

Blog

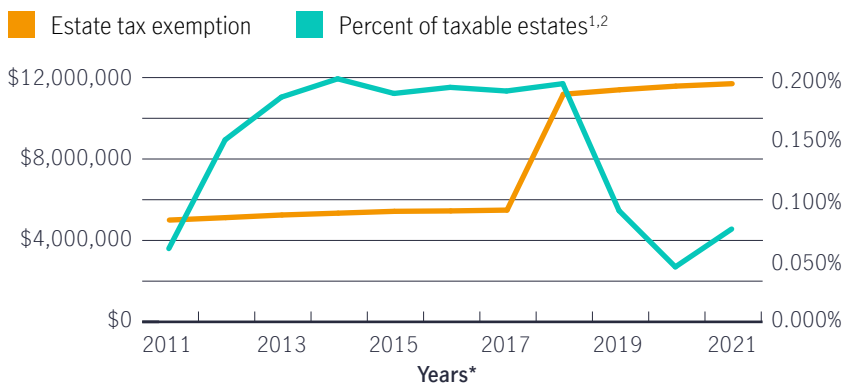
Consider acting now before estate exemptions go down

The 2017 passage of the Tax Cuts and Jobs Act (TCJA) doubled the lifetime exemption available to individuals (\$12.92M in 2023), reducing the number of estates subject to the estate tax. Barring legislative action, that exemption will revert to pre-TCJA numbers in 2026, potentially exposing many more estates to taxation at death. Individuals should lock in higher exemptions.

Here's a look at some numbers from 2021^{1,2}:

- Number of deaths: 3,464,235
- Estate tax exemption: \$11,060,000
- Number of taxable estates: 2,584
- Percentage of estates that were taxable: 0.075%
- Average federal estate tax paid: \$7,100,000
- The 369 largest estates (over \$50M) paid 61% of all estate taxes; the average net worth was \$142,000,000

Estate tax exemption vs. percentage of estates paying estate tax



*Because estate tax returns are due 9 months after death (with the possibility of a 6-month extension), the percentages are calculated based off of the number of deaths in the previous year.
 1. SOI Tax Stats - Estate Tax Filing Year Tables, IRS, irs.gov/statistics/soi-tax-stats-estate-tax-filing-year-tables (last updated Oct 24, 2022).
 2. Number of Deaths and Crude Death Rates, Michigan and United States Residents, 1970 – 2021, Michigan Department of Health and Human Services, mdch.state.mi.us/osr/deaths/USMlcrudedxrt.asp (last updated February 27, 2023).



Now is the time to plan to take advantage of these increased exemptions. The 2020 election and legislative proposals in 2021 led to a flurry of year-end planning. A recent tax court case,

Smaldino v. Commissioner, shows the perils last-minute planning — the taxpayer ended up owing over \$1,000,000 in gift tax that could have been avoided with timely planning.

Three planning opportunities financial professionals should be discussing with their clients

1. Outright gifting to irrevocable trusts of gift tax exemption

- Under current law, the federal estate and gift tax exemption is \$12.92M in 2023 (\$25.84M for a married couple).
- Wealthy clients should consider gifting now because, without legislative action, the exemption will drop to \$5M (before inflation indexing) on 1/1/2026.
- If a married couple is not able to fully utilize their joint exemption (i.e., \$25.84M in 2023), it may be prudent to consider having one spouse fully use their exemption rather than gift-splitting, so that the couple can at least partially benefit from the current higher exemptions.
- For additional flexibility, or to alleviate concerns about loss of control or future access to gifted assets, consider spousal lifetime access trusts (SLATs).

Act now: Proactively talk to clients about how trust-owned life insurance may enhance planning goals by providing an income-tax-free source of liquidity and a favorable internal rate of return on the life insurance death benefit. John Hancock's gifting module can help illustrate the potential benefits of lifetime gifting as well as how to use life insurance inside irrevocable life insurance trusts (ILITs).

2. Getting prepared — drafting irrevocable trusts now to avoid rushed planning and missed opportunities

- With the sunset looming, wealthy clients may want to utilize all of their exemption before the sunset on 1/1/2026—having trusts in place now can allow for comprehensive planning and proper execution.
- If clients want to gift assets that are difficult to value, they may also want to contact an appraiser now to discuss starting the valuation process.

Act now: For clients not already working with a lawyer, consider reaching out to your local bar association or estate planning council for recommendations. Additional resources to help find an accredited estate planning attorney in your client's area can be found [here](#).

3. Putting personally owned life insurance in place now, and planning for a potential transfer later

- Considering the Biden administration's tax proposals, high-income earners, particularly those earning more than \$400K annually, may find the income tax benefits of life insurance

more attractive than ever. For these individuals, personal ownership structured for either (1) maximum cash accumulation potential to generate income-tax-free supplemental income in the future or (2) maximum death benefit may be desirable.

- If it appears that Congress will not act to make the current estate tax exemptions permanent, the insured/owner can consider either of the following:
 - Gifting the policy to an ILIT at a future date (note the gift of a policy on the donor's life is subject to estate tax inclusion for three years following the gift), or
 - Selling the policy to an ILIT for full and adequate consideration (which should avoid the three-year rule), provided the sale meets an exception to the transfer for value and reportable policy sale rules.

Act now: If a future transfer of the policy to a trust is likely, for survivorship policies, financial professionals can consider discussing an estate preservation rider with clients (designed to provide additional death benefit for the first four policy years to offset some risk of estate tax inclusion), as well as the possibility of using a standby trust. Learn more [here](#).

Financial professionals have an outstanding opportunity to discuss these planning opportunities with their clients now.

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Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation-skipping tax). Failure to do so could result in adverse tax treatment of trust proceeds. There can be costs associated with drafting a trust.

Life insurance death benefit proceeds are generally excludable from the beneficiary's gross income for income tax purposes. There are few exceptions such as when a life insurance policy has been transferred for valuable consideration. Comments on taxation are based on John Hancock's understanding of current tax law, which is subject to change. No legal, tax or accounting advice can be given by John Hancock, its agents, employees or licensed agents. Prospective purchasers should consult their tax professional for details.

The IRR on death benefit is equivalent to an interest rate at which an amount equal to the illustrated premiums could have been invested outside the policy to arrive at the net death benefit of the policy.

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