

legally speaking

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WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

Estate and Gift Taxes for 2020: Is It Better To Make A Large Gift Sooner Rather Than Later?

Under the federal tax law, the amount of each person's federal estate and gift tax exemption, combined, is \$11.58 million in 2020 (and scheduled to increase annually for inflation through 2025). This exemption amount applies to the total taxable gifts made during an individual's lifetime and the value of property transferred at death to someone other than a spouse or charity. Once the gifts combined with transfers at death exceed \$11.58 million, a federal tax of 40% will be imposed on the amount exceeding \$11.58 million.



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This gift and estate tax exemption amount of \$11.58 million per person only lasts through December 31, 2025. Beginning January 1, 2026, the federal combined gift and estate tax exemption will go back to \$5 million, indexed for inflation. Individuals using the increased exemption amount prior to 2026 can, however, take comfort. The Internal Revenue Service has issued a directive making clear that gifts made between now and December 31, 2025, totaling no more than the higher exemption amount will not be subject to additional gift and estate taxes after the federal exemption is reduced in 2026.

For example, if Mary made a \$10 million gift in 2020 to her daughter, Gwen, (when the exemption amount is \$11.58 million) and then dies in 2026 (when the exemption amount decreases to \$5 million), the gifts in excess of the \$5 million exemption would not be added to Mary's total lifetime and death transfers, so would not cause an increase in the federal estate tax due on her estate.

Those considering making substantial gifts to children and others may wish to accelerate such gifting before the end of 2025. With the prospect of a new administration in the White House in 2020, which may cause the exemption to be decreased sooner than 2026, one may wish to proceed with large gifts before the end of 2020. For instance, a business owner who has been thinking about gifting a substantial interest in her business may wish to proceed with that gifting sooner, rather than later.

New York has its own separate estate tax system, with the estate tax exemption for 2020 set at \$5.85 million per person. While there is no New York State gift tax, New York adds back to your taxable estate all taxable gifts you made during the three-year period immediately preceding your death. This may also prompt you to make gifts sooner rather than later, in order to reduce the value of your estate at death for New York estate tax purposes.

Making large gifts, especially of one's interest in a business, is a multi-faceted decision, involving what is best for the business, the owner's family and the owner. Federal and New York capital gains tax consequences of making gifts must be considered, as the donee takes the gifted assets with your income tax basis. Tax savings, corporate goals, and personal comfort must all be considered before making a substantial gift.

Patricia C. Marcin is a partner at the law firm of Farrell Fritz, P.C. concentrating in trusts, estates and tax law. Patricia has lived in Lloyd Harbor since 2005 with her husband John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.

