2001(c), and by that it means this year's version (2030) of that subsection. Therefore, on line 6, the tentative tax is calculated entirely based on the 2030 rates (on page 6). The tentative tax is \$22,651,800. That's \$155,800 plus 37 percent of (\$61,300,000 minus \$500,000).

**(continued on next page)**

### Estate Tax (2030)

|                                                                          |              |
|--------------------------------------------------------------------------|--------------|
| 1. Gross Estate (§§ 2032–2044)                                           | \$44,000,000 |
| 2. – Deductions (§§ 2053–2058)                                           | (4,000,000)  |
| 3. Taxable Estate (§§ 2051, 2001(b)(1)(A))                               | \$40,000,000 |
| 4. + Adjusted Taxable Gifts (§ 2001(b)(1)(B))                            | 21,300,000   |
| 5. Tentative Estate Tax Base                                             | \$61,300,000 |
| 6. Tentative Estate Tax (§ 2001(b)(1))                                   | \$22,651,800 |
| 7. – Tax on Lifetime Taxable Gifts at Date of Death Rates (§ 2001(b)(2)) |              |
| 8. Gross Estate Tax (§ 2001(b))                                          |              |
| 9. – Unified Credit & Other Credits (§§ 2010–2016)                       |              |
| 10. Estate Tax                                                           |              |

Now comes line 7, the step in which we subtract out the amount called for in Section 2001(b)(2). Roughly speaking, this is the gift tax payable on lifetime gifts (net of the unified credit). And with our classroom assumptions, roughly speaking is good enough. But in this example, to be precise, it is the aggregate amount of gift tax which would have been payable if Section 2001(g) had applied when those gifts were made.

Within subsection (g), note that paragraph (g)(2) was intended to give the IRS authority to cope with a sunset clause, and that sunset clause never took effect. And so, trust me, we can ignore paragraph (g)(2).

Paragraph (g)(1) is where the action is. It tells us that in computing the gift tax payable on the lifetime gifts under Section 2001(b)(2), we use the tax rates in effect *at the time of the decedent's death*, not the rates that were in effect at the times of those gifts. IRC § 2001(g)(1)(A). But we still use the unified credit exemption equivalent amounts that were in effect at the earlier times.

Heading back, then, to our task under Section 2001(b)(2), we must take each prior gift and figure out the gift tax that would have been payable using the 2030, date-of-death rates. On our facts, to fill in line 7, we must calculate the gift taxes payable for both the 2005 gift and the 2026 gifts that way, and add them up.

As to the 2005 gift, the gift tax for Section 2001(b)(2) purposes is:

**Gift Tax, 2005, for Purposes of Section 2001(b)(2)**

|                                                                               |             |
|-------------------------------------------------------------------------------|-------------|
| 1. Gifts Current Year (§§ 2501(a), 2503(a))                                   | \$1,311,000 |
| 2. – Annual Exclusion (§ 2503(b))                                             | (11,000)    |
| 3. Deductions (§§ 2522–2524)                                                  | -0-         |
| 4. Taxable Gifts Current Year                                                 | \$1,300,000 |
| 5. + Prior Year's Taxable Gifts (§ 2504(a))                                   | -0-         |
| 6. Cumulative Taxable Gifts                                                   | \$1,300,000 |
| 7. Tentative Gift Tax on Cumulative Taxable Gifts (Line 6) (§ 2502(a)(1))     | \$451,800   |
| 8. – Tentative Gift Tax on Prior Year's Taxable Gifts (Line 5) (§ 2502(a)(2)) | (-0-)       |
| 9. Tentative Gift Tax                                                         | \$451,800   |
| 10. Current Year's Unified Credit (§§ 2505(a)(1), 2010(c))                    | 340,800     |
| 11. – Unified Credit Previously Used                                          | -0-         |
| 12. Unified Credit Allowable                                                  | 340,800     |
| 13. Gift Tax (Line 9 – Line 12)                                               | \$111,000   |

Notice that in calculating the gift tax on the 2005 gifts for purposes of Section 2001(b)(2), we use the 2030 tax rates, but the historical unified credit exemption equivalent (\$1,000,000) from 2005. (And so, in “shortcut” terms, there was a \$300,000 tax base and a flat rate of 37 percent.)

Still working under Section 2001(b)(2), the tax on the 2026 gifts is:

**(continued on next page)**

**Gift Tax, 2026, for Purposes of Section 2001(b)(2)**

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| 1. Gifts Current Year (§§ 2501(a), 2503(a))                                   | \$20,038,000 |
| 2. – Annual Exclusion (§ 2503(b))                                             | (38,000)     |
| 3. Deductions (§§ 2522–2524)                                                  | -0-          |
| 4. Taxable Gifts Current Year                                                 | \$20,000,000 |
| 5. + Prior Year's Taxable Gifts (§ 2504(a))                                   | 1,300,000    |
| 6. Cumulative Taxable Gifts                                                   | \$21,300,000 |
| 7. Tentative Gift Tax on Cumulative Taxable Gifts (Line 6) (§ 2502(a)(1))     | \$7,851,800  |
| 8. – Tentative Gift Tax on Prior Year's Taxable Gifts (Line 5) (§ 2502(a)(2)) | (451,800)    |
| 9. Tentative Gift Tax                                                         | \$7,400,000  |
| 10. Current Year's Unified Credit (§§ 2505(a)(1), 2010(c))                    | \$5,520,800  |
| 11. – Unified Credit Previously Used                                          | (340,800)    |
| 12. Unified Credit Allowable                                                  | \$5,180,000  |
| 13. Gift Tax (Line 9 – Line 12)                                               | \$2,220,000  |

Here again, in calculating the gift tax on the 2026 gifts for purposes of Section 2001(b)(2), we use the 2030 tax rates, but the original exemption equivalent (\$15,000,000) from 2026. (In “shortcut” terms, we have \$20,000,000 of 2026 gifts, \$14,000,000 of which is wiped out by an unused exemption equivalent in the unified credit, leaving \$6,000,000 of gift tax base. Thirty-seven percent of that amount is \$2,220,000.)

Note that the results of these two applications of the gift tax template are not the same amounts of gift tax that were actually paid, which we calculated on pages 2 through 5. Section 2001(g)(1) tells us that when the tax rates change, we change the rates for purposes of looking back at the gift tax in doing the estate tax calculation.

Still here? If so, now we can get back to the estate tax template. The sum of the two gift tax figures we just came up with (\$111,000 plus \$2,220,000) goes on line 7 of our estate tax template, as follows, with the result of the required subtraction shown on line 8:

**Estate Tax (2030)**

|                                                                          |              |
|--------------------------------------------------------------------------|--------------|
| 1. Gross Estate (§§ 2032–2044)                                           | \$44,000,000 |
| 2. – Deductions (§§ 2053–2058)                                           | (4,000,000)  |
| 3. Taxable Estate (§§ 2051, 2001(b)(1)(A))                               | \$40,000,000 |
| 4. + Adjusted Taxable Gifts (§ 2001(b)(1)(B))                            | 21,300,000   |
| 5. Tentative Estate Tax Base                                             | \$61,300,000 |
| 6. Tentative Estate Tax (§ 2001(b)(1))                                   | \$22,651,800 |
| 7. – Tax on Lifetime Taxable Gifts at Date of Death Rates (§ 2001(b)(2)) | (2,331,000)  |
| 8. Gross Estate Tax (§ 2001(b))                                          | \$20,320,800 |
| 9. – Unified Credit & Other Credits (§§ 2010–2016)                       |              |
| 10. Estate Tax                                                           |              |

We're dehydrated and fatigued at this point, but all that's left to compute is the unified credit for 2030, the tax on \$17,000,000 using our hypothetical 2030 tax table (on page 6) with the 37 percent top rate. That works out to \$6,260,800: It's \$155,800 plus 37 percent of (\$17,000,000 minus \$500,000). We're left with an estate tax of \$14,060,000, as follows:

**(continued on next page)**

### Estate Tax (2030)

|                                                                          |              |
|--------------------------------------------------------------------------|--------------|
| 1. Gross Estate (§§ 2032–2044)                                           | \$44,000,000 |
| 2. – Deductions (§§ 2053–2058)                                           | (4,000,000)  |
| 3. Taxable Estate (§§ 2051, 2001(b)(1)(A))                               | \$40,000,000 |
| 4. + Adjusted Taxable Gifts (§ 2001(b)(1)(B))                            | 21,300,000   |
| 5. Tentative Estate Tax Base                                             | \$61,300,000 |
| 6. Tentative Estate Tax (§ 2001(b)(1))                                   | \$22,651,800 |
| 7. – Tax on Lifetime Taxable Gifts at Date of Death Rates (§ 2001(b)(2)) | (2,331,000)  |
| 8. Gross Estate Tax (§ 2001(b))                                          | \$20,320,800 |
| 9. – Unified Credit & Other Credits (§§ 2010–2016)                       | (6,260,800)  |
| 10. Estate Tax                                                           | \$14,060,000 |

Is that right? And can we “shortcut” to it? It is, and I suppose we can. We had a taxable estate of \$40,000,000. Although the taxpayer exhausted their unified credit (twice!) on lifetime gifts, \$2,000,000 of “new” unified credit exemption equivalent arose between their last gifts in 2026 and their death in 2030, which reduces the estate tax base to \$38,000,000. A flat rate of 37 percent applied to that is \$14,060,000.

And so in that sense, I suppose a “shortcut” would work for the estate tax calculation, even in this circumstance. But it’s always safest to do it the way the Code directs, as we have here. The ideal practice might be to do it both ways, and make sure the results match!

One last note on this estate tax example: Although the taxpayer died when the top estate tax is 37 percent, the estate tax calculation just performed does not give the estate back any of the gift taxes that the decedent paid at higher rates in 2005 and 2026. Looking at the taxes imposed in all three years, they add up to \$16,584,000, and that’s 37.44 percent of the overall taxable base of \$44,300,000 (\$61,300,000 minus the \$17,000,000 exemption equivalent):

|                            |                   |
|----------------------------|-------------------|
| 2005 gift tax              | \$ 124,000        |
| 2026 gift tax              | 2,400,000         |
| <u>+ Estate tax (2030)</u> | <u>14,060,000</u> |
| Total                      | \$ 16,584,000     |

\* \* \* \* \*

If a taxpayer made taxable gifts before 1977 — something you will not encounter on our exam, and perhaps not in real life, either — the rules are different. Back then, the exemption (much smaller than it is today) was implemented as an actual exclusion, rather than a tax credit. See, for example, modern-day Section 2504(a)(3). Suffice it to say that if you encounter a taxpayer with such an extended gift history, the tax calculation process will be slightly different.

I hope that any of you who have dragged yourselves all the way through this have found it helpful. If you have questions or concerns about anything written here, let's talk about it. But keep in mind what is said in the first paragraph hereof: For exam purposes, you will *not* need to get into these weeds.