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## Sophisticated Use of Exemption: Use It or Lose It

Today, with the exemptions from the Federal Estate, Gift and Generation-Skipping Transfer Taxes (“FET, FGT and GSTT”) at \$11.4 million per person and \$22.8 million for a married couple, fewer than one half of one percent of Americans could be subject to those taxes. However, existing law will cut the exemptions in half after 2025, to an anticipated \$6/\$12 million on an inflation-adjusted basis. The IRS has issued proposed regulations confirming that gifts covered by exemption at the time they are made will not result in the imposition of FET, FGT or GSTT if the exemption is later reduced below the amount of those gifts. Therefore, for anyone whose estate would be subject to the FET, FGT or GSTT if he or she died today, making substantial, large gifts now could produce a significant economic benefit in the event the exemptions from those taxes are later reduced.

In other words, the wealthiest Americans now have an opportunity to give away as much as \$11.4/\$22.8 million free of the FET, FGT and GSTT. If they fail to make very large gifts now, the missed opportunity could “cost” their families as much as \$2.16/\$4.32 million in FET or FGT and additional amounts of GSTT. Language in the proposed “SECURE Act” (which is largely focused on changes related to retirement savings) would accelerate a reversion to the lower exemptions to 2023. A bill recently introduced in the Senate would reduce the exemptions to \$3.5 million and increase the tax rate from 40% to 45% for decedents dying after the end of 2019. While it is unlikely that any such proposed changes would be enacted in 2019, political uncertainties suggest this window of opportunity may well close before 2026, as provided by current law.

Ultra wealthy estate planning clients should therefore consider using the bulk of their FET, FGT and GSTT exemptions now, “while the gettin’ is good.” These will be clients who can afford to transfer significant capital, as well as the income stream from that capital, to or in trust for their younger generation family members. One member of a married couple can fully use his or her exemption, and so “going big” doesn’t have to mean giving away \$22.8 million. Rather, one person can make a gift of as much as \$11.4 million in 2019. Although this opportunity is relevant to very few individuals, the potential tax savings reflected in the chart on the next page demonstrate its importance to those in such a position.

## Potential Federal Estate Tax Savings from Making Large Taxable Gifts Now

(Illustrated for a single person; the savings would generally be doubled for married couples who would utilize their entire combined exemptions.)

Tax savings reflected are based on the current FET/FGT rate of 40%.

Amount Gifted Now:	If FET Exemption at Death is:	The Potential FET Savings is:
\$11,400,000	\$6,000,000	\$2,160,000
\$7,500,000	\$6,000,000	\$600,000
\$6,000,010	\$6,000,000	\$40
\$5,000,000	\$6,000,000	\$0
\$11,400,000	\$3,500,000	\$3,160,000
\$7,500,000	\$3,500,000	\$1,600,000
\$6,000,010	\$3,500,000	\$1,000,040
\$5,000,000	\$3,500,000	\$600,000