

ADVANCED ESTATE PLANNING AHEAD OF TCJA SUNSET

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KURT R. STEINKRAUSS, ESQ.

Member of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Chair, Closely Held Business Practice

Co-chair, Private Equity Practice

- Focuses on corporate matters emphasizing M&A and estate planning
- Specializes in advising family businesses, start-ups, and emerging companies in a variety of sectors on organization and financing, mergers and acquisitions, corporate governance, and succession planning
- Mutli-disciplinary background of corporate, tax, and personal estate planning lends itself to unique 'big picture' representation for privately-held businesses and individual owners as they prepare for and navigate intergenerational transfers of wealth and businesses and/or a sell-side transaction



617.832.6093 KSteinkrauss@mintz.com

CHRIS CAHILL

J.D., CFP® & CAP®

Twelve Points

· Chris is a Partner at Twelve Points who is known for helping successful business owners who are looking to make a lasting generational impact with their businesses and their wealth.

Attorneys, CPAs and business advisors introduce Chris to their clients who are focused on passing on more than just their business and their monetary wealth – they are looking to make a meaningful impact in the world and lead amazing lives of significance.



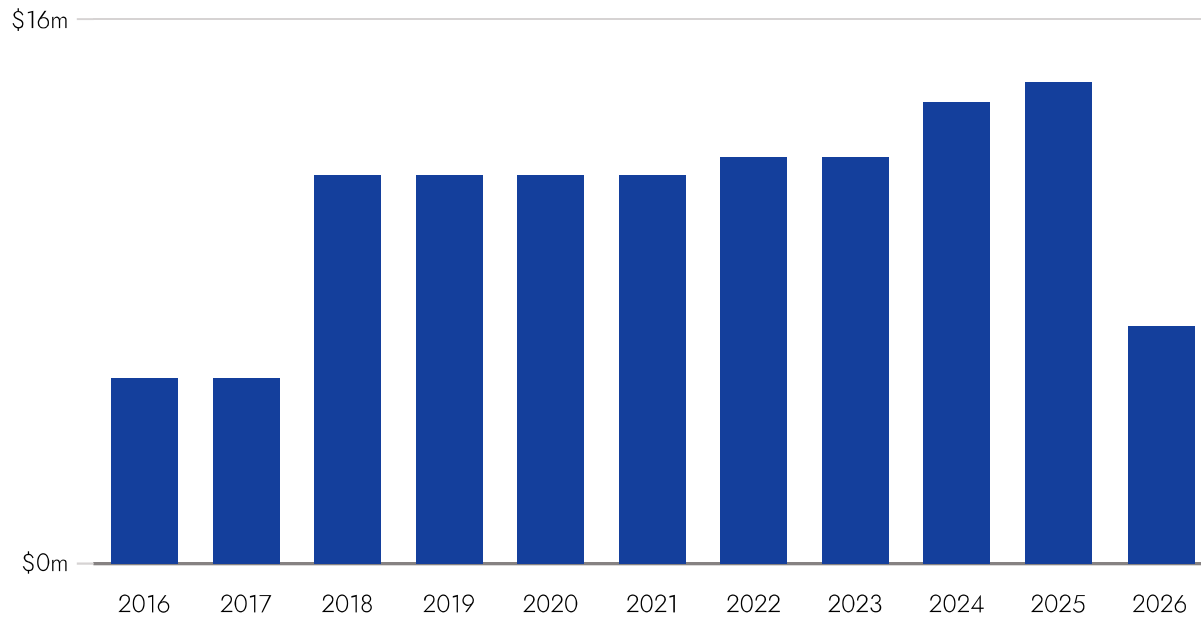
978-318-9500 Chris@twelvepoints.com



TCJA ~ 12/31/25 & THE GOLDEN AGE OF PLANNING



PREPARE FOR SUNSETTING ESTATE, GIFT & GST TAX EXEMPTIONS



● Exemption Amounts

**POTENTIAL
50%
REDUCTION
IN
EXEMPTIONS!**

WE'VE SEEN THIS MOVIE BEFORE!



We've faced the prospect of dramatic increases or reductions in exemptions before

- 2010 - Congress failed to act - sunset of estate, gift & GST tax for one year
- 2012 - Exemptions scheduled to reduce from over \$5M to \$1M before Congress took action in 11th hour to keep \$5M
- 2020 - Fears of election and what could happen to estate tax
- End of 2021
- Election of 2024??



ACT QUICKLY

457
**CALENDAR DAYS
BEFORE SUNSET**

311
**WORK DAYS
BEFORE SUNSET**

EXCLUDING WEEKENDS AND
HOLIDAYS

~150
**WORK DAYS
TO ENGAGE
YOUR CLIENTS**

BEFORE LABOR DAY 2025!

PROFESSIONAL TRUST COMPANIES
WON'T TAKE NEW ENGAGEMENTS
AFTER 12/1

IRS HAS SHUT DOWN ABILITY TO GET
NEW EIN'S EARLY BEFORE

KYC CHALLENGES WITH OPENING
NEW ACCOUNTS

BE DELIBERATE & AVOID RUSHED PLANNING MISTAKES



We have to be thoughtful

- How much can you afford to give away?
- What assets are best suited to gift?
- Who is best-suited to manage the assets for the long-term?
- Will there be an impact of gifting on the business?
- Build flexibility into your planning

UNCERTAINTY REIGNS SUPREME (AGAIN!)

Potential Outcomes



#1 - Keep things as they are

Extend current estate tax exemption and maintain top bracket of 40%



#2 - Change estate tax rate and/or exemption amount

Another option, lower estate tax rate (20%) and/or increase exemption (Project 2025)



#3 - Get rid of federal estate tax

Death Tax Repeal Act



#4 - Find middle ground

Adjust exemption between \$13.6M and \$7M and/or possibly let higher amount remain with slightly increased tax rate



#5 - Do nothing / Sunset

Tax exemption in the TCJA would lapse, reverting to about \$7 million for 2026 deaths. The top 40% estate tax rate would remain in place.



#6 - Lower estate tax exemption

Below 2017's figure and/or to increase the estate tax rate. (American Housing and Economic Mobility Act of 2024 - Elizabeth Warren)



Irrevocable Trusts for Family & Friends

1. Grantor Trusts / Life Insurance Trusts
2. Dynasty Trusts
3. SLATs
4. GRATs
5. Lifetime Q-TIP Trusts/Wait & See Q-TIP Trusts
6. Jurisdictional considerations
7. Who will be the trustees & trust protectors?

Gifting FLP & LLC Units

1. Adequate disclosure rules
2. Potential discounts

Estate Freeze /Sales for Large Estates

1. Sale of assets to IDGT
2. Promissory Notes
3. Installment Sales
4. Self-Cancelling Installment Notes

Potential Pitfalls

1. Step Transactions
2. Reciprocal Trusts
3. Non Citizen Spouses
4. Valuations
5. Substantiation on Gift Tax Return
6. Formalities of Trust



ESTATE REDUCTION THROUGH CHARITABLE GIFTS

- 1 **Charitable Remainder Trust**
- 2 **Charitable Lead Trust**
- 3 **Private Family Foundation**
- 4 **Donor-Advised Fund**
- 5 **Qualified Charitable Distribution from IRA**

WHY IT MATTERS SO MUCH

- **\$50M Clients & Death in 2026 - After Sunset**

- Federal estate tax due of \$14.4M
- $\$50M - \$14M = \$36M \times 40\% = \$14.4M$

- **Same Clients & Death In 2026 - After Sunset But Used Exemptions in 2024**

1. \$27.2M gifted to trust in 2024 (no discounts)
2. Federal estate tax due of \$9.12M
3. $\$28.8M \times 40\%$
4. Assuming a 25% discount on gift in 2024, tax could be only \$6.4M

- **Estate tax reduction of either \$5.28M or \$8M!**





SMART WAYS TO PAY THE ESTATE TAX

Properly Placed Life Insurance

- Estate tax-free
- Income tax-free
- Capital gains tax - free

Section 6166/Deferral

- Value of business must exceed 35% of decedent's gross estate
- 14 Years - Principal & Interest on business interest
- US Citizens only

Graegin Loans

- Illiquid assets - company stock, real estate, etc.
- Loans, secured by promissory notes with fixed interest rates
- Interest is deductible

PLANNING FOR BUSINESS INTERESTS

Issues of Control

- How much to give?
- Re-Capitalization - Voting/Non-Voting?
- Who will be the trustee?
- Who gets the controlling/voting interests at your passing?

Complexity of Planning

- Family issues / governance & equalization (what's fair?)
- Need for valuations - time & expense
- How to reward & retain management team?
- S Corp. Stock

Succession Planning & Beneficiaries

- Can the children run the business?
- Can the management team do it? (Will they want to?)
- How do you educate the next generation to step up and lead?

Buy-Sell Agreements

- Do you have one?
- When was it reviewed last?
- Discuss Connelly Case

SECTION 1202 - QUALIFIED SMALL BUSINESS STOCK & GAIN EXCLUSION

(I know, not technically Estate Planning but important nonetheless!)

- 1 Domestic "C" Corp. Stock - originally issued after 8/10/93
- 2 On date of issue, the corporation had \$50 million or less in assets
- 3 At least 80% of the corp. assets is in active conduct of one or more qualified businesses
- 4 The issuing corp. does not purchase any of the stock from the taxpayer during a four-year period starting two years before the issue date
- 5 Issuing corp. does not significantly redeem stock within a two-year period starting one year before the issue date



CONTACT KURT & CHRIS



Kurt R. Steinkrauss

Member - Mintz

617.832.6093

KSteinkrauss@mintz.com



Chris Cahill

Partner - Twelve Points

978-318-9500

Chris@twelvepoints.com

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