

## Notable Estate Planning Legislation

No matter the time of year, taxes are always a hot topic. While we usually think about taxes in terms of how they affect us today, it can be equally important to understand the history of tax laws that impact estate planning.

### The Estate and Gift Tax

Taxation of property transfers at death dates as far back as 700 BCE in ancient Egypt. It was also used in Rome and feudal Europe.

The United States estate tax was introduced in 1916.<sup>1</sup> It was advocated by progressive reformers during a time of great wealth concentration and inequality (think Gilded Age figures like Carnegie and Rockefeller).<sup>2</sup> An initial exemption, or exclusion amount, of \$50,000 was allowed.<sup>3</sup>

In the decades since the estate tax's inception, Congress has made important additions and revisions to its structure that reflect wider cultural debates about wealth distribution, economic stimulus, and government revenue.

The first of these was a tax on so-called *inter vivos*, or lifetime, gifts, which became part of the transfer tax system in 1932 to prevent wealthy taxpayers from circumventing the estate tax by gifting assets during their lifetime.<sup>4</sup> The marital deduction, introduced in 1948, allows tax-free transfers to qualifying surviving spouses.<sup>5</sup> And in 1976, the Tax Reform Act created a unified estate and gift tax exemption.<sup>6</sup>

Over the years, the estate tax exclusion has increased from \$50,000 in 1916 to \$2 million in 2006<sup>7</sup> to \$5.49 million in 2017—the year before the Tax Cuts and Jobs Act (TCJA) went into effect.<sup>8</sup> The annual gift tax exclusion has increased as well, from \$3,000 per individual in 1976 to \$12,000 in 2006<sup>9</sup> to \$14,000 in 2017.<sup>10</sup>

Today, thanks to the TCJA, the estate and gift tax unified exemption is at an all-time high. The lifetime exclusion is currently \$13.99 million for individuals and \$27.98 million for married

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<sup>1</sup> Darien B. Jacobson et al., *The Estate Tax: Ninety Years and Counting*, 27 *Stats. of Income Bull.*, no. 1, Summer 2007, at 118, <https://www.irs.gov/pub/irs-soi/ninetyestate.pdf>.

<sup>2</sup> Chuck Collins, *Long Live the Estate Tax*, U.S. News & World Rep. (Sept. 8, 2016), <https://www.usnews.com/opinion/articles/2016-09-08/americas-second-best-idea-the-estate-tax>.

<sup>3</sup> Jacobson et al., *supra* note 16, at 120.

<sup>4</sup> *Id.* at 122.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Federal Estate and Gift Tax Rates, Exemptions, and Exclusions, 1916–2014*, Tax Found. (Feb. 4, 2014), <https://taxfoundation.org/data/all/federal/federal-estate-and-gift-tax-rates-exemptions-and-exclusions-1916-2014>.

<sup>8</sup> *Estate Tax*, IRS (Oct. 29, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>.

<sup>9</sup> *Federal Estate and Gift Tax Rates, Exemptions, and Exclusions, 1916–2014*, *supra* note 22.

<sup>10</sup> *Frequently Asked Questions on Gift Taxes*, IRS (Oct. 29, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes>.

couples,<sup>11</sup> while the annual gift tax exclusion is \$19,000 per person and \$38,000 for married couples.<sup>12</sup> Taxes on generation-skipping transfers match the estate tax exemption.

However, these allowances are set to revert to much lower pre-TCJA levels in 2026 unless Congress acts to extend or modify them.

## The Income Tax

Estate and gift taxes affect individual estate planning, but their contribution to the overall federal budget is relatively small, typically accounting for approximately 1 percent of total federal revenue.<sup>13</sup> In 2023, it was estimated that only around 0.14 percent of estates were taxable.<sup>14</sup>

Federal income tax is a different story. Although not as inevitable as the famous Benjamin Franklin “death and taxes” quote would have us believe—tens of millions of Americans owe little or no federal income tax each year<sup>15</sup>—income taxes account for roughly half of all federal revenue and are the largest source of government funding.<sup>16</sup>

The US did not have a permanent federal income tax until 1913.<sup>17</sup> That was the year the Sixteenth Amendment was passed, giving Congress the authority to levy taxes on corporate and individual income.

Like the estate tax, the income tax has its roots in war efforts and a Progressive Era push for wealthy individuals to pay the taxes and tariffs.<sup>18</sup> Rates started at 1–7 percent on incomes above \$3,000.<sup>19</sup> Top rates soared during World War I and World War II and peaked at 94 percent for top taxpayers in 1944<sup>20</sup>—the same year Congress created the standard deduction.<sup>21</sup>

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<sup>11</sup> IRS Releases Tax Inflation Adjustments for Tax Year 2025, IRS (Oct. 22, 2024), <https://www.irs.gov/newsroom/irs-releases-tax-inflation-adjustments-for-tax-year-2025>.

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Dep’t of the Treasury, Bureau of the Fiscal Serv., *How Much Revenue Has the U.S. Government Collected This Year?*, Fiscal Data, <https://fiscaldata.treasury.gov/americas-finance-guide/government-revenue> (last visited Apr. 21, 2025).

<sup>14</sup> *How Many People Pay the Estate Tax?*, Tax Pol’y Ctr. (Jan. 2024), <https://taxpolicycenter.org/briefing-book/how-many-people-pay-estate-tax>.

<sup>15</sup> Drew Desilver, *Who Pays, and Doesn’t Pay, Federal Income Taxes in the U.S.?*, Pew Rsch. Ctr. (Apr. 18, 2023), <https://www.pewresearch.org/short-reads/2023/04/18/who-pays-and-doesnt-pay-federal-income-taxes-in-the-us>.

<sup>16</sup> U.S. Dep’t of the Treasury, Bureau of the Fiscal Serv., *supra* note 28.

<sup>17</sup> *Historical Highlights of the IRS*, IRS (Sept. 13, 2024), <https://www.irs.gov/newsroom/historical-highlights-of-the-irs>.

<sup>18</sup> *Constitutional Amendments — Amendment 16 — “Income Taxes,”* Ronald Reagan Presidential Libr. & Museum, <https://www.reaganlibrary.gov/constitutional-amendments-amendment-16-income-taxes> (last visited Apr. 21, 2025).

<sup>19</sup> *Historical Highlights of the IRS*, *supra* note 32.

<sup>20</sup> Mark Luscombe, *Historical Income Tax Rates*, Wolters Kluwer (Dec. 30, 2022), <https://www.wolterskluwer.com/en/expert-insights/whole-ball-of-tax-historical-income-tax-rates>.

<sup>21</sup> *Historical Highlights of the IRS*, *supra* note 32.

Other key changes to the federal income tax over the years include the earned income tax credit in 1975;<sup>22</sup> the 1986 Tax Reform Act that simplified and restructured the tax code and dropped the top rate to 28 percent;<sup>23</sup> the American Taxpayer Relief Act of 2012, which set the top rate at 39.6 percent post-recession;<sup>24</sup> and the TCJA of 2017.

The TCJA temporarily lowered tax rates across seven brackets and permanently dropped the corporate tax rate. It also significantly increased the standard deduction and child tax credit, capped state and local tax deductions, added deductions for pass-through income and business deductions, and as noted, nearly doubled the estate tax exemption.<sup>25</sup>

### **The Future Impact of Taxes on Estate Plans**

A US Chamber of Commerce survey shows that voters favor permanently extending the TCJA by a nearly three-to-one margin.<sup>26</sup> President Trump and Republicans in Congress are also pushing for TCJA extensions.

Historically, major tax bills in a new administration's first year (e.g., the TCJA in December 2017) take months, often landing in the fall, or lame-duck, session. President Trump did not sign the TCJA into law until three days before Christmas 2017.

If the past is prologue, Congress—if it acts at all—may put off TCJA extensions, either short-term or long-term, until the last few weeks or even days or hours of the year.

As we keep our eyes on the latest tax developments from Washington, DC, advisors can work together at the nexus of financial and estate planning to develop contingency plans for clients that account for different scenarios, including the estate tax exemption and individual tax rates remaining at current levels or reverting to pre-TCJA levels.

To discuss how we can address gaps in our clients' financial and estate plans, please reach out to us.

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<sup>22</sup> Margot L. Crandall-Hollick, *The Earned Income Tax Credit (EITC): Legislative History*, Congress.gov (Apr. 28, 2022), <https://www.congress.gov/crs-product/R44825>.

<sup>23</sup> Julia Kagan, *Tax Reform Act of 1986: Overview and History*, Investopedia (Nov. 3, 2024), <https://www.investopedia.com/terms/t/taxreformact1986.asp>.

<sup>24</sup> Pub. L. 112–240, 126 Stat. 2313 (codified in scattered sections in 26 U.S.C.), <https://www.congress.gov/bill/112th-congress/house-bill/8>.

<sup>25</sup> David Floyd, *What Is the Tax Cuts and Jobs Act (TCJA)?*, Investopedia (Jan. 31, 2025), <https://www.investopedia.com/taxes/trumps-tax-reform-plan-explained>.

<sup>26</sup> Ashlee Rich Stephenson, *American Voters Will Support Lawmakers Who Back Permanent Tax Relief*, U.S. Chamber of Com. (Mar. 4, 2025), <https://www.uschamber.com/taxes/american-voters-will-support-lawmakers-who-back-permanent-tax-relief>.