

# Publications

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## Will the Red Wave Crash Down on the Estate Tax Sunset?

Prior to November 5<sup>th</sup>, most pundits on both sides of the aisle did not forecast Republicans gaining control of both the Senate and House of Representatives. With Donald Trump being elected to a second term, we now have a “red wave” with the Republican Party holding the White House and both chambers of Congress.

Now that the Republican party has gained control of the House, speculation turns to how President-elect Trump and the new Congress will attempt tax reform in 2025, specifically in light of the Tax Cut and Jobs Act (TCJA) set to expire January 1, 2026, if no new legislation is enacted.

While the odds of the extension of the higher federal estate and gift tax exemption amounts are now more favorable, and rumors swirl about whether the federal estate tax could be repealed completely, clients should be cautious if considering delaying their tax planning until the end of 2025 or beyond.

With slim majorities in both the House and the Senate and the present focus on slashing the large federal deficit, negotiation and deal-making internally among Republicans and across party lines may put extending the TCJA on the back burner the first half of 2025. As for an entire repeal of the estate tax, while Republicans may consider this tactic, it again may not be a high priority, as estate tax liability only applies to less than half of one percent (0.5%) of American households. Further, if the higher estate tax exemption is extended, it may be for a limited number of additional years beyond 2025!

This is not to say that Republicans may not try to extend the sunset through the budget reconciliation process, which avoids the possibility of a filibuster in the Senate as was used when the original Tax Cuts and Jobs Act was passed in 2017. House Majority Leader Steve Scalise (R-LA) has made indications that he is prepared to use budget reconciliation to extend provisions of the TCJA. However, budget reconciliation may only occur once per fiscal year, and there is no guarantee that it will include extending the estate and gift tax exemption amounts.

Therefore, clients should still consider using their lifetime transfer tax/gift tax exemption (\$13,610,000 in 2024; \$13,990,000 in 2025) before the end of 2025. Waiting until the end of 2025 increases the odds of unexpected issues arising that could prevent timely

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completion of the gifts/transfers. Gifts often include assets that require a qualified appraisal that meets IRS requirements and can take a substantial amount of time to complete. If clients wait for an appraisal until the fourth quarter of 2025, there is a high probability the appraisal may not be completed before the December 31, 2025, deadline if qualified appraisers are backlogged and racing against the clock.

Also, for clients living in states that have their own estate and inheritance taxes (such as Illinois, New York, and Massachusetts), it is essential to continue working with their estate planning attorneys to make lifetime gifts to avoid state estate taxes.

While high-net-worth clients may be seeing green with the possibility of the exemption being extended or increased, or even the entire federal estate tax being completely repealed, clients need to continue to plan. There is no guarantee that the TCJA will be extended, and it is impossible to predict what new tax rules will be imposed.

As such, clients should avoid adopting the “wait and see” approach and should be actively engaging with their estate planning attorneys to at least discuss and analyze gifting in 2025. If the TCJA is extended (or the estate tax is repealed), gifting or transfers can be delayed, if preferable. However, if planning is not in place and the exemption does sunset, then the client may be left a day late and millions of dollars short.