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SUMMARY

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The estate tax is imposed on bequests at death, whereas the gift tax applies to inter vivos (during life) gifts. A certain amount of combined estates and gifts—recently set at $15 million by P.L. 119-21 (commonly known as the One Big Beautiful Bill Act) for 2026, indexed for inflation—is exempted from taxation by the federal government.

The American Taxpayer Relief Act (ATRA; P.L. 112-240) established permanent rules for the estate and gift tax for 2013 and subsequent years. The tax revision of 2017 (P.L. 115-97), commonly known as the Tax Cuts and Jobs Act (TCJA), temporarily doubled the exemption levels. This increase was set to expire after 2025, but P.L. 119-21 roughly retained the doubled exemption.

With indexation, the exemption amount was $5.49 million in 2017, and with the temporary doubling of the exemption and inflation adjustments, it is $13.99 million in 2025. P.L. 119-21 sets it at $15 million for 2026, to be subsequently indexed for inflation. The taxable estate is subject to a 40% rate. The exemption applies to total bequests and gifts (separate from the annual inter vivos gift exemption of $19,000 per donee for 2025). Transfers between spouses are exempted, and any unused exemption can be inherited by a surviving spouse. Other elements of the tax remain, including deductions for charitable bequests and a number of special provisions for farms and small businesses. Farms and small businesses are eligible for deferral of tax payments; valuation (with limits) based on use rather than market value; and, in the case of farms and landowners, contributions of conservation easements (with limits).

The rate of the tax and the level of exemption have been subject to legislative changes in recent years. Since these changes began in 2001 with an increase in the exemption amount, the share of decedents paying an estate tax has declined from 2.1% of the population to 0.07% in 2019. This share is expected to rise to about 0.2% when the TCJA's increased exemptions expire. Estate tax rates also fell during that period, from 55% in 2000 to 40% currently. As a result of the exemption increases and rate decreases, the tax as a percentage of GDP fell from 0.3% in 2000 to 0.1% currently.

Policymakers have raised concerns about the effect of the tax on farms and family businesses. About 0.2% of operating farms were estimated to be subject to the estate tax, rising to 1% when the exemptions expire. The share of estates with more than half of assets in businesses subject to the tax is estimated at 0.09%.

Over half (60% of returns and 55% of the value) of estates over the filing threshold in 2019 (the last year for which year-of-death data are available) paid no estate tax, primarily because of the marital deduction, and to a lesser extent the charitable deduction. The average rate of tax paid on taxable estates was 19%, including a 1.7% rate from the gift tax. Nontaxable estates paid 0.3% in gift taxes.

One justification for the estate tax is that, because appreciated assets have a basis in the hands of decedents at the fair market value at the time of death rather than the basis of the decedents (generally cost of acquisition, minus depreciation in the case of depreciable assets), unrealized gains passed on at death are never taxed under the income tax. Some data suggest that unrealized gains are about 44% of the value of estates subject to filing requirements, and that gains are as high as 55% of value for very large estates.

Other justifications for the estate tax are its progressive nature, its reduction in the concentration of wealth, and its encouragement of charitable bequests. Criticisms reflect general questions about the appropriateness of death as a triggering event for taxes, the argument that assets subject to the tax (except for unrealized gains) have already been taxed under the income tax, and the potential effects on saving and labor supply. Evidence, however, suggests that the saving and labor supplies of donors are not affected, but the tax increases the supplies of saving and labor generated by beneficiaries.

Various proposals have been advanced to revise the treatment of estates, including making the higher exemption levels permanent, repealing the tax, lowering the rate, or introducing higher graduated rates and lower exemptions. There have also been proposals to tax capital gains at death. A number of proposals to address more narrow provisions have also been advanced. Some would increase limits on valuation discounts for farms and family businesses, as well as limits on the deduction of conservation easements. Others are aimed at avoidance mechanisms, restricting the benefits of grantor trusts, disallowing minority discounts (for estates left to a family partnership), and other minor aspects of the estate and gift tax.

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Introduction

The estate and gift tax is imposed on bequests at death and on inter vivos (during lifetime) gifts. A tax rate is applied to the value of the estates and gifts to the extent it exceeds a lifetime exemption amount. Lawmakers have changed the tax rate and the level of exemption in recent years. Since those changes began in 2001, the share of decedents paying an estate tax has declined from 2.1% of the population to 0.07% in 2019.[1]

This declining share began with the Economic Growth and Tax Relief Act of 2001 (EGTRRA; P.L. 107-16), which increased the exemption from $675,000 in 2001 to $3.5 million in 2009. In 2008, the tax affected 0.7% of decedents. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) increased the exclusion to $5 million indexed for inflation, and the tax affected less than 0.2% of decedents.

The American Taxpayer Relief Act of 2012 (P.L. 112-240) established permanent rules for the estate and gift tax for 2013 and subsequent years. The exemption was temporarily doubled by the 2017 tax revision (P.L. 115-97), commonly known as the Tax Cuts and Jobs Act (TCJA), effective from 2018 to 2025. Absent legislation, the exemption rate would have decreased by half after 2025, but the tax legislation popularly known as the One Big Beautiful Bill Act (P.L. 119-21) restored that exemption and slightly increased it from $13.99 million in 2025 to $15 million in 2026. The estate tax affects relatively few people, about 0.07% of decedents.

Estate tax rates also fell during that period, from 55% in 2000 to 40% currently. As a result of the increase in exemptions and the decrease in the rate, the tax as a percentage of GDP fell from 0.3% in 2000 to 0.1% currently. The share is expected to rise to 0.2% when the increased exemptions expire.[2]

The following section addresses details of the tax structure. The principal rules are as follows:[3]

- In 2025, estates and lifetime gifts have a combined exemption of $13.99 million in asset value. This amount will be $15 million in 2026.
- The estate tax rate on the taxable portion of the estate, if any, is 40%.
- The exemption from the estate tax applies to estates and lifetime inter vivos gifts in the aggregate. A separate annual exemption per donee for inter vivos gifts is indexed for inflation and is $19,000 in 2025.
- Transfers to spouses remain exempt, but spouses can inherit any unused portion of the exemption from each other, so that the combined exemption for a couple is $27.98 million in 2025 and $30 million in 2026. Other estate tax deductions, such as those for charitable contributions, are retained.
- A number of special rules for farms and small businesses are in place.

[1] See Joint Committee on Taxation, *History, Present Law, And Analysis Of The Federal Wealth Transfer Tax System*, JCX-52-15, March 26, 2015, https://www.jct.gov/publications/2015/jcx-52-15/. Current shares estimated from "Table 1: Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

[2] "Historical Budget Projects and Revenue Projections, by Category," Congressional Budget Office, https://www.cbo.gov/data/budget-economic-data#7.

[3] See "Estate Tax," Internal Revenue Service (IRS), at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-Tax, and "Frequently Asked Questions on the Gift Tax," IRS, at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes#5. For all 2024 values in the tax code see IRS, *Internal Revenue Service Rev. Proc. 2023-34*, https://www.irs.gov/pub/irs-drop/rp-23-34.pdf.

This report describes the basic structure of the estate and gift tax; provides a brief history; and discusses the tax's revenue effects and coverage, the distribution of assets and deductions, economic effects, and issues and options.

Basic Structure

This section describes the tax, including rates; exemptions; deductions; special provisions for small businesses, farms, and land owners; step-up basis for appreciated assets; and differences in the treatment of bequests and gifts.

The estate and gift tax is a unified tax, so that assets transferred as gifts during a person's lifetime are combined with those transferred at death (bequests) and subject to a single rate schedule.[4] The tax is imposed on the decedent's estate, and the rate structure applies to total bequests and gifts given; heirs are not subject to tax.

Rates and Basic Exemptions

The lifetime estate and gift tax exemption is indexed for inflation and is $13.99 million for 2025 and $15 million in 2026. The exemption is a lifetime exemption for both taxes—any portion taxpayers use to reduce their gift tax liability lowers the exemption available to them to count against their estate. A generation-skipping tax is also imposed, to address estate tax avoidance through gifts and bequests to a later generation.[5]

Although the rates of the tax are graduated, the exemption is applied in the form of a credit and offsets taxes applied at the lower rates. Thus, the taxable estates and gifts are therefore effectively subject to a flat 40% rate. This rate is higher than the 35% rate that applied in 2011 and 2013, but lower than the 45% rate that applied in 2009.[6]

Differences in the Treatment of Bequests and Gifts

Although the lifetime exemption applies to the total of bequests and gifts, the treatment of these two types of transfers differs in three ways.

Annual Gift Tax Exemption

Individuals are also allowed to exempt annual gifts of $19,000 per recipient for 2025, which do not count as part of the lifetime exemption. The annual gift tax exemption is indexed for inflation in $1,000 increments.

[4] CRS Report 95-416, *The Federal Estate, Gift, and Generation-Skipping Transfer Taxes*, by Emily M. Lanza, provides a detailed description of the estate tax (report out of print; available to congressional clients from the author upon request).

[5] For example, parents may directly skip a generation by leaving some assets to grandchildren, or they may set up a lifetime trust for their children, with the assets subsequently inherited by the grandchildren. The generation-skipping tax is imposed in these circumstances, although it also has an exemption. See CRS In Focus IF13053, *The Generation-Skipping Transfer Tax (GSTT)*, by Jane G. Gravelle for more details.

[6] A discussion of the debate over exemptions and rates as the 2001 tax cut provisions were expiring is in CRS Report R41203, *Estate Tax Options*, by Jane G. Gravelle (report out of print; available to congressional clients from the author upon request).

Step-up or Carryover Basis for Appreciated Assets

Heirs of an estate take as their basis (the amount to be deducted from the sales price) for purposes of future capital gains the value of the asset at the date of the decedent's death. This treatment is referred to as *step-up in basis* and means that no capital gains tax is paid on the appreciation of assets during the decedent's lifetime. For example, suppose a decedent purchased stock for $100,000 and the value of the stock at the time of death were $200,000, a gain of $100,000. If the heir sells the stock for $250,000, a gain of $50,000 ($250,000 minus the stepped-up basis of $200,000) is recognized. The $100,000 of gain that accrued during the decedent's lifetime is never taxed.

The step-up rules do not apply to gifts, in which *carryover basis* is applied. In that case, the original basis of $100,000 would be carried over and the gain would be $150,000 ($250,000 minus $100,000). Both the gain accrued by the donor and the gain accrued by the donee would be taxed. This treatment favors leaving appreciated assets through the estate rather than making lifetime gifts.

Step-up in basis is a feature of the income tax law, since it applies regardless of whether an estate tax applies. Its existence is a justification for the estate tax, since otherwise gains of wealthy individuals could go entirely untaxed.

Tax Inclusive Versus Tax Exclusive Rates

While the rates of the gift and estate tax are nominally the same, the estate tax rate is higher in practice. The estate tax is tax inclusive (i.e., the tax is applied to the estate with the amount of the tax included in the amount of the estate), whereas the gift tax is tax exclusive (i.e., the tax is imposed on the gift net of the tax). To illustrate, consider a 50% tax rate. Assuming the annual and lifetime exemptions are already used, to provide a gift of $1 million costs $1.5 million: the tax rate of 50% is applied to the gift of $1 million for a $500,000 tax. To provide a net amount of $1 million for a bequest, $2 million is required: a tax of $1 million (50% of $2 million) and a net to the heir of $1 million. Another way of stating this is that the gift tax rate, if stated as a tax-inclusive rate like the estate tax, would be 33%. Thus, for a 40% estate tax rate, the gift tax rate equivalent is 28.6%.[7] This feature makes the transfer by gift more attractive for assets with little or no appreciation.

Other Exemptions and Deductions

Transfers between spouses are exempt from the estate and gift tax. Estates are allowed to deduct charitable contributions and administrative expenses; deduct state taxes paid on estates and inheritances; and exempt up to $13.99 million for 2025 and $15 million in 2026 in remaining assets from the tax. Estates can also take deductions for donations of conservation easements up to 40% of the value of the asset, with a cap of $500,000.

A spouse can inherit any unused exemption. Thus, in 2025, if a husband dies and leaves an estate of $10 million to nonspousal beneficiaries, his wife can use the remainder of his $13.99 million exemption, increasing her exemption by the $3.99 million difference.

[7] To convert the statutory tax inclusive rate into an equivalent rate for a tax exclusive application, the formula is t/(1+t), where t is the tax inclusive rate.

Special Provisions for Businesses, Farms, and Landowners

A series of provisions benefits businesses, including farms and landowners. These provisions include the ability of family businesses to pay any estate tax due in installments, special use valuations, and conservation easements. Minority discounts, although granted by courts rather than specifically in the law, may also benefit small businesses. Minority discounts are allowed when assets are left to a family partnership in which no individual has a controlling share and are thus deemed to lose value for that reason.

Although the estate tax return is due within nine months of the death, small businesses are allowed to defer payment (except for interest) for the next 5 years, and pay the remaining installment payments over 10 years. Because the last interest payment and the first installment coincide, the overall delay in full payment is 14 years. The benefit is allowed only for the business portion of assets if 35% of the estate is in a farm or closely held business.

Small businesses are also allowed to value their assets at use as a farm or business. This provision is particularly beneficial to farms and allows a reduction in the estate value of up to $1 million, adjusted for inflation ($1.39 million in 2024). It means, for example, that the value of the farm will be what it could be sold for if restricted to farm use rather than to be subdivided for development. Heirs are required to continue use of the assets as a farm or business for 10 years.

Farmers and other landowners may also benefit from conservation easements, a perpetual restriction on the use of the land. In addition to the reduction in value due to the easement itself, an exclusion of up to 40% of the restricted value of the land is allowed, with the total deduction capped at $500,000.

History

Early History of U.S. Taxes on Transfers

Taxes on the transfer of assets have existed throughout history, dating back to ancient Egypt. In the United States, they were used prior to the modern estate and gift tax in 1916 to finance wars and similar emergencies.[8] The first was enacted in 1797 to expand the Navy, given strained relationships with France. At that time, a documentary stamp tax on the inventories of deceased persons, the receipt of inheritances from an estate (except those to a wife, children, or grandchildren), and the probates and letters of administration of estates was imposed. These taxes were fixed amounts, although they were larger for larger inheritances and small inheritances were exempt. These taxes were repealed in 1802.

In 1862, during the Civil War, an inheritance tax was imposed. Unlike the current estate tax, the tax was imposed on the beneficiaries, but unlike the stamp tax, it was a percentage of the inheritance. The tax was also imposed on gifts during the lifetime. The rate depended on the family relationships of the beneficiaries, and spouses and small inheritances were exempt. This tax was repealed in 1870.

[8] For a history, see Darien P. Jacobson, Brian G. Raub, and Barry W. Johnson, *The Estate Tax: Ninety Years and Counting*, Internal Revenue Service, Statistics of Income Bulletin, Summer 2007, pp. 118-128, https://www.irs.gov/pub/irs-soi/ninetyestate.pdf, and Joint Committee on Taxation, *History, Present Law, And Analysis Of The Federal Wealth Transfer Tax System*, JCX-52-15, March 26, 2015, https://www.jct.gov/publications/2015/jcx-52-15/. For a history of the gift tax, see David Joulfaian, *The Federal Gift Tax: History, Law, and Economics*, U.S. Department of the Treasury, Office of Tax Analysis, OTA Paper 100, November 2007, https://home.treasury.gov/system/files/131/wp-100.pdf.

The 1894 income tax was not a transfer tax, but it included inheritances and gifts in income. It was short-lived after being found unconstitutional by the Supreme Court in *Pollock v. Farmers' Loan and Trust Company.*

In 1898, an estate tax was enacted to finance the Spanish-American War. Rates were graduated depending on degree of kinship and size, bequests to spouses were exempt, and there was an overall exemption that excluded small estates. It was repealed in 1902.

The Modern Estate and Gift Tax

Lawmakers enacted the direct ancestor of the current estate tax in 1916. It contained exemptions that excluded small estates, and rates were graduated based on the size of the estate. Over time, rates were increased, but the basic form of the tax remained. The top rate was 10% in 1916 with a $50,000 exemption, and it was increased to 25% in 1917, with the first $50,000 taxed at 2%. At the end of World War I in 1918, rates were reduced on smaller estates and charitable deductions were allowed. The top rate was increased to 40% in 1924, and a credit for state taxes was allowed for up to 25% of estate tax liability. The top rate was reduced to 20% from 1926 to 1931, increased to 40% in 1932, and eventually rose as high as 77% from 1941 to 1976.

A separate gift tax was enacted in 1924 with the same rates and exemptions, and an annual exclusion per donee of $500. The tax was repealed in 1926, then reenacted in 1932 with a $5,000 annual exclusion per donee.

In 1942, changes addressed the difference in treatment in community property states, where each spouse owned half the assets and only the half owned by the decedent was subject to tax. In other states where couples could own assets jointly, exclusions were allowed only if the surviving spouse contributed to the assets. The 1942 act treated assets in community property states the same as in other states. In 1948, this rule was changed to allow a deduction for property transferred to a spouse whether by the will or by law. The 1942 act made other changes in rates and exemptions and instituted a $3,000 annual gift exclusion per donee.

The Tax Reform Act of 1976 (P.L. 94-455) created the modern unified estate and gift tax with a unified credit and graduated rates applied to all transfers. The 1976 act also instituted carryover basis for inherited assets, but that provision resulted in considerable controversy and was repealed retroactively in 1980. The exemption was increased from $60,000 to $120,000, and the top rate was lowered to 70%.

The Economic Growth and Tax Relief Act of 2001 (EGTRRA; P.L. 107-16) provided for a gradual reduction in the estate tax. The law applied a unified exemption for both lifetime gifts and the estate of $675,000 prior to these changes.

Under EGTRRA, the estate tax exemption rose from $675,000 in 2001 to $3.5 million in 2009, and the top tax rate fell from 55% to 45%. Although combined estate and gift tax rates are graduated, the exemption is effectively in the form of a credit that eliminates tax due at lower rates, resulting in a flat rate on taxable assets under 2009 law. The gift tax exemption was, however, restricted to $1 million.

For 2010, EGTRRA scheduled the elimination of the estate tax, although it retained the gift tax and its $1 million exemption. EGTRRA also provided for a carryover of basis for assets inherited at death in 2010, so that, in contrast with prior law, heirs who sold assets would have to pay tax on gains accrued during the decedent's lifetime. This provision had a $1.3 million exemption for gain (plus $3 million for a spouse).

As with other provisions of EGTRRA, the estate tax revisions were to expire in 2011, returning the tax provisions to their pre-EGTRRA levels. The exemption would have reverted to $1 million (a value that had already been scheduled for pre-EGTRRA law) and the rate to 55% (with some graduated rates). The carryover basis provision effective in 2010 would have been eliminated (so that heirs would not be taxed on gain accumulated during the decedent's life when they inherited assets).

During debate on the estate tax, most agreed that the 2010 provisions would not be continued and could be repealed retroactively. President Obama proposed a permanent extension of the 2009 rules (a $3.5 million exemption and a 45% tax rate), and the House provided for that permanent extension on December 3, 2009 (H.R. 4154). The Senate Democratic leadership indicated a plan to retroactively reinstate the 2009 rules for 2010 and beyond. Senate Minority Leader McConnell proposed an alternative of a 35% tax rate and a $5 million exemption.[9] A similar proposal for a $5 million exemption and a 35% rate, which also included the ability of the surviving spouse to inherit any unused exemption of the decedent, is often referred to as Lincoln-Kyl (named after two Senators who sponsored it). Other proposals began with the $3.5 million exemption and 45% rate and would have phased in the $5 million exemption and 55% rate. Some Members of Congress argued for permanent estate tax repeal.[10]

At the end of 2010, P.L. 111-312 enacted a temporary two-year extension of the estate and gift tax, with a $5 million unified exemption, a 35% rate, and inheritance of unused spousal exemptions. For 2010, estates could elect to be taxed under the estate tax or under the carryover rules. These provisions provided for estate tax rules through 2012, after which the provisions would have reverted to the pre-EGTRRA rules ($1 million exemption, 55% top rate) absent legislation.

The American Taxpayer Relief Act of 2012 (P.L. 112-240) established the permanent exemption ($5.25 million, indexed for inflation?) and rate (40%) described above.

The 2017 tax revision (P.L. 115-97) doubled the exemption for the years 2018 through 2025. The House had proposed doubling the exemption through 2024 and then repealing the estate tax and lowering the gift tax rates to 35%.

The 2025 tax revision (P.L. 119-21) set the exemption at $15 million for 2026, indexed for inflation.

Revenues and Coverage

The estate and gift tax is a small source of revenue and applies to a small portion of decedents under either exemption level. Revenue for FY2023 was $32 billion, constituting 0.7% of federal revenues and 0.1% of GDP.[11] Based on data on estate tax returns, 2,129 estates were taxable in

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[9] See Chuck O'Toole, "Estate Tax Expiration Imminent After Congress Fails to Complete Action," *Tax Notes Today*, December 17, 2009, 2009TNT 240-4. For a discussion indicating that there would not be a legal issue with a retroactive tax, see Jay Starkman, "Can an Estate Tax be Retroactive?" *Tax Notes*, February 22, 2010, pp. 972-974.

[10] In addition to H.R. 4154, numerous bills were introduced in the 111th Congress to address the estate tax. The phase-in proposal was described in Martin Vaughn, "U.S. Effort to Reduce Estate Tax Hits Turbulence," Dow Jones Newswire, May 18, 2010, at http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=201005181832dowjonesdjonline000463&title=us-senate-effort-to-reduce-estate-tax-hits-turbulence.

[11] Congressional Budget Office, "Budget and Economic Projections," https://www.cbo.gov/data/budget-economic-data#2.

2019, constituting 0.07% of deaths, and 5,467 estates were taxable in 2016 before the doubling of the exemption, constituting 0.21% of deaths.[12]

Concern about the estate tax often centers on farms and family businesses, although the share of estates that pay estate and gift taxes and include such businesses is also small. According to the U.S. Department of Agriculture (USDA), about 0.2% of estates of principal operators of farms would be subject to the tax in 2023, or approximately 89 estates.[13] Another study by the USDA projected that the sunsetting of the larger exemption in 2026 would increase the share of farmers subject to the tax from 0.3% to 1.0%.[14]

Data for businesses are more difficult to obtain, but the Tax Policy Center estimates that of estates with more than half their assets in farms or businesses, 300 will pay tax in 2023, accounting for 8% of taxable estates and 14% of estate tax revenue.[15] The share of such estates that pay the tax appears to be about the same as the share of all estates subject to the tax, estimated at 0.09% of decedents.[16]

The Tax Policy Center also provides estimates of the distribution of the estate tax across incomes. The top 10% of the income distribution pays 90% of the tax, the top 5% pays 83%, the top 1% pays 65%, and the top 0.1% pays 29%.

Data from estate tax returns indicate that revenues fell from $19.9 billion in 2017 to $13.2 billion in 2019.[17] The change reflects both changes in the tax law and the increase in the value of assets over that time period.

The Tax on Estates Above the Filing Threshold

Although the estate tax is imposed at a nominal rate of 40%, the effective rate is significantly lower, even for very large estates. Many of these estates pay no estate tax because of deductions and credits on estate taxes.

Table 1 provides a distribution of filers and assets by size of gross estate for 2019, the most recent year for which data by year of death are available. In that year, there were 5,314 returns filed, reporting $171.1 billion of gross estate and collecting $14.6 billion in estate taxes, a 6.5%

12 For estate tax returns, see "Statistics of Income, Estate Tax Year of Death Tables," Internal Revenue Service, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables; for deaths see "Number of deaths in the United States from 1990 to 2022," Statista, https://www.statista.com/statistics/195920/number-of-deaths-in-the-united-states-since-1990/.

13 "Federal Estate Taxes," U.S. Department of Agriculture (USDA), Economic Research Service, https://www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes/

14 Tia M. McDonald and Ron Durst, *An Analysis of the Effect of Sunsetting Tax Provisions for Family Farm Households*, USDA, Economic Research Service, Economic Research Report no. 328, February 2024, https://www.ers.usda.gov/webdocs/publications/108636/err-328.pdf?v=4877.

15 "Who Pays the Estate Tax?," Tax Policy Center, January 2024, https://www.taxpolicycenter.org/briefing-book/who-pays-estate-tax#:~:text=According%20to%20TPC's%20estimates%2C%20no,Tax%20Cuts%20and%20Jobs%20Act.

16 In 2022, the population of the United States was 333.3 million and the number of deaths was 3.27 million, indicating a death rate of 1%. See "Resident Population of the United States from 1950 to 2022," Statista, https://www.statista.com/statistics/183457/united-states-resident-population/, and "Number of deaths in the United States from 1990 to 2022," Statista, https://www.statista.com/statistics/195920/number-of-deaths-in-the-united-states-since-1990/. There are 33.2 million businesses in the United States: "Frequently Asked Questions About Small Business," U.S. Small Business Administration, Office of Advocacy, March 2023, https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf. If 1% of the owners dies each year, that is 332,000 deaths, and 300 taxable estates is 0.09%.

17 "Statistics of Income, Estate Tax Filing Year Tables," Internal Revenue Service, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-filing-year-tables.

effective rate. These estate filers were 0.16% of total decedents, a small share because of the large exemptions. The filing threshold is generally the amount effectively exempt because of the credit and thus covers all estates potentially liable for tax. Estate filers included some estates whose value at the time of the holder's death was under the filing threshold because gifts are added back to calculate the estate tax, with a credit for any gift taxes paid. As **Table 1** shows, 60% of estate returns filed were not taxable at all. Nontaxable returns accounted for 55% of asset value. About half of assets were in estates of $50 million or more, which constituted about 11% of returns filed. Almost 60% of the tax was paid by 6% of estate filers. As the shares in **Table 1** indicate, the tax is relatively progressive within returns that are taxable, due to the credit, although approximately half of the largest estates in asset value were not taxable in 2019.

Table 1. Distributions of Estate Tax Returns by Asset Size, 2019

Size of Estate ($ millions)	Share of Returns	Share of Gross Asset Value	Share of Taxable Asset Value (Amount Subject to the Estate Tax Before the Credit)	Share of Final Tax Liability
All Returns	**100.0%**	**100.0%**	**100.0%**	**100.0%**
Under $11.4	11.9%	3.3%	5.3%	1.4%
$11.4-$20	49.9%	22.8%	32.8%	9.9%
$20-$50	27.5%	25.5%	28.9%	29.6%
$50 or more	10.7%	48.5%	33.0%	59.1%
Taxable Returns	**40.1%**	**45.5%**	**71.4%**	**100.0%**
Under $11.4	4.4%	1.2%	2.4%	1.4%
$11.4-$20	16.5%	7.7%	15.6%	9.9%
$20-$50	13.2%	12.4%	22.3%	29.6%
$50 or more	6.0%	24.2%	31.2%	59.1%
Nontaxable Returns	**59.9%**	**54.5%**	**28.6%**	**0.0%**
Under $11.4	7.5%	2.1%	3.0%	0.0%
$11.4-$20	33.5%	15.1%	17.2%	0.0%
$20-$50	14.3%	13.1%	6.6%	0.0%
$50 or more	4.7%	24.2%	1.8%	0.0%

Source: "Table 1: Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

The unified estate and gift tax is determined by reducing the estate by deductions, adding back taxable gifts, and calculating the tax, allowing a credit for prior gift taxes paid, and then applying the uniform credit. All of the estates below the filing limit filed because of prior taxable gifts, as shown in **Table 2**. Returns with taxable gifts were distributed similarly to estate tax filings, except that they were slightly more concentrated in estates below the filing threshold. Overall, taxable gifts were 17% of the total of estate- and gift-taxable assets.

Table 2. Estate Tax Returns and Prior Gifts, 2019

Size of Estate ($ millions)	Share of Returns With Prior Taxable Gifts	Share of Returns with Prior Taxable Gifts by Size of Gross Asset Value	Gifts as a Share of Total Estate and Gift Taxable Assets	Share of Taxable Gifts by Size of Gross Asset Value
All Returns	**64.0%**	**100.0%**	**17.0%**	**100.0%**
Under $11.4	100.0%	18.5%	44.7%	21.0%
$11.4-$20	50.4%	39.3%	12.4%	22.5%
$20-$50	65.6%	28.2%	16.7%	28.1%
$50 or more	83.7%	14.0%	15.0%	28.3%
Taxable Returns	**75.2%**	**47.0%**	**15.8%**	**65.1%**
Under $11.4	100.0%	.8%	45.7%	9.7%
$11.4-$20	65.0%	16.7%	15.5%	13.9%
$20-$50	72.4%	15.0%	15.5%	19.9%
$50 or more	90.9%	8.5%	12.5%	21.7%
Nontaxable Returns	**56.6%**	**53.0%**	**20.1%**	**34.9%**
Under $11.4	100.0%	11.7%	43.9%	11.4%
$11.4-$20	43.3%	22.6%	9.3%	8.6%
$20-$50	59.2%	13.2%	20.5%	8.3%
$50 or more	74.5%	5.5%	43.4%	6.7%

Source: "Table 1: Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

The low rate of the estate tax and the significant share of the largest estates (well above the exemption level) that pay no tax is due to the deductions allowed from estates. **Table 3** reports the major deductions taken by 2019 decedents' estates. Deductions are allowed for costs such as attorney's fees and burial expenses as well as debts; these amounts typically average between 4% and 5% regardless of size or taxability, and are primarily due to debts. The most important deduction is for bequests to surviving spouses, which in the aggregate were 36% of estate values in 2019. Some 14% of taxable returns had any bequest for surviving spouses, which suggests most of these taxpayers were not married at the time of death, for some because they were a surviving spouse. By contrast, 75% of nontaxable returns had a deduction for a bequest to a spouse. The share rose with the size of the estate and appears to be a major factor in eliminating tax altogether. The second-largest deduction reducing estate tax liability is the charitable deduction, which accounted for 13% of the total estate value and was larger in estates that were not taxable. Unlike the income tax, there is no limit on the share of the estate that can be left to charity. These deductions are larger for the nontaxable returns, and for the largest estates total deductions amount to over 96% of the gross estate. To some extent, the tax on taxable estates includes collections of previous spousal gifts.

Table 3. Major Deductions for the Estate Tax, 2019

Size of Estate ($ millions)	Expenses and Debts as a % of Estate	Bequests to Surviving Spouses as a % of Estate	Charitable Contributions as a % of Estate	Total as a % of Gross Estate
All Returns	**4.66%**	**36.01%**	**13.03%**	**53.69%**
Under $11.4	4.64%	17.12%	3.05%	24.81%
$11.4-$20	4.28%	24.96%	4.72%	33.97%
$20-$50	4.51%	33.78%	9.17%	47.46%
$50 or more	4.91%	43.64%	19.64%	68.19%
Taxable Returns	**4.55%**	**12.20%**	**10.17%**	**26.93%**
Under $11.4	3.93%	1.50%	1.57%	7.00%
$11.4-$20	3.93%	1.74%	1.44%	7.10%
$20-$50	4.93%	6.04%	5.03%	16.00%
$50 or more	4.59%	19.20%	16.00%	39.79%
Nontaxable Returns	**4.74%**	**55.90%**	**15.41%**	**76.06%**
Under $11.4	5.03%	25.86%	3.88%	34.78%
$11.4-$20	4.46%	36.87%	6.40%	47.74%
$20-$50	4.11%	60.01%	13.08%	77.20%
$50 or more	5.23%	68.11%	23.28%	96.62%

Source: "Table 1. Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

There are no similar data across filing types for gift deductions. However, both gifts to spouses and gifts to charities are smaller shares of gifts than they are of estates, based on 2021 gifts, with gifts to spouses 1% and gifts to charities 11%.[18] Married couples have no reason to make inter vivos gifts to each other in most cases. The remaining gifts are primarily to children (52%) and grandchildren (19%). **Table 4** lists the taxes as a percentage of gross estate plus taxable gifts, including the state estate tax (which is a deductible cost for the federal tax), the gift tax already paid, the estate taxes before the credit, and the estate tax after the credit. The gift tax is relatively low, especially for smaller estates, because the uniform credit is first applied to gifts and no tax is due until the estate exceeds $11.4 million (in 2019). The total effective federal estate and gift tax rate was 9.2% in 2019, with the largest estates paying a tax of 11.4%. Thus, even for these large estates, the effective tax rate was about a quarter of the statutory rate.

[18] "2021 Gifts, Gift Tax Statistics One Sheet," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-gift-tax-statistics.

Table 4. Taxes as a Percentage of Gross Estate Plus Taxable Gifts, 2019

Size of Estate ($ millions)	State Taxes as a % of Gross Estate	Gift Taxes as a % of Gross Estate	Estate Taxes Before Credit as a % of Gross Estate	Estate Taxes After Credit as a % of Gross Estate
All Returns	**1.2%**	**1.0%**	**19.6%**	**8.2%**
Under $11.4	1.0%	2.0%	31.8%	2.3%
$11.4-$20	1.2%	0.4%	27.4%	3.5%
$20-$50	1.4%	1.1%	21.8%	9.4%
$50 or more	1.2%	1.0%	13.2%	10.4%
Taxable Returns	**2.2%**	**1.7%**	**29.0%**	**17.3%**
Under $11.4	1.4%	2.0%	36.2%	5.8%
$11.4-$20	1.9%	0.9%	36.8%	9.7%
$20-$50	2.6%	1.9%	32.8%	18.6%
$50 or more	2.2%	1.7%	23.7%	20.1%
Nontaxable Returns	**0.3%**	**0.3%**	**11.1%**	**0.0%**
Under $11.4	0.8%	2.0%	28.9%	0.0%
$11.4-$20	0.7%	0.1%	22.0%	0.0%
$20-$50	0.2%	0.3%	10.6%	0.0%
$50 or more	0.0%	0.2%	2.1%	0.0%

Source: "Table 1. Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

The Distribution of Estates by Asset Type

Two issues associated with the types of assets transferred at death are the importance of step-up in basis and the effect on smaller businesses and farms, in particular whether these estates have the liquidity to pay the estate tax.

How Important are Unrealized Gains in Estates?

One of the justifications for the estate tax is that it taxes income that would otherwise not be taxed because of step-up in basis for appreciated assets. **Table 5** shows the distribution of the major assets in estates. The first three categories are likely to have capital gains. These categories account for 63% of assets.

Table 5. Distribution of Assets in Estates, 2019

Size of Estate ($ millions)	Publicly Traded Stock as a % of Estate	Business Assets as a % of Estate	Real Estate as a % of Estate	Financial Assets as a % of Estate	Retirement Assets as a % of Estate
All Returns	**27.1%**	**20.3%**	**13.6%**	**28.0%**	**4.4%**
Under $11.4	26.0%	13.6%	13.4%	29.0%	9.9%
$11.4-$20	25.5%	15.6%	16.8%	26.1%	8.4%
$20-$50	27.8%	18.0%	15.1%	27.1%	5.2%
$50 or more	27.6%	24.1%	11.3%	29.3%	1.7%
Taxable Returns	**29.2%**	**20.0%**	**11.2%**	**30.4%**	**3.3%**
Under $11.4	28.3%	13.6%	12.8%	30.5%	7.6%
$11.4-$20	29.4%	13.6%	15.4%	28.3%	6.8%
$20-$50	30.9%	14.4%	13.8%	30.2%	3.8%
$50 or more	28.3%	25.2%	8.4%	31.3%	1.7%
Nontaxable Returns	**25.4%**	**20.5%**	**15.5%**	**26.0%**	**5.3%**
Under $11.4	24.7%	13.6%	13.7%	28.1%	11.2%
$11.4-$20	23.6%	16.6%	17.5%	25.1%	9.2%
$20-$50	24.8%	21.3%	16.2%	24.2%	6.5%
$50 or more	27.0%	23.0%	14.1%	27.4%	1.6%

Source: "Table 1. Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

Notes: Business assets include closely held stock, farms, other business assets, depletable or intangible assets, and limited partnerships. Real estate includes direct holdings and general partnerships for the purpose of investing in real estate. Financial assets include bonds, cash, life insurance, mortgages and notes, private equity funds, unclassifiable mutual funds, and unallocated assets. Assets not included in this table include art, 1.9% of the estate varying from 0.4% to 3.0%; personal residences, 2.2%, varying from 3.0% to 1.5%, and other, approximately 1%.

In 2010, when carryover basis for appreciated assets was originally scheduled along with repeal of the estate tax, P.L. 111-312 allowed the option of paying an estate tax or paying no tax and carrying over the basis of appreciated assets. Returns that elected carryover basis provided data allowing a one-time measure of the share of estates that were capital gains. The overall data on these returns showed that 43.6% of the estate was in gains. For the first three categories (i.e., those that were likely to have gains), the share for corporate stock was 63.1%, the share for business assets varied by type, the share for real estate held individually was 45.3%, and the share for real estate partnerships was 54.1%. Among business assets, the share for closely held stock was 72.5%, the share for farms was 59.6%, the share for other noncorporate business was 22.5%, the share for limited partnerships was 38.8%, and the share for depletable and intangible assets was 83.6%.[19] These ratios apply to those who elected carryover basis, which would presumably

[19] Robert Gordon, David Joulfaian, and James Poterba, "Revenue and Incentive Effects of Basis Step-Up at Death: Lessons from the 2010 'Voluntary' Estate Tax Regime," *American Economic Review: Papers & Proceedings*, vol. 105, No. 5 (May 2016), pp: 662-667.

include estates that are more likely to be subject to significant estate taxes, and those who had smaller capital gains. Thus, the share of gains may be understated in these data.

A previous study using data on unrealized gains from the Federal Reserve's Survey of Consumer Finances estimated that capital gains represented 13% of the assets of estates under $2 million (the smallest estates) and 55% of the assets of estates over $100 million.[20]

Table 6 reports the shares of each type of business asset (excluding depletable or intangible assets that are less than 0.5% of the estate at any level).

Table 6. Distribution of Business Assets by Type, 2019

Size of Estate ($ millions)	Closely Held Stock as a % of Estate	Farm Assets as a % of Estate	Other Noncorporate Assets as a % of Estate	Limited Partnership Assets as a % of Estate
All Returns	**8.4%**	**2.2%**	**4.8%**	**4.6%**
Under $11.4	3.3%	3.0%	3.3%	3.9%
$11.4-$20	6.3%	3.3%	2.9%	2.9%
$20-$50	7.5%	2.4%	3.8%	4.0%
$50 or more	10.1%	1.5%	6.3%	5.8%
Taxable Returns	**7.3%**	**2.4%**	**4.3%**	**5.5%**
Under $11.4	2.7%	3.1%	3.0%	4.6%
$11.4-$20	5.1%	2.9%	2.5%	2.5%
$20-$50	6.0%	1.9%	2.4%	3.8%
$50 or more	8.9%	2.5%	5.9%	7.3%
Nontaxable Returns	**9.2%**	**2.0%**	**5.2%**	**3.8%**
Under $11.4	3.6%	3.0%	3.4%	3.4%
$11.4-$20	6.8%	3.4%	3.1%	3.1%
$20-$50	9.0%	2.9%	5.1%	4.1%
$50 or more	11.4%	0.5%	6.8%	4.2%

Source: "Table 1. Estate tax returns, Year of death, Values for tax purposes by tax status and size of gross estate, 2019," Internal Revenue Service, Statistics of Income, https://www.irs.gov/statistics/soi-tax-stats-estate-tax-year-of-death-tables.

As mentioned above, one justification for the estate tax is that it helps to prevent unrealized capital gains from escaping tax entirely. However, there is only a loose connection between assets with unrealized gains and assets subject to the estate tax. There is some evidence that unrealized gains are distributed similarly to realized gains, and the top 0.1% of the income class has about 50% of realized gain.[21]

[20] Robert B. Avery, Daniel Grodzicki, and Kevin B. Moore, *Estate vs. Capital Gains Taxation: An Evaluation of Prospective Policies for Taxing Wealth at the Time of Death*, Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series (FEDS) 2013-28, March 2013, https://www.federalreserve.gov/econres/feds/estate-vs-capital-gains-taxation-an-evaluation-of-prospective-policies-for-taxing-wealth-at-the-time-of-death.htm.

[21] CRS Report R47113, *Capital Gains Taxes: An Overview of the Issues*, by Jane G. Gravelle.

Liquid Assets in Estates

Table 5 shows that 63% of the assets in taxable estates are liquid assets (publicly held stock, financial assets, and retirement assets), with a slightly lower share for nontaxable returns. Since the effective estate tax cannot exceed 40%, and the same liquidity ratio applies to the largest taxable estates, most estates have more than adequate resources to pay the tax as well as debt (which averages around 5% of the estate according to **Table 3**).

These aggregates could be different for estates with business assets and real property. In theory, estates with few liquid assets relative to illiquid assets could have to liquidate some assets to pay the tax. The Joint Committee on Taxation examined 2011 returns with farm property or closely held stock for their ability to pay estate taxes and debts with liquid assets. The committee's analysis used a liquidity ratio, where a ratio of 1 or more means the estate has enough liquid assets to pay taxes and debts. For taxable estates with farms, they found a median liquidity ratio of 2.8 and that 77% were well funded (had a ratio of at least 1). For all estates with farms, 87% were well funded (either because of ownership of liquid assets or no taxes and debts), and for all estates with closely held stocks 87% were well funded.[22]

Issues and Options

The estate tax is controversial, with both supporters, who would like the tax increased, and critics, who would like to maintain a small tax or eliminate it entirely.

Progressivity is perhaps the principal justification advanced by supporters of the tax. The filing threshold alone indicates that the estate tax is confined to the top 1% of individuals by wealth, and a much lower threshold would continue to concentrate the tax at the top of the wealth distribution.[23] The estate and gift tax is by far the most progressive of any of the federal taxes. It also helps reduce the concentration of wealth by reducing the amount that individuals can inherit.

The estate tax helps to fill a hole in the income tax because unrealized gains on inherited assets are never taxed. As noted earlier, 44% of assets in estates electing to use carryover basis in 2010 were unrealized capital gains. This role of the estate tax is limited, however, because the exemptions exclude many unrealized gains from the estate tax. The estate tax affects less than 0.1% of individuals in 2025. Data indicate that top 0.1% of taxpayers are responsible for about half of capital gains, and a similar distribution appears likely for unrealized gains.[24] In addition, there is a long delay in the payment of the tax on these assets compared to the tax on realized gains.

The estate tax also is estimated to increase charitable bequests. The effect of the tax on charitable bequests is theoretically ambiguous. The reduction in the estate left to heirs because of the tax could divert bequests to them from charitable donations (the wealth effect). At the same time, the favorable treatment of charitable contributions could make charity a more attractive beneficiary

[22] Joint Committee on Taxation, *History, Present Law, And Analysis Of The Federal Wealth Transfer Tax System*, JCX-52-15, March 26, 2015, https://www.jct.gov/publications/2015/jcx-52-15/.

[23] The threshold is $13.7 million in 2023, and the threshold for the top 1% is $1.9 million. See "Who Are the One Percent in the United States by Income and Net Worth?," DQYDJ, https://dqydj.com/top-one-percent-united-states/. This estimate is from the Federal Reserve Board's Survey of Consumer Finances.

[24] See CRS Report R47113, *Capital Gains Taxes: An Overview of the Issues*, by Jane G. Gravelle.

(the substitution effect). The empirical evidence, however, indicates that the substitution effect is larger, so that contributions to charity would fall with decreases in estate tax coverage and rate.[25]

There is also considerable opposition to the estate tax. One reason may be that people dislike a tax that is triggered by death, which has emotional and moral connotations.[26] Another is that the estate tax is imposed on accumulations from earnings that have already been taxed, so it is a form of double taxation. (This argument would not apply to unrealized gains.)

For some, the concern is that family businesses and farms will not be able to continue their businesses. Data suggest that few, if any, businesses and farms would have this problem. Most estates with family farms and businesses are not subject to the tax either before or after the 2017 increase in exemptions. Estates that are subject to the tax generally have enough other assets to pay it. Moreover, a business itself can be collateral to borrow against, and the estate tax allows a deferral of tax so that earnings can be used to pay the tax, as well as a valuation discount.

Aside from these issues, critics of the estate tax argue that it reduces savings and labor supply. This effect is an empirical issue, as theory is ambiguous. These effects depend on the bequest motive. These motives are generally altruism (satisfaction from helping heirs), accident (precautionary savings to deal with uncertain life span and health that are left over when the donor dies), egoism (wealth accumulated because the donor enjoyed the work, the competition, or the prestige of being wealthy), and exchange (donors may use bequests to influence the behavior of their children). While a tax on accidental or egoistic bequests would not affect the donor's labor supply and saving, a tax on bequests motivated by other reasons could have effects on the donor's behavior. These possible effects are uncertain in direction as well as size, because of income and substitution effects. Substitution effects could cause donors to prefer other uses that are not subject to the tax, such as their own consumption and leisure, so they work less and save less. Income effects could cause them to work harder and save more to increase the bequest to compensate for the loss to their heirs from taxes. The tax could also affect the beneficiaries, since inheritances can cause them to work less or save less. By decreasing inheritances, the tax could reduce these effects, leading to more labor supply and savings. The empirical evidence for these effects is mixed but mostly finds small effects on donors, while there is evidence that the estate tax could increase labor and savings for beneficiaries.[27]

Critics have argued that the costs of tax planning and administration are very large for the estate tax, although evidence suggests that these costs are similar to or lower than the costs of the income tax, about 7%.[28] At the same time, the estate tax, as it exists, is also criticized as applying

[25] See CRS Report R40518, *Charitable Contributions: The Itemized Deduction Cap and Other FY2011 Budget Options*, by Jane G. Gravelle and Donald J. Marples; a summary of studies is in Appendix C. See also Michael J. Brunetti, "The Estate Tax and Charitable Bequests: Elasticity Estimates Using Probate Records," *National Tax Journal*, vol. 58, no. 2 (June 2005), pp. 165-188; and John E Dexter Jr. and Scott E. Miller, "Do Estate Tax Rates Really Affect Charitable Bequests? A Regression Model Analysis of Estate Distributions," *Journal of Academic Research in Economics*, vol. 7, no. 1 (March 2015), pp. 45-58.

[26] David D. Stewart and Joseph J. Thorndike, "Interview: Death Taxes With Tax Historian Joseph Thorndike" *Tax Notes*, November 9, 2019, https://www.taxnotes.com/opinions/interview-death-taxes-tax-historian-joseph-thorndike/2019/11/04/2b351.

[27] Congressional Budget Office, *Understanding Federal Estate and Gift Taxes*, June 2021, https://www.cbo.gov/publication/57272#; David Joulfaian, "What Do We Know About the Behavioral Effects of the Estate Tax?" *Boston College Law Review*, vol. 5, no. 3 (May 2016), pp. 843-858, https://lira.bc.edu/files/pdf?fileid=7e73e3d9-044c-4688-a0a6-4a39985cede2; and Internal Revenue Service, Statistics of Income, *Behavioral Responses to Transfers and Taxes, Compendium of Federal Transfer Tax and Personal Wealth Studies, Volume 2*, https://www.irs.gov/pub/irs-soi/11pwcompench5.pdf.

[28] William G. Gale and Joel Slemrod, "Rhetoric and Economics in the Estate Tax Debate," *National Tax Journal*, vol. 54, no. 3 (September 2001), pp. 613-627.

unevenly by allowing wealthy individuals to circumvent the tax through a variety of techniques which could be addressed with legislative changes.

Options for Change: Broad Changes

Eliminating the Estate Tax

During congressional deliberations leading up to the 2017 tax revision, House and Senate bills both proposed an immediate doubling of the exemption level. However, the House proposal also would have repealed the estate tax (and reduced the gift tax rate to 35%) after 2024. Two bills in the 118th Congress propose this change: H.R. 7035 (Feenstra) and S. 1108 (Thune). Based on the share of the tax in gifts versus estates, repealing the estate tax would cause a revenue loss of 90% of the estate and gift tax, about $32 billion in FY2026 and $48 billion in FY2028.

Lowering the Exemption and Increasing the Rate

The For the 99.5 Percent Act (H.R. 2676 [Gomez] and S. 1178 [Sanders]) in the 118th Congress would have introduced graduated rates, ranging from 45% to 65%, and lowered the exemption to $3.5 million.

Based on estimates of the revenue gain from a 2021 Joint Committee on Taxation study, the bill, including other provisions discussed below, would have raised revenues by about $44 billion in FY2028, after the higher exemption levels expired.[29]

The American Housing and Economic Mobility Act of 2024 (H.R. 9245 [Cleaver] and S. 4824 [Warren]) in the 118th Congress would have lowered the exemption to $3.5 million, imposed graduated rates on estates above $13 million ranging from 55% to 65%, and imposed a 10% surtax on amounts in excess of $1 billion.

Lowering the Rate

One bill has been introduced in the 119th Congress to reduce the rate to 20%: H.R. 1301 (Feenstra). The expected revenue loss in FY2028 based on reducing estate tax revenues by half would be $27 billion.

Proposals to Address Step-Up Basis

Although step-up basis is an income tax issue rather than an estate tax issue, the estate tax is sometimes justified as a way to tax some of the unrealized gains in the estate. Step-up in basis discourages realizations of capital gains taxes and is the major reason that there are limits to raising revenue by increasing capital gains tax rates, as these increases will lead to holding more assets until death to avoid the tax.

There are two approaches to address this issue: imposing carryover basis, as was the case in 2010, or taxing gains at death or by gift.

The revenue gain from carryover basis would be small initially but grow over time. The Congressional Budget Office estimates an initial revenue gain from a carryover basis effective in

[29] Letter from Thomas Barthold, Joint Committee on Taxation, March 24, 2021, https://www.sanders.senate.gov/wp-content/uploads/For-the-99.5-Act-JCT-Score.pdf

2023 of $7.2 billion in FY2024, rising to $26.6 billion in FY2032.[30] The Joint Committee on Taxation estimates that taxing capital gains at death would raise $58.4 billion and taxing at gift would raise $1.5 billion.[31]

The Biden Administration proposed in its FY2025 budget to tax capital gains and dividends at ordinary rates (which were also proposed to be increased to a top rate of 39.6%) for taxpayers with adjusted gross income of more than $1 million for joint returns, and $500,000 for other returns. This increase in capital gains rates would have been accompanied by taxation of capital gains at death or by gift, with a $1 million exemption. Personal property other than collectibles would have been excluded, as would $250,000 of gain on homes (and any unused amount could have subsequently been used by the surviving spouse, making the total $500,000 for a couple). Family-owned businesses and farms would not have had to pay the tax until assets were sold or the business was no longer family-owned and -operated. The tax could have been paid over 15 years for assets that are not liquid (i.e., tangible assets). This tax could have been reported on a final income tax schedule or as part of the estate and gift tax return. The tax would have reduced the size of the estate (or gift), thus reducing the estate tax.[32]

Narrow Provisions

The Build Back Better Act (BBBA; H.R. 5376, 117th Congress, as reported by the Ways and Means Committee), proposed several changes, including restoring the lower exemption. It also proposed narrower changes, including increasing the limits on discounts for valuation of farms and businesses based on use, coordinating the income and estate tax treatment of grantor trusts, and disallowing minority discounts for cash and readily marketable assets. The revenue estimates for these proposals are all for FY2022-FY2031 and are obtained from estimates of the Joint Committee on Taxation.[33] Several other sources of narrower proposals are discussed below, including the For the 99.5 Percent Act, the American Housing and Economic Mobility Act proposals by Senators Wyden and King, and Biden Administration budgets.

Increase the Valuation Limits for Discounts for Businesses and Farms Based on Use

As discussed above, farmers and businesses can value assets based on use rather than market value, but there is a limit to the reduction in value of $1 million, indexed for inflation (a $1.19 million value in 2021). The BBBA would have increased the limit to $11.7 million. This provision was estimated to lose $0.3 billion in revenue over 10 years. The For the 99.5% Act and the American Housing and Economic Mobility Act would have increased the limit (now $1.39 million) to $3 million. The Biden Administration's 2025 budget proposal would have increased

[30] Congressional Budget Office, *Options for Reducing the Deficit, 2023 to 2032—Volume II: Smaller Reductions*, December 7, 2022, https://www.cbo.gov/system/files/2022-12/58163-budget-options-small-effects.pdf.

[31] Joint Committee on Taxation, *Estimates Of Federal Tax Expenditures For Fiscal Years 2023-2027*, JCX-59-23, December 7, 2023, https://www.jct.gov/publications/2023/jcx-59-23/.

[32] U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals*, March 2024, https://home.treasury.gov/policy-issues/tax-policy/revenue-proposals.

[33] Joint Committee on Taxation, *Estimated Budgetary Effects Of An Amendment In The Nature Of A Substitute To The Revenue Provisions Of Subtitles F, G, H, I, And J Of The Budget Reconciliation Legislative Recommendations Relating To Infrastructure Financing And Community Development, Green Energy, Social Safety Net, Responsibly Funding Our Priorities, And Drug Pricing, Scheduled For Markup By The Committee On Ways And Means On September 14, 2021*, JCX-42-21, September 13, 2021, https://www.jct.gov/publications/2021/jcx-42-21/.

the limit on qualified real property (real estate) to $14 million. In the 119th Congress, S. 1927 (Hyde-Smith) would increase the limit for farms to $15 million.

Increase the Amount of Conservation Easement

The For the 99.5% Act and the American Housing and Economic Mobility Act would have increased the conservation easement limit from a 40% reduction to a 60% reduction and increased the cap from $500,000 to $2 million.

Grantor Trusts Income and Transfer Tax Rules

Grantor trusts are used to minimize combined income and estate and gift taxes. Proposals to address the use of grantor trusts have been offered by the Biden Administration and by the Build Back Better Act (BBBA; H.R. 5376, 117th Congress, as reported by the Ways and Means Committee; any references to the BBBA are to that version), as well as the For the 99.5 Percent Act proposal and the American Housing and Economic Mobility Act. In the 118th Congress, Senator Wyden, then-chairman of the Finance Committee, and Senator King proposed a series of restrictions on grantor trusts in the Getting Rid of Abusive Trusts Act.[34]

In a grantor trust, an individual is treated as owner for income tax purposes. However, the trust and the individual are treated as separate persons for purposes of the estate and gift tax. Grantor trusts can be used to transfer assets out of an individual's estate. For income tax purposes, the grantor and the trust are treated as a unit, so that transactions between them are disregarded. Grantor trusts can be designed so that the earnings of the trust flow through to the grantor and the grantor pays the income taxes. Since these taxes are not considered gifts to the trust, the earnings in the trust can grow free of income tax.

For estate and gift tax purposes, the assets of the trust are separate from the individual so that while the initial contribution is a gift, distributions to beneficiaries are not treated as gifts and the assets of the trust are not included in the estate. One technique to transfer assets into the trust is to sell an appreciated asset to the trust in exchange for a low-interest promissory note. No capital gain will be realized on the transfer and no income tax paid on the interest payments. A grantor may also swap assets of equal value that can be beneficial for tax purposes if high-basis assets (which would yield lower capital gains if sold by the trust to a third party) are exchanged for low-basis assets, which will be subject to step-up in basis if left in the estate.

The Wyden-King proposal would have treated transfers between the grantor and the trust as sales and treated income taxes paid by the grantor on trust income as gifts.

The BBBA would have treated the transfer of property between the grantor and the trust as a taxable event; gain would be recognized but losses would not be. The revision would also have included the trust in the taxable estate, and any distributions made by the trust to the beneficiaries would have been treated as gifts made by the grantor and thus subject to gift tax rules. This provision would have applied to grantor trusts other than revocable trusts (revocable trusts are included in the estate) but would have been grandfathered so that only contributions and transactions with the trust going forward would be covered and included in the estate. These provisions would have applied to all irrevocable grantor trusts, including grantor retained annuity trusts (GRATs; discussed below), insurance trusts, and spousal lifetime access trusts (SLATs)—

[34] U.S. Senate, Committee on Finance, "Wyden, King Introduce Bill to Close Major Tax Loophole Involving High-Value Trusts," press release, March 20, 2024, https://www.finance.senate.gov/chairmans-news/wyden-king-introduce-bill-to-close-major-tax-loophole-involving-high-value-trusts.

which are trusts allowing lifetime benefits for spouses. These provisions were estimated to raise $7.9 billion for FY2022-FY2031.

The For the 99.5% Act would have included these proposed BBBA changes as well as some additional ones relating to GRATs. It would also have imposed a gift tax on any assets if the grantor ceased to be the owner. The provisions would also have applied to a trust where the deemed owner is not the grantor, and would have required the gift tax to be paid by the trust if a gift was made by the deemed owner. The act would also have disallowed step-up in basis for any distribution from a decedent that is not included in the estate.

The American Housing and Economic Mobility Act would have included grantor trusts in the estate and disallowed any step-up in basis for a distribution not included in the estate.

The Biden Administration's FY2025 budget would have treated the transfer of property as a recognizable event and taxes paid as gifts. It included some other provisions relating to GRATs. The changes as a package would have gained $83.8 billion from FY2025 to FY2034.

Grantor Retained Annuity Trusts (GRATs)

A grantor retained annuity trust is a trust that allows the grantor to receive an annuity, with any remaining assets transferred to the trust recipient. The value of the gift is reduced by the value of the assets used to fund the annuity. If the assets in the trust appreciate substantially, then virtually all of the gift can be reduced by the value of the annuity, while still providing a substantial ultimate gift to the recipient. This trust approach could be a method of transferring assets roughly tax free if the assets appreciate at a rate faster than the discount rate used to value the annuity. The grantor needs to survive over the period of the annuity. If the grantor dies during the annuity period, the remaining value of the annuity is included in the estate. To increase the likelihood the grantor survives, many of these trusts have short annuity periods, as short as two years.

Although successive short-term GRATs reduce the grantor's risk of losing control of capital, long-terms GRATs also offer an advantage. If the interest rate is expected to rise, the trust can lock in a low discount rate for the entire term. This low interest rate will increase the value of the annuity deduction compared with successive short-term GRATs, which use the interest rate at the time the GRAT is established.

The Wyden-King proposal would have imposed a minimum term of 15 years and a maximum term of the life expectancy of the annuitant plus 10 years. It would also have prohibited any decrease in the annuity and required a minimum value for the remainder interest for gift tax purposes.

The For the 99.5 Percent Act would have imposed a minimum annuity term of 10 years and a maximum of the life expectancy of the annuitant plus 10 years, disallowed any decline in the annuity, and required a remainder interest not less that the greater of 25% of the assets or $500,000 and not more than the fair market value of the property. Similar provisions were included in the Biden Administration's FY2025 budget proposal.

The American Housing and Economic Mobility Act would have imposed a minimum term of 10 years, with any fixed payments not declining in those 10 years, and the remainder interest not being less than 10% of the assets.

As discussed above, GRATs would have been affected by the BBBA provisions and assets would have been included in the estate.

Minority Discounts

The existing restrictions keep estates from engaging in artificial actions designed to reduce their value (such as freezes on assets). As discussed above, courts sometimes allow estates to reduce the fair-market value when assets are left in family partnerships in which no one has a majority control. These discounts have been allowed when assets are in cash and readily marketable securities, and these family partnerships appear to have become an estate tax avoidance tool. The BBBA would have disallowed discounts for cash and readily marketable securities with exceptions for assets used for hedging transactions and business working capital. This provision was estimated to raise $19.9 billion over 10 years. The For the 99.5 Percent Act, the American Housing and Economic Mobility Act, and the Administration's FY2025 budget proposal would have also disallowed discounts for nonbusiness assets and discounts for lack of control or marketability if the transferor, the transferee, and members of their families have control of the entity or own the majority of the ownership interests. The FY2025 budget would also have disallowed discounts for promissory notes with below-market interest rates if the foregone interest were not treated as income because it charged the government interest rate. The valuation provisions were estimated to gain $12.2 billion from FY2025 to FY2034.

Consistent Valuation

There is no explicit rule preventing a low valuation of fair-market value for an estate and a high valuation of the asset for purposes of stepped-up basis in the hands of an heir. A low value for an asset reduces the estate tax, and a high value (because it reduces the amount of gain) reduces the capital gains tax. Requiring the same value for both purposes, when proposed by the Obama Administration in 2016, was projected to raise $1.7 billion over 10 years.[35]

A proposal in the Biden Administration's FY2025 budget would have disallowed discounts for promissory notes with below-market interest rates if the foregone interest were not treated as income because the note charged the government interest rate.

Other Minor Provisions

When generation-skipping transfers are made to a trust, the estate tax exemption applicable to them also exempts the associated earnings during the trust's lifetime. In the past, a trust life has been limited because most states had a rule against perpetuities that generally limited trusts to a 21-year life. Those laws began to be eliminated after 1986. The For the 99.5% Act would have disallowed exemptions for trusts that have lives of more than 50 years. The Biden Administration's FY2025 budget proposal would have limited exemptions to the life of the trust beneficiary who either is no younger than the transferor's grandchild or is a member of a younger generation but who was alive at the trust's creation. The American Housing and Economic Mobility Act had a similar provision.

The Biden Administration's FY2025 budget proposal also proposed changes in charitable lead annuity trusts (CLATs) that provide an annuity to charities with the remainder going to beneficiaries. The provision would have required a level payment annuity and a remainder interest of at least 10%. It would also have treated a loan from a trust to a beneficiary as a

[35] U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016, https://home.treasury.gov/policy-issues/tax-policy/revenue-proposals.

distribution with a refund after repayment of the loan is complete. The repayment of a loan to the owner would have been treated as an additional contribution.

Currently, the Internal Revenue Service (IRS) has a lien on estate tax deferrals for closely held businesses, but these liens are for 10 years, shorter than the deferral period. The Biden Administration's FY2025 budget proposal would have extended the liens through the deferral period, which was projected to raise $0.3 billion over 10 years.

Currently, payments for another person's medical care or education made directly to the provider are exempt from the generation-skipping tax and the gift tax. Some taxpayers have been using trusts to eventually pay for these expenses and avoid tax on the accumulations. The Obama Administration's 2017 budget would have disallowed exemptions for payments to trusts. This provision would have lost revenue in the budget horizon, $0.2 billion.

The executor of an estate is responsible for estate tax issues, but there is no clear federal rule about authority to address decedents' income tax issues from prior years. The Biden Administration's FY2025 budget proposal would have extended authority for addressing federal income tax issues to the executor. It would have involved a negligible revenue loss.

Simplify Gift Tax Exclusion for Annual Gifts

The Biden Administration's FY2025 budget proposed to disallow the unlimited use of trusts (called Crummey trusts) to expand the number of annual gift exclusions by imposing an additional overall limit of $50,000 on gifts made via trusts. The For the 99.5 Percent Act and the American Housing and Economic Mobility Act would have imposed an additional limit of twice the current exclusion (which would be $36,000 in 2024) to apply to trusts, interests in partnerships, and transfers that cannot be immediately liquidated.

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