



Estate Planning in 2021: Now What?

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Hi! I'm John R. Strohmeyer.

- I'm the proprietor of Strohmeyer Law PLLC in Houston, where I guide clients through the maze of estate planning, tax, international tax, and probate.
- I'm Board Certified by the Texas Board of Legal Specialization in both Tax Law and Estate Planning and Probate Law.
- I'm a Fellow of the American College of Trust and Estate Counsel.

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Hi! I'm John R. Strohmeyer.

Bark Office



Griswold
Strohmeyer-Daniels

BARK OFFICE



Molly Strohmeyer-
Daniels

BARK OFFICE



Billy Strohmeyer-
Daniels

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Hi! I'm John R. Strohmeyer.

- I've given a wide range of white-knuckle presentations, including the following.
 - A Sun That Never Sets: International Tax Updates for Global Clients
 - Income Tax Treaties
 - Estate and Gift Tax Treaties
 - Hoisting Your Jolly Roger: How to Fund Your Retirement in a Non-Extradition Country with Your Client's Money
 - A Whole New World: Trust and Estate Distributions to Foreign Beneficiaries

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Overview

- Income Tax
- The Wealth Transfer Taxes: Estate Tax, Gift Tax, and Generation-Skipping Transfer Tax
- How Much Planning Do We Need?

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WHAT LEVEL OF PLANNING DO WE NEED?

- Goal 1: Simplicity
- Goal 2: Account for reality
- Goal 3: Benefits of planning outweigh the costs

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	Individual	Corporation	S Corporation	Partnership	Grantor Trust	Non-Grantor Trust	Estates
Pays tax?	Yes	Yes	Yes, but also pass through	No, pass through tax	No, reported by Grantor	Yes	Yes
Return	1040	1120	1120-S	1065	1040 or 1041	1041	1041
Tax Year	Calendar	Fiscal	Fiscal	Fiscal	Calendar	Calendar	Fiscal
State-Law Entity?	No	Yes (Inc.)	Yes (Inc., LLC, Ltd.)	Yes (LLC, Ltd.)	No	No	No

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Trusts Income Tax Options

- The trust is a Complex Trust, which means that each trust would report and pay tax as a separate taxpayer.
- The trust is a Grantor Trust as to each individual beneficiary. This means that the beneficiary will be responsible for all income tax generated within the trust and may receive distributions to pay that tax.
- The trust is a Grantor Trust as to the person who created the trust. This means that they will be responsible for paying all income tax generated within the trust but can't receive distributions to pay the tax.

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 0: No estate tax issues anticipated
- Level 1: Possible estate tax issues
- Level 2: Form 706 expected, but can avoid paying tax
- Levels 3, 4, and 5: Form 706 and payment expected

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Income Taxation of Trusts & Estates

- Types of trust taxation
 - Complex Trust
 - Simple Trust
 - Grantor Trust
 - Qualified Sub-S Trust (“QSST”)
 - Electing Small Business Trust (“ESBT”)

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Income Taxation of Trusts & Estates

- “Income” for a trust can mean:
 - Fiduciary Accounting Income
 - Based on State Law and Trust Agreement
 - Distributable Net Income
 - Taxable Net Income
 - (Undistributed) Net Investment Income

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Income Taxation of Trusts & Estates

- “Simple” trusts are required to distribute all income annually
- “Complex” trusts are all other trusts
 - Simple trusts that make distributions in excess of income
 - Trusts are almost always complex trust in year of termination

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Income Taxation of Trusts & Estates

- Distributable Net Income—Start with Adjusted Gross Income
 - Add:
 - Personal Exemption
 - Capital Losses
 - Tax-Exempt Interest unless allocated to Charity
 - Distribution Deductions
 - Subtract:
 - Unpaid Dividends allocated to Simple Trust Principal
 - Unpaid Capital Gains allocated to Principal

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Income Taxation of Trusts & Estates

- Distribution Deduction
 - Deducted Amounts included in Recipient's Gross Income
- For Simple Trusts, DNI is allocated pro rata to required distributions
 - Income passed through to beneficiaries
- For Complex Trusts, the deduction is available for:
 - Income *required* to be distributed
 - Other amounts *actually* paid, credited, required to be distributed

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Grantor Taxation of Trusts

- Grantor trust rules
 - Code § 673 Reversionary Interests
 - Code § 674 Power to Control Beneficial Enjoyment
 - Code § 675 Administrative Powers
 - Code § 676 Power to Revoke
 - Code § 677 Income for Benefit of Grantor
 - Code § 678 Person other than grantor treated as substantial owner
 - Code § 679 Foreign trusts with United States beneficiaries.

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Income Tax Planning Options

1. Allocate capital gains to DNI under Treas. Reg. § 1.643(a)-3(b)
2. Elect to treat in-kind distribution of property as a sale under Code § 643(e)(3)
3. The 65-Day Rule for complex trusts and estates under Code § 663(b)
4. Excess deductions on termination & conclusion under Code § 642(h)(2)
5. Estimated tax payments treated as made by beneficiary under Code § 643(g)
6. “Disability Trusts” are entitled to a personal deduction under Code § 642(b)(2)(C)
7. Income tax deduction for estate tax attributed to IRD under Treas. Reg. § 1.691(a)-1
8. Unlimited charitable deduction under Code § 170(c)

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U.S. TRANSFER TAX SYSTEM

- U.S. Resident Transfer Tax Obligations
 - Worldwide taxation of transfers for U.S. citizens and permanent residents
 - File Form 709 to report and pay tax on taxable lifetime transfers
 - “Gross Estate” subject to Estate Tax, reported on Form 706
- Certain foreign gifts must also be reported
 - Gifts from a nonresident alien individual or foreign estate must be reported only if the aggregate amount of gifts from that person exceeds \$100,000 during the tax year
 - Gifts from foreign corporations and foreign partnerships must be reported only if the aggregate amount of gifts exceeds \$15,601

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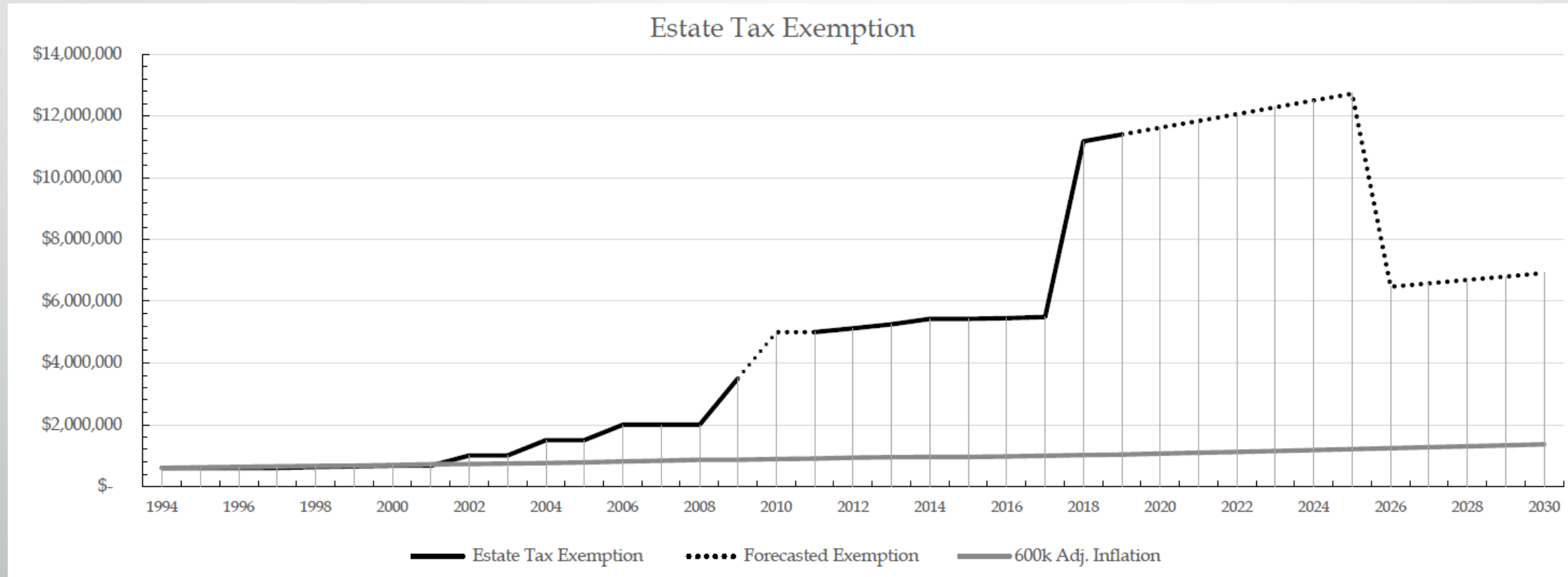
U.S. TRANSFER TAX SYSTEM

- Federal Estate Tax
 - The decedent's estate is responsible for paying the 40% tax
 - The estate tax exemption amount is currently \$11.7 million per person and adjusted for inflation each year.
 - This is expected to increase annually under current law until January 1, 2026.
 - While we won't know the exact amount, we guess that it will be approximately \$12.5 million per person in 2025.
 - In 2026, estate tax exemption amount will be reduced to \$5 million, and adjusted for inflation from 2011. While we won't know the exact amount, we guess that it will be approximately \$6.5 million.
 - Basis step-up for property held by decedent at death
 - Unlimited Marital Deduction is used to exempt property from the Estate Tax until the surviving spouse's death

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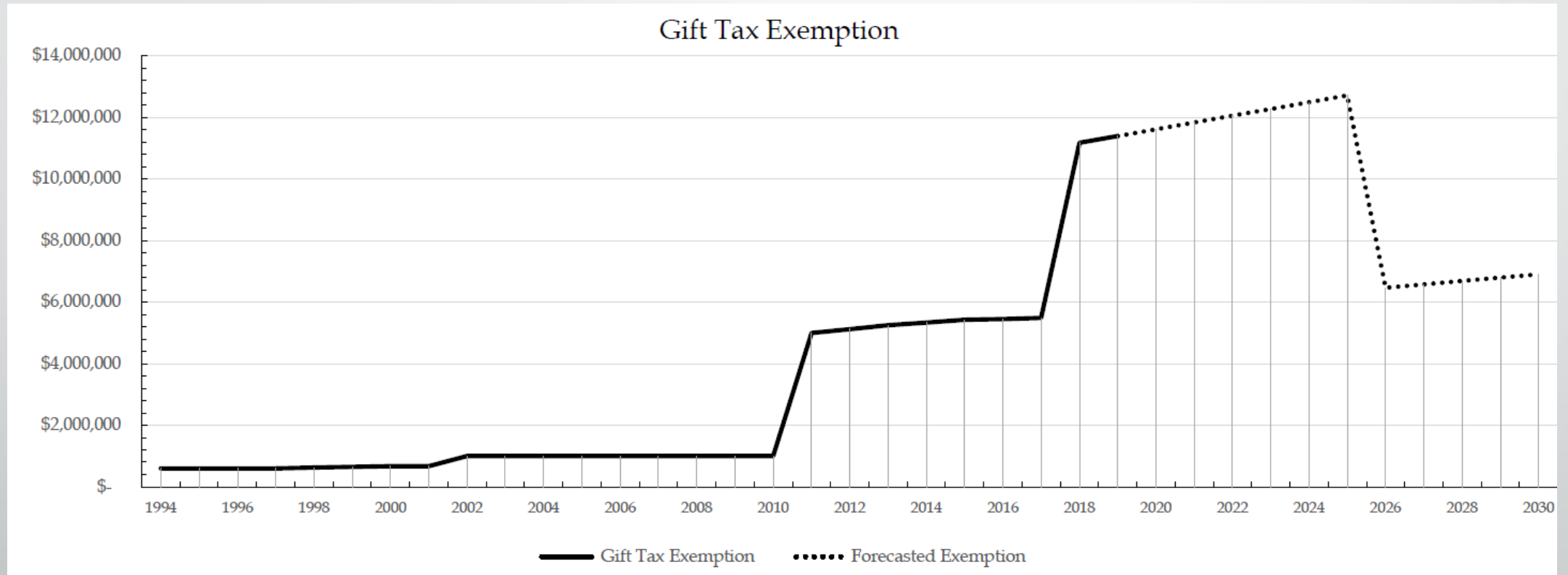
Federal Estate Tax



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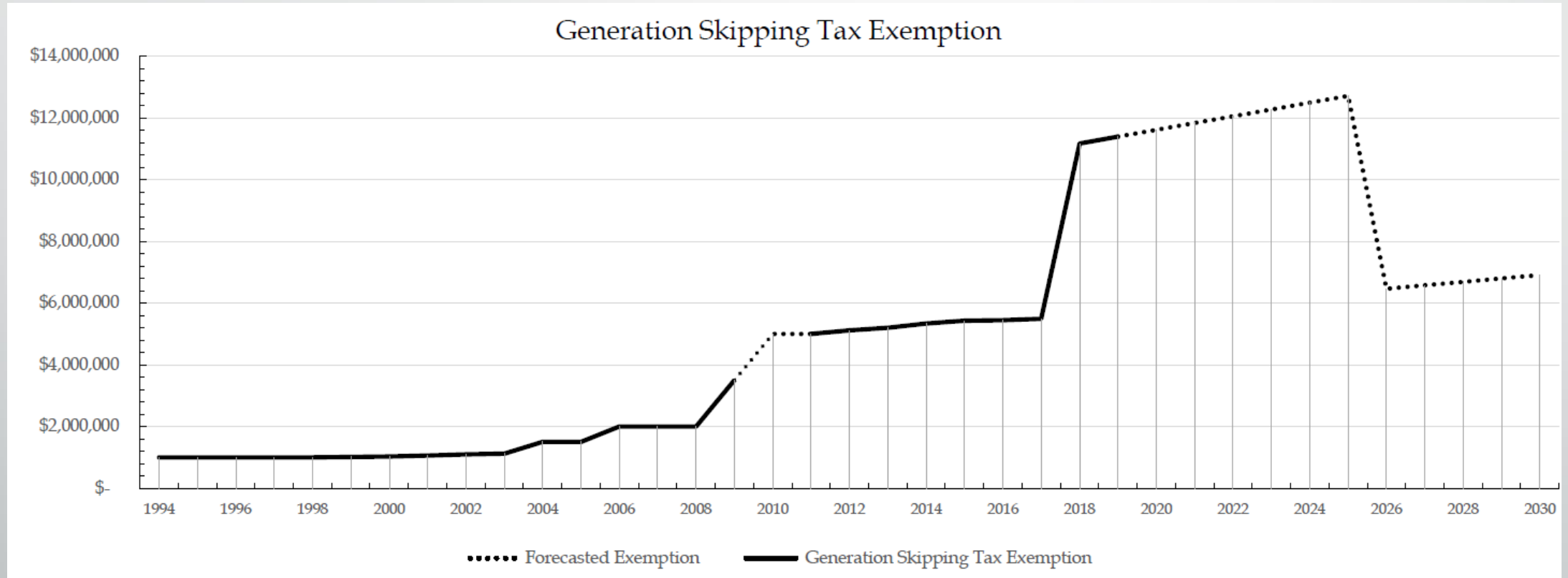
Federal Gift Tax



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Federal Generation-Skipping Transfer Tax



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Post-Mortem Planning Issues

Estate Tax Issues

- Portability election?
- Should any beneficiaries disclaim their interest?
- Who will prepare the 706?
- IRC § 2032 Special Valuation Date
- IRC § 2032A Special Use Valuation
- IRC § 6161 Discretionary Deferral of Payment
- IRC § 6166 Estate Tax deferral
- IRC § 6651(a)(2) Relief from late payment penalties

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U.S. TRANSFER TAX SYSTEM

- Gift Tax

- The donor is taxed on gratuitous transfers at a 40% rate
- \$10,000,000 lifetime exemption equivalent, indexed for inflation (currently \$11,700,000)
- \$10,000 annual exclusion, indexed for inflation (currently \$15,000)
- \$159,000 Annual Exclusion for gifts to non-citizen spouses
- Unlimited Exclusions for educational and medical payments
- Donees take a carryover basis in transferred property

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U.S. TRANSFER TAX SYSTEM

- Generation-Skipping Transfer Tax
 - 40% tax imposed on a transferee who is two or more generations below the generation of the transferor
 - Serves as the backstop to Gift and Estate Taxes
 - \$10,000,000 lifetime exemption, indexed for inflation (currently \$11,700,000)

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U.S. TRANSFER TAXATION ON NONRESIDENTS

- Nonresidents are subject to Estate Tax, Gift Tax, and GST Tax only on property situated in the U.S.
 - U.S.-situs tangible property
 - U.S.-situs real property
- Lifetime transfers of intangible property are not taxed
 - Gifts of U.S. stock are not taxed

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TRANSFER TAX RESIDENTS

- Estate & Gift Taxes are imposed on U.S. citizens and residents of the U.S.A.
- Residents are those who are domiciled and primarily residing in the U.S.A. with no definite present intention of leaving
 - Facts and circumstances test based on the following
 - Green Card holder
 - Time spent in the U.S.A. and abroad
 - Driver's license
 - Civic involvement
 - Has the person abandoned their life in other country?
 - Not a bright-line rule like Substantial Presence

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U.S. TRANSFER TAXATION OF NONRESIDENTS

- Gift Tax applied to property transferred in the U.S.A.
 - No lifetime exemption
 - \$15,000 Annual Exclusion for gifts to non-spouses
 - Unlimited marital deduction for gifts to citizen spouses
 - \$159,000 Annual Exclusion for gifts to non-citizen spouses

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U.S. TRANSFER TAXATION OF NONRESIDENTS

- Estate Tax applied to property located in the U.S.A.
 - Real property
 - Cash deposits in the U.S.A.
 - Tangible property in the U.S.A.
 - Stock in U.S. corporations
- \$60,000 estate-tax exemption for Nonresidents
- Unlimited marital deduction is available for assets left to U.S.-citizen spouses.
 - A “QDOT” can be established for non-citizen spouses
- The GST Tax applies if the Estate & Gift Taxes apply

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 0: No estate tax issues anticipated
 - Assets under \$3,000,000

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 1: Possible estate tax issues, can be managed with testamentary planning for now
 - If single: Assets under \$5,000,000
 - If married: Assets under \$8,000,000
- Looking to minimize possible effects of tax, so considering testamentary trusts only.

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 2: Form 706 expected, but can avoid paying tax with active management with a combination of testamentary planning, annual exclusion gifts, and charitable gifts
 - If single: Assets over \$5,000,000
 - If married: Assets over \$8,000,000

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 3: Form 706 and payment expected, and we can solve with additional liquidity in a trust.
 - Using life insurance in a trust to provide liquidity.

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Trusts and Annual Exclusion

- Annual exclusion gifts
 - Annual exclusion only available for gifts of present interests in gifted property
 - Present interest is unrestricted right to immediate use, possession or enjoyment of property or the income from property. Treas. Reg. 25.2503-3(b)
 - Test for present interest is not when title vests but when substantial enjoyment begins for the donee. *Fondren v. Comm'r*, 324 U.S. 18, 20 (1945).

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Trusts and Annual Exclusion

- Gifts in trust are to be regarded for gift tax purposes as gifts to beneficiaries rather than to trustees. *Calder*, 85 T.C. 713 (1985)
- However, such gifts will be considered gifts of future interests **unless** beneficiaries, in general either have immediate right to substantial use and enjoyment of gifted property or to income from the property

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 4: Form 706 and payment expected, and we can address with fractional gifts of business interests.
 - Goal: Use gift tax exemption now with reduced values because the date of death value is expected to be much higher.
 - Will need appraisals of fractional interests.

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 4: Form 706 and payment expected, and we can address with fractional gifts of business interests.
 - Beneficiary-Defective Inheritor's Trusts (BDIT)
 - Delaware Incomplete Non-grantor Trust (DING)

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WHAT LEVEL OF PLANNING DO WE NEED?

- Level 5: Form 706 and payment expected, and we can address with specialized trusts.
 - Goal: Use gift tax exemption now with reduced values.
 - Will need appraisals of fractional interests.
 - But there's added complexity because of the trusts that are being used.

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TRUST PLANNING OPTIONS

- Grantor Retained Annuity Trusts (GRAT)
- Spousal Lifetime Access Trusts (SLAT)
- Qualified Personal Residence Trusts (QPRT)

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CHARITABLE PLANNING OPTIONS

- Charitable Lead Trusts
 - Charitable Lead Annuity Trust (CLAT)
 - Charitable Lead Uni-Trust (CLUT)
- Charitable Remainder Trusts
 - Charitable Remainder Annuity Trust (CRAT)
 - Charitable Remainder Uni-Trust
 - (CRUT)
 - (NICRUT)
 - (NIMCRUT)

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- Level 0: No estate tax issues anticipated
- Level 1: Possible estate tax issues, can be managed with testamentary planning for now.
- Level 2: Form 706 expected, but can avoid paying tax with active management with a combination of testamentary planning, annual exclusion gifts, and charitable gifts
- Level 3: Form 706 and payment expected, and we can solve with additional liquidity in a trust.
- Level 4: Form 706 and payment expected, and we can address with fractional gifts
- Level 5: Form 706 and payment expected, and we can address with specialized trusts

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GREAT. WHAT WE DO WITH THIS?

- Client 1: Widow, age 50 with 2 minor children and ~\$25 million
- Client 2: Widow, age 70 with 3 adult children and ~\$25 million
- Clients 3 +4: Married Couple with 2 adult children and \$13 million
- Clients 5 + 6: Married Couple with 2 adult children and \$25 million

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CLE Course Number: 174115954

Have a question?

Jump on my calendar here:

<http://calendly.com/john-strohmeyer/30-minute-call>

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