

New York Law Journal

The Great Wealth Transfer: Estate Planning for the Most Significant Wealth Transfer in US History



By Jennifer B. Cona, Founder and Managing Partner, and Dylan S. Stevens, Associate Attorney

According to research conducted by the financial market intelligence firm, Cerulli and Associates, baby boomers and the Silent Generation will pass down a whopping \$84 trillion in assets through 2045, \$72.6 trillion of which passing directly to heirs. Other projections estimate the size of the transfer to be as high as \$140 trillion, resulting in millennials experiencing a five-fold increase in wealth according to studies by WealthEngine and Coldwell Banker Global Luxury. See <https://www.cerulli.com/press-releases/cerulli-anticipates-84-trillion-in-wealth-transfers-through-2045>; <https://www.cfaac.org/news/great-wealth-transfer-millennials-be-prepared>.



This “wealth transfer wave” also comes at a time when the current historically high federal estate tax exemption is set to expire very shortly. Fortunately, there are several powerful estate planning strategies that can be utilized now to take advantage of the Tax Cuts and Jobs Act of 2017 before it sunsets, greatly reducing, if not eliminating, future estate tax exposure.

A Primer on Estate and Gift Taxation

Federal estate taxation in the United States is a unified system, meaning an individual faces taxation not only on property owned by the decedent at death that is includible in the decedent’s taxable estate pursuant to I.R.C. Section 2033, but on completed taxable gifts made during life under I.R.C. Section 2051. Thus, broadly speaking, taxes will be owed at death if the value of an individual’s taxable estate plus lifetime taxable gifts exceeds the applicable federal estate and gift tax exemption amount.

This exemption amount has changed dramatically throughout the years. In 2001, the estate tax exemption amount was a mere \$675,000, but fortunately this exemption has gradually increased over time and in

2017 the Tax Cuts and Jobs Act doubled the basic estate and gift tax exemption from \$5 million to \$10 million per person so that, after adjusting for inflation, the exemption became \$11,180,000 in 2018, \$11,400,000 in 2019, \$11,580,000 in 2020, \$11,700,000 in 2021, \$12,060,000 in 2022, \$12,920,000 in 2023, and \$13,610,000 in 2024. See I.R.C. Section 2010; Rev. Proc. 2022-38; Rev. Proc. 2023-34. However, these increased exemptions are slated to sunset on Dec. 31, 2025, reverting back to the pre-Tax Cut and Jobs Act level of \$5 million (adjusted for inflation). See I.R.C. Section 2010(c)(3)(C).

This presents a unique estate planning opportunity, particularly for New York residents, to take advantage of the temporarily elevated estate and gift tax exclusion before it expires.

Importantly, the Treasury issued regulations on Nov. 26, 2019, under Treas. Reg. Section 20.2010-1(c) providing that if a taxpayer uses a large basic exemption amount during lifetime but dies when the exemption amount is lower, the taxpayer can still enjoy the benefit of the higher amount without being subject to a “clawback.”

The reason this is particularly appealing for New York residents is due to New York’s different treatment of lifetime gifts as compared to the federal estate tax system. The current New York estate tax exemption amount for 2024 is \$6.94 million, but unlike the federal system where lifetime gifts count towards the exemption amount, gifts made more than three years before death are not included in an individual’s taxable estate for New York estate tax purposes. See NY CLS Tax Section 954. It is important to keep in mind, however, that in New York, there is an estate tax “cliff” meaning that if the taxable estate is greater than 105% of the exclusion amount (\$7,287,000 for 2024), the exemption is lost altogether and the estate is taxed in its entirety, hence the importance of making gifts during life (provided they are more than three years before death). See NY CLS Tax Section 952(c)(1).

Thus, by making gifts during life now one can make use of the temporarily high federal exemption amount before the Tax Cuts and Jobs Act provisions sunset on Dec. 31, 2025, and completely avoid New York estate tax as to the gifted amounts so long as they are completed more than three years before death.

Not all gifting strategies are created equal, however. Which gifting strategies are the most tax-efficient and protective of the estate and an individual’s beneficiaries bears much consideration in the planning process.

Trusts as Vehicles for Strategic Gifting

As previously discussed, lifetime gifting can be a way to reduce, if not eliminate, New York estate tax liability while taking advantage of the current, historically high federal gift tax exemption. This can be accomplished by simply making outright gifts of assets to beneficiaries, but then control of the gifted funds is lost, not to mention the risk of the assets being unnecessarily dissipated by the beneficiaries.

Spousal Lifetime Access Trusts

One alternative is the Spousal Lifetime Access Trust (SLAT). A SLAT is an irrevocable trust created by one spouse as the “donor” or “grantor” for the benefit of the other spouse during his or her lifetime. The donor spouse who contributes the assets to the trust is effectively making a completed gift, utilizing some of his or her federal gift tax exemption (currently \$13,610,000). The other spouse would be the beneficiary of the SLAT, but additional beneficiaries, such as the children, can be beneficiaries as well. The beneficiary spouse can serve as trustee of the SLAT and, as long as said spouse’s discretion to distribute trust assets is limited by an ascertainable standard (e.g., for health, education, maintenance and support), the assets will not be included in the beneficiary spouse’s taxable estate. In funding the SLAT, the donor spouse is using some of his or her federal gift tax exemption, but if he/she survives the gift to the SLAT by more than three years, the entire amount transferred

y kn'p'v'dg'w'dl'ge'v'q'P gy 'I q'tn'g'uc'v'g' vcz'c'p'f 'y' g'f' q'p'q't'ur' q'w'g'u'w'w'P gy 'I q'tn' g'z'g' r'v'k'p'y' kn'w'k'm'd'g'c'x'c'k'c'd'g'c'v'f' g'c'y' O' O' q't'g'x'g't. 'y' g'x'c'n'g'q'h'y' g'i' k'h'q't'g'u'c'v'g'v'z' r'w'r' q'u'g'u'k'u'f't'q'l' g'p'c'v'y' g'f'c'v'g'q'h't'c'p'u'h'g't." g'z'e'n'f' k'p'i' 'c'p'f' 'h'w'w'g'c'r' r't'g'e'k'v'k'p'f'q'o' 'y' g' v'z'c'd'g'g'u'c'v'g'q'h'g'k'y' g't'ur' q'w'g'u'U'g'g'K'OT'OE'0' U'g'e'v'k'p'47340

UNCV'ct'g'c' h'p'c'u'k'e'y' c'f' 'v'q't'g'o' q'x'g'c'u'g'u'v' h'q'o' "c'o' c't'l'k'f' 'k'p'f' k'k'f' w'e'n'u'v'z'c'd'g'g'u'c'v'g'" while still allowing them to benefit from the i' k'h'g'f' 'c'u'g'u'v'k'p'f' k't'g'e'v'f' 'y' t'q'w' j' 'y' g'k' 'ur' q'w'g'u' J' q'y' g'x'g't. 'y' j' g't'g'd'q'y' 'ur' q'w'g'u'g'u'c'd'k'k'y' " UNCV'f'q't'g'c'e'j' 'q'y' g't' 'q'p'g'o' w'u'v'd'g'y' c't'f' " q'h'y' g'T'g'e'k'r' t'q'e'c'n'v't'w'u'v'F' q'e'v'k'p'g.'c' h'g'i' c'n' v'g'u'v'f' g'x'm'g'r' f'd'f' 'y' g'W'U'U'w'r' t'g'o' g'E'q'w't'v' k'p'W'p'k'g'f' 'U'c'v'g'u'x'O'G'u'c'v'g'q'h'I' t'c'e'g'y' c'v'k'h'i' h'c'k'g'f'. 'y' k'n'p'w'k'h'i' 'y' g't'g'u'r' g'e'v'k'g'UNCV'u'k'h'i' v'y' g'f' 'c't'g'q'x'g't'n'f' 'u'k'o' k'k'c't'v'q'g'c'e'j' 'q'y' g't'. 'r' c't'v'q'h'i' c'v'k'p'i' n'g't'c'p'u'c'e'v'k'p'. 'c'p'f' 'h'g'c'x'g'y' g'ur' q'w'g'u' k'p'c'r'r' t'q'z'k'o' c'v'g'n'f' 'y' g'v'c'o' g'g'e'q'p'q'o' k'e' r' q'u'k'k'p'c'u'k'h'i'y' g'f' 'j' c'f' 'p'q'v'e't'g'c'v'g'f' 'y' g't'w'u'u' in the first place. See United States v. Estate of Grace, 395 U.S. 316 (1969).

Intentionally Defective Grantor Trusts

Another way families can efficiently v'c'p'u'h'g't' 'y' g'e'n'y' 'v'q'v'y' g'p'g'z'v'i' g'p'g't'c'v'k'p'k'u' v'y' t'q'w' j' 'c'p'k'p'v'p'v'k'p'c'm'f' 'f' g'h'e'v'k'g'i' t'c'p'v'q't' trust (IDGT). An IDGT is designed to take c'f' x'c'p'v'c'i' g'q'h'y' g'l'p'e'q'p'i' t'w'p'e'g'd'g'y' g'g'p'

v'y' g'g'e'v'k'p'u'q'h'y' g'k'p'v'g't'p'c'n'T'g'x'g'p'w'g'E'q'f' g' i' q'x'g't'p'k'p'i' 'y' g't'g'c'v'o' g'p'v'q'h't'w'u'u'f'q't' " k'p'e'q'o' g'v'z' 'r' w'r' q'u'g'u'c'p'f' 'y' g'e'q'f' g'g'e'v'k'p'u' c'f' f't'g'u'k'p'i' 'g'u'c'v'g'v'z'c'v'k'p'o

C'p'k'f' I' V'k'u'c'p'k't'g'x'q'c'e'd'g'v't'w'u'v'k'p'y' j' k'j' " c'e'q'o' r' r'g'v'f' 'i' k'h'k'u'o' c'f' g'v'q'v'y' g't'w'u'v'y' c'v' e'c'p'p'c'o' g'e'j' k'f' t'g'p'q't' 'q'y' g't' 'h'q'x'g'f' 'q'p'g'u'c'u' beneficiaries. The trust is drafted in such a y' c'f' 'y' c'v'y' g'i' t'c'p'v'q't' 'k'u'v't'g'c'v'g'f' 'c'u'v'y' g'q'y' p'g't' " h'q't' 'k'p'e'q'o' g'v'z' 'r' w'r' q'u'g'u'c'p'f' 'y' w'u'c'm'v't'w'u'v' k'p'e'q'o' g'k'u't'g'r' q't'v'g'f' 'q'p'v'y' g'i' t'c'p'v'q't' a'u'r' g't'u'q'p'c'n' tax return) without triggering estate tax k'p'e'n'u'k'p'o'f'q't'g'z'c'o' r' i'g'. 'k'h'i'y' g'i' t'c'p'v'q't' 't'g'c'k'p'u' v'y' g'v'v' q'y' g't' 'q'v'g'c'e's' w'k'g'y' g'v't'w'u'v'e'q't'r' w'u'd'f' " u'w'd'u'k'w'k'p'i' 'q'y' g't' r' t'q'r' g't'v'f' 'q'h'i'c'p'g's' w'k'x'c'g'p'v' x'c'n'g'o'y' g'i' t'c'p'v'q't' 'y' k'm'd'g'v't'g'c'v'g'f' 'c'u'v'y' g' q'y' p'g't' 'h'q't' 'k'p'e'q'o' g'v'z' 'r' w'r' q'u'g'u'w'p'f' g't' 'K'OT'OE'0' U'g'e'v'k'p'8970J' q'y' g'x'g't. 'v'y' k'u'v'v'c'v' c'r' 'r' q'y' g't'o' f' q'g'u'p'q'v'v't'k'i' i' g't' 'g'u'c'v'g'v'z' 'k'p'e'n'u'k'p'v'p'f' g't' " U'g'e'v'k'p'u'4258"q't'425: "q'h'y' g'K'OT'OE'0

E'q'p'u'g's' w'p'v'n'f'. 'y' g'x'c'n'g'q'h'y' g'i' k'h'v'q' " v'y' g'k'f' I' V'y' k'n'i'w'g'u'v'q'o' g'q'h'y' g'i' t'c'p'v'q't' a'u' h'g'f' g't'e'n'i' k'h'v'z' 'g'z'g'o' r' v'k'p'. 'd'w'c'p'f' " h'w'w'g'c'r' r' t'g'e'k'v'k'p'y' k'n'i'f' t'q'y' "g'u'c'v'g'v'z' " h'g'g'o' q't'g'x'g't. 'd'f' 'r' c'f' 'k'p'i' 'y' g'k'p'e'q'o' g' " v'z' 'i' g'p'g't'c'v'g'f' 'd'f' 'y' g'v't'w'u'v' 'y' g'i' t'c'p'v'q't' 'k'u' g'h'g'e'v'k'g'n'f' 'o' c'n'k'p'i' 'c'f' f' k'k'q'p'c'n'v'z' 'h'g'g'i' k'h'u' g'c'e'j' "f' g'c't'OC'p'f' 'd'g'e'c'w'u'g'P' gy 'I' q't'n'i'v'c'v'g' " q'p'n'f' 'v'z'g'u'i' k'h'u'o' c'f' g'y' k'y' k'p'v'y' t'g'g'f' 'g'c't'u'q'h'i' f' g'c'y' 'w'p'f' g't' 'P' ['E'N'U'v'z' 'U'g'e'v'k'p'v', 76. 'k'h'

q'p'g'v'w'x'k'g'u'v'y' g't'c'p'u'h'g't' 'v'q'v'y' g'k'f' I' V'd'f' " v'y' t'g'g'f' 'g'c't'u'. 'y' g'g'p'v't'g'i' k'h'c'p'f' 'c'p'f' 'h'w'w'g'g' c'r' r' t'g'e'k'v'k'p'y' k'n'f'g'u'c'r' g'P' gy 'I' q't'n'i'g'uc'v'g' " v'z' 'g'p'v't'g'n'f'o

Conclusion—C'u'd'c'd'f' 'd'q'q'o' g't'u'c'p'f' 'y' g' U'k'p'p'v'l' g'p'g't'c'v'k'p' 'r' c'u'u'f' q'y' p'w'r' 'v'q'v'8362" v't'k'k'p'v'q'v'y' g'k'f' 'j' g'k't'u' 'o' w'e'j' 'e'c'p'd'g'f' 'q'p'g' v'y' t'q'w' j' 'y' g'w'g'q'h'UNCV'u'c'p'f' 'k'f' I' V'u' " r' c't'v'e'w'c't'n'f' 'p'q'y' 'k'p' 'h'i' j' v'q'h'y' g'v'g'o' r' q't'c't'k'f' " g'g'x'c'v'g'f' 'h'g'f' g't'e'n'i'g'uc'v'g'v'z' 'g'z'g'o' r' v'k'p'. 'v'q' " o' k'p'o' k'j' g'g'uc'v'g'v'z' 'h'c'd'k'k'f' 'c'p'f' 'c'm'q'y' " g'u'c'v'g'c'u'g'u'v'q' 'c'r' r' t'g'e'k'v'g'v'z' 'h'g'g'o'P' q'v'q'p'n'f' " f' q'v'y' g'u'g'v't'w'u'v'q'h'g't' 'g'u'c'v'g'c'p'f' 'k'p'e'q'o' g'v'z' " c'f' x'c'p'v'c'i' g'u' 'd'w'k'h'i' t'q'r' g't'n'f' 'f' t'c'h'g'f'. 'y' g'f' " e'c'p'q'h'g't' 'o' g'c'p'k'p'i' h'w'i'c'u'g'v'r' t'q'v'e'v'k'p'f'q't' " the trust's beneficiaries, placing trust assets d'g'f' q'p'f' 'y' g't'g'c'e'j' 'q'h'i'r' t'q'ur' g'e'v'k'g' 'e't'g'f' k'q't'u' " l'w'f' i' o' g'p'u'c'p'f' 'f' k'x'q't'g'e'v'g'w'g'o' g'p'v'f' g'e't'g'g'u'0' O' q't'g'x'g't. 'd'f' 'r' c'u'k'p'i' 'c'u'g'u'v'k'p' 'v'w'u'v'c' " t'g'u'r' q'p'u'k'g'n'f' r' g't'u'q'p' 'e'c'p'd'g'c'r' r' q'k'p'v'g'f' 'v'q' " o' c'p'c'i' g'c'p'f' 'k'p'x'g'u'v'y' g'c'u'g'u'v'c'u'v't'w'u'g'g'. " p'rot'ect'ing' b'en'ef'ic'ia'r'ies' f'rom' t'h'e'm's'e'l'v'es'.

I'g'p'p'l'h'g't' 'D'OE'q'p'c'k'u'v'y' g'h'q'w'p'f' g't'c'p'f' " o' c'p'c'i' k'p'i' 'r' c't'v'p'g't' 'q'h'E'q'p'c'G'f' g't'N'c'y'. "c" f'irm' t'h'at' c'on'c'e'n't'r'ates' i'n' t'h'e' a'r'e'as' o'f' e'l'd'e'r' r'e'y'. "g'u'c'v'g'r' r'e'p'p'l'k'i'. "g'u'c'v'g'c'f' o' k'p'k'm'v'c'v'k'p' " c'p'f' 'h'k'k'c'v'k'p'c'p'f' "j' g'e'n'y' 'e'c't'g'v'x'y' O'F' {r'e'p' 'U'0' S't'e'v'e'n's' i's' a'n' a's's'o'c'iate' w'ith' t'h'e' f'irm'. F'or' c'f' f' k'k'q'p'c'n'k'p'h'q't'o' c'v'k'p'. 'x'k'k'k' " y' y' y' Q'q'p'c'g'f' g't'r'e'y' Q'q'o' 0 ©Cona Elder Law



Customized Trusts, Estates, Corporate & Elder Law Plans

- Medicaid Planning
- Estate Administration
- Asset Protection
- Special Needs Trusts
- Estate Planning
- Estate Litigation



447'Dt'q'c'f' j' q'm'y' "T'q'c'f' O' g'r'k'k'g'"

y' y' y' Q'q'p'c'g'f' g't'r'e'y' Q'q'o' 85305; 207222

I' c't'f' g'p'E'k'f' 'E'P' gy 'I' q't'n'i'E'k'f' R'q't'v'L'g'h'g't'g'u'p'U'c'v'k'p'