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 can impact your estate plan.

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.[1] Estate and gift taxes play a significant role in individual estate planning, but their contribution to the overall federal budget is relatively small, typically accounting for approximately 1 percent of total federal revenue.[2] In 2023, it was estimated that only around 0.14 percent of estates were taxable.[3]

The federal estate tax was advocated by progressive reformers during a time of great wealth concentration and inequality (think Gilded Age figures like Carnegie and Rockefeller).[4] An initial exemption, or exclusion amount, of $50,000 was allowed.[5]

In the decades since the estate tax's inception, Congress has made additions and revisions to its structure. These changes include a tax on so-called *inter vivos*, or lifetime, gifts in 1932 to prevent wealthy taxpayers from circumventing the estate tax by gifting assets during their lifetime; a marital deduction introduced in 1948 that allows tax-free transfers to qualifying surviving spouses; and the 1976 Tax Reform Act, which created a unified estate and gift tax exemption.[6]

Over the years, the estate tax exemption amount increased from $50,000 in 1916 to $2 million in 2006[7] to $5.49 million in 2017—the year before the Tax Cuts and Jobs Act (TCJA) went into

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[1] 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.

[2] 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).

[3] *How Many People Pay the Estate Tax?*, Tax Pol'y Ctr. (Jan. 2024), https://taxpolicycenter.org/briefing-book/how-many-people-pay-estate-tax.

[4] 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.

[5] Jacobson et al., *supra* note 17, at 120.

[6] *Id.* at 121.

[7] 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.

effect.[8] The annual gift tax exclusion has increased as well, from $3,000 per individual in 1976 to $12,000 in 2006[9] to $14,000 in 2017.[10]

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

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

The Income Tax

While not a direct tax on estates, the income tax has ramifications throughout the estate planning process, from the taxation of estate assets and trusts to beneficiary taxes, capital gains, and charitable contributions.

The US did not have a permanent federal income tax until 1913[13]—more than a century after Benjamin Franklin's famous "death and taxes" quip. That was the year the Sixteenth Amendment was passed, giving Congress the authority to levy taxes on corporate and individual income. Today, income tax revenue makes up nearly half of all federal revenue and is the largest source of government funding.[14]

Income taxes are not quite as inevitable as Franklin would have us believe. Tens of millions of Americans owe little or no federal income tax each year.[15]

Like the estate tax, the income tax has its roots in war efforts and a Progressive Era push for wealthy individuals to pay taxes and tariffs.[16] Rates started at 1–7 percent on incomes above

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

[9] Federal Estate and Gift Tax Rates, Exemptions, and Exclusions, 1916–2014, supra note 23.

[10] *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.

[11] 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.

[12] *Id.*

[13] Historical Highlights of the IRS, IRS (Sept. 13, 2024), https://www.irs.gov/newsroom/historical-highlights-of-the-irs.

[14] 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).

[15] 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.

[16] *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).

$3,000.[17] Top rates soared during World War I and World War II and peaked at 94 percent for top taxpayers in 1944,[18] the year Congress created the standard deduction.[19]

Other key changes to the federal income tax over the years include the earned income tax credit in 1975;[20] the 1986 Tax Reform Act that simplified and restructured the tax code and dropped the top rate to 28 percent;[21] the American Taxpayer Relief Act of 2012, which set the top rate at 39.6 percent post-recession;[22] and 2017's TCJA.

The TCJA temporarily dropped tax rates across seven brackets and permanently lowered the corporate tax rate. It also increased the standard deduction and the child tax credit, capped state and local tax deductions, added deductions for pass-through income and business deductions, and nearly doubled the estate tax exemption.[23]

Navigating an Uncertain Tax Future

In a spring survey, voters said by a nearly three-to-one margin that they favor permanently extending the TCJA.[24] President Trump and Republicans in Congress are also pushing for TCJA extensions.

If Congress acts at all, it may postpone TCJA extensions, either short-term or long-term, until the last few weeks or even days or hours of this year. Historically, major tax bills in a new administration's first year (e.g., the TCJA in December 2017) often land in the fall, or lame-duck, session.[25] President Trump did not sign the TCJA into law until three days before Christmas 2017.

Congress may wait until the eleventh hour to act, but you do not have to. You can work with an estate planning attorney on contingency plans that account for different scenarios, including the estate tax exemption and individual tax rates remaining at current levels or reverting to pre-TCJA levels. Potential strategies include shifting 2026 income into 2025, prepaying expenses, contributing to tax-advantaged accounts, using the bonus depreciation and qualified business income (QBI) deductions, gifting assets, and creating and funding irrevocable trusts.

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[17] *Historical Highlights of the IRS*, *supra* note 29.

[18] 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.

[19] Historical Highlights of the IRS, supra note 29.

[20] Margot L. Crandall-Hollick, The Earned Income Tax Credit (EITC): Legislative History, Congress.gov (Apr. 28, 2022), https://www.congress.gov/crs-product/R44825.

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

[22] 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.

[23] 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.

[24] 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.

[25] Gabriella Sanchez, *What Happens in a Lame-Duck Session of Congress?*, Brennan Ctr. for Just. (Dec. 19, 2022), https://www.brennancenter.org/our-work/research-reports/what-happens-lame-duck-session-congress.

Changes to your estate plan can take weeks or months to implement. Delaying action on your plan could put you at a disadvantage if you are caught unprepared for what Congress does or does not do. Changes do not have to be permanent. Some can be a temporary hedge, while other proactive measures may prove to be prescient.

To talk about specific tax policies and how they might affect your estate plan, please contact us.