SFGH

TAX NEWSLETTER

# Use It or Lose It

## An Opportunity to Reduce Estate Taxes

***By Howard M. Helsinger***

*May 2019*

The federal estate tax is going to be changed. Some people want to increase it, some want to eliminate it. But change is not merely possible – it is likely. Since its introduction in 1916 the federal estate tax has been repeatedly changed and modified with a significant change made roughly every four years. The maximum rate has ranged from a low of 25% in 1917, to a high of 78% for the 36 years between 1938 and 1974. Currently, the top rate is 40%. Initially only estates less than $50,000 were exempt from the tax. Today the exclusion is $11.4 million, almost one-hundred times greater than it was when I started law school 40 years ago.

Several current presidential candidates, most notably Bernie Sanders and Elizabeth Warren, have proposed major changes to the estate tax. Their proposed changes have broad popular support. They may not be enacted as proposed, but change seems likely. It would be wise to be prepared.

The Sanders proposal, Senate Bill 309, is the most detailed. It would severely limit many of the most effective estate tax reduction strategies. It would also increase estate tax rates to a maximum of 77% on estates of over $1 billion, and change the rules regarding valuation discounts, GRATs, Grantor Trusts, generation-skipping dynasty trusts, and annual exclusion gifts.

Most significantly, the Sanders proposal would reduce the gift and estate tax exclusion to $3.5 million from its current historic high of $11.4 million. The exclusion is scheduled to collapse back to $5 million in 2025. The Sanders proposal would accelerate and deepen that collapse.

But right now you can give away $11.4 million without paying gift tax. Married couples can give away a total of $22.8 million. You can do that today. You may not be able to do it next year, or at least not if the Sanders proposal or something like it is enacted. You have an opportunity now, and when opportunity knocks**…**

What can you do, or should you do, *NOW*?

The simplest thing you can do is use your $11.4 million gift tax exclusion. Use as much or as little of it as you are comfortable doing. This was a smart move last year when the exclusion increased. It would be prudent now, when there is talk of reducing it sooner rather than later. Making a gift now would reduce the size of your taxable estate and remove from your estate the income and appreciation on that gifted property. If the exclusion does shrivel by two thirds you will appear brilliant to have used it before it was reduced, and foolish to have failed to do so. Regretting a missed opportunity is never fun.

There are many ways to seize this opportunity:

- The simplest would be a direct gift to children or descendants, or better, to a trust for their benefit.
- Make the gift with appreciating assets and you also remove future growth from your estate.
- Make the gift using assets subject to valuation discounts, like interests in a family partnership, and you could remove more value from your estate. The Sanders proposal would limit the availability of such discounts, but they can still be used now.
- Make the gift to a grantor trust. The advantage of a grantor trust is that you pay the trust's income tax, thus further reducing the size of your taxable estate, but your payment of the trust's income tax is not treated as a gift to the trust or to its beneficiaries. The trust can grow tax free, and the trust can be designed so that it is not included as part of your taxable estate. The Sanders proposal would eliminate those advantages by including the grantor trust in your estate and requiring the trust to pay its own taxes – but only for trusts created or funded after those changes become effective. This is another opportunity that may disappear but that you can take advantage of now.
- If you as a surviving spouse are the beneficiary of a QTIP trust that would be taxed as part of your estate, you may be able to withdraw funds from that trust and use them for gifts.
- If you have been preparing Crummey notices every year to cover the premium payments for the insurance in your Irrevocable Life Insurance Trust, this may be the time to make a large gift to the trust. There have been recurring proposals to bar Crummey notices. If your trust could pay the premiums out of income you would no longer need Crummey notices.
- Should you use the current exclusion amount for generation skipping transfers? The Sanders proposal would limit generation skipping trusts to 50 years. Your gift might avoid generation skipping tax longer if you made an outright gift to grandchildren, who could then use those funds in the ways we've listed above, including trusts for their children.

These are only some of the ways you can now, while it is available, take advantage of the generous 11.4 million gift and estate tax exclusion. The Sanders proposals may not be enacted, but if the exclusion is reduced and you haven't used it you will regret the lost opportunity. Use it lest you lose it. Some of the ways of using it are simple. Others are less simple. We urge you to talk to any one of our estate planning attorneys to learn what will work best for you.■

---

*Author—Howard M. Helsinger is a partner at the law firm of Sugar Felsenthal Grais & Helsinger LLP.*

## For More Information

Richard A. Sugar
312-704-9400
rsugar@sfgh.com

Steven A. Felsenthal
312-704-2180
sfelsenthal@sfgh.com

Adam J. Grais
312-704-2189
agrais@sfgh.com

Howard M. Helsinger
312-704-2184
hhelsinger@sfgh.com

Michelle M.Huhnke
312-704-2779
mhuhnke@sfgh.com

Ira S. Neiman
312-704-2776
ineiman@sfgh.com

Jeffrey D. Shelley
312-704-2175
jshelley@sfgh.com

## Chicago

30 North LaSalle Street, Suite 3000
Chicago, Illinois 60602
Telephone: 312-704-9400
Fax: 312-372-7951

## New York

230 Park Avenue, Suite 908
New York, New York 10169
Telephone: 212-899-9780

www.sfgh.com