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IRS Announces No Clawback of Gift Tax Exemption

Encourage clients to plan before the 2026 sunset of increased exemptions.

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The Treasury and Internal Revenue Service just issued proposed regulations stating that there will be no clawback of the use of any unified credit (gift tax exemption)

before 2026 when the lifetime exemption will revert from \$10 million to \$5 million (both inflation adjusted).

For those unfamiliar with these taxes, exemptions and how they're calculated, Tax Notes offers a thorough explanation:

"In general, gift and estate taxes are calculated, using a unified rate schedule, on taxable transfers of money, property and other assets. Any tax due is determined after applying a credit – formerly known as the unified credit – based on an applicable exclusion amount.... The credit is first used during life to offset gift tax and any remaining credit is available to reduce or eliminate estate tax.

The [Tax Cuts and Jobs Act] temporarily increased the BEA from \$5 million to \$10 million for tax years 2018 through 2025, with both dollar amounts adjusted for inflation. To address concerns that an estate tax could apply to gifts exempt from gift tax by the increased BEA, the proposed regulations provide a special rule that allows the estate to compute its estate tax credit using the higher of the BEA applicable to gifts made during life or the BEA applicable on the date of death."

A taxpayer could make a taxable gift now of \$11.18 million without concern that there would be a phantom estate tax on his death after 2025. Advisors should use this new pronouncement as an opportunity to encourage clients to plan before the 2026 sunset of the increase in the exemption, or a possible earlier shift if the political climate in Washington changes in 2020.

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