Planning for the 2026 Sunset of the Lifetime Gift & Estate Tax Exclusion

Background

The Federal gift and estate exclusion amount in 2023 stands at $12.92 million per person. This represents the allowable sum that an individual can transfer, either during life or upon death, without incurring Federal gift or estate taxes.[1] It is important to note that if a portion of this exclusion is utilized for lifetime gifts, only the remaining balance is available for estate transfers upon death. In this Client Alert, this combined exclusion is referred to as the "lifetime exclusion."

The lifetime exclusion is subject to annual inflationary adjustments. For instance, in 2023, it increased by $860,000, reaching $12.92 million. Starting January 1, 2024, the lifetime exclusion will increase by $690,000 to $13.61 million.

A significant change is scheduled for January 1, 2026, when the lifetime exclusion is set to be reduced by half. The estate planning implications of this impending change are broad and much discussed in existing literature. This paper aims to add to the existing writings a few targeted planning tips for consideration.

To grasp the ideas effectively, it is important to understand that in 2010, the lifetime exclusion was established at $5 million (termed the "base amount"), with subsequent adjustments for inflation starting in 2012. Under the Tax Cuts and Jobs Act of 2017 (the "2017 Act"), starting in 2018, the base amount was doubled to $10 million.

With a $10 million base amount, the lifetime exclusion became $11.18 million in 2018, and the lifetime exclusion continued to increase with inflation to the current $12.92 million in 2023. This doubling of the base amount created an unexpected windfall known as the "bonus exclusion."

Importantly, the 2017 Tax Act included a "sunset" provision, required by the "Byrd Rule,"[2] which mandates a return to the $5 million base amount (adjusted for inflation since 2010) on January 1, 2026. This paper estimates that the inflationary-adjusted lifetime exclusion will drop to approximately $7.18 million in 2026.

Assuming for this purpose that for years after 2024, a 2.68% inflation rate is used to estimate future lifetime exclusions, the lifetime exclusion for 2025 would be $13.98 million. The sunset of the 2017 Tax Act in 2026 translates to an immediate reduction of $6.8 million in the lifetime exclusion as of 2026. To put this into perspective, assume an individual, who has never used any lifetime exclusion, gives $13.98 million on December 31, 2025. Because the gifts occurred in 2025, the gifts equal the individual's lifetime exclusion and

[1] Generally, three types of transfers do not use the lifetime exclusion, which are: (1) annual exclusion gifts, (2) marital gifts, and (3) charitable gifts. An annual exclusion gift is a gift of a present interest made by the maker of the gift, the donor, that does not exceed the annual exclusion amount as determined each year. For 2023, the annual exclusion is $17,000, and it will be $18,000 in 2024. Similar to the lifetime exclusion, the annual exclusion is subject to annual inflation adjustments. A marital gift is a gift made outright to a spouse, or a gift made in a special trust for a spouse, where the tax laws permit the gift in trust to be treated as if the gift was made to the spouse and is therefore entitled to a marital deduction. A charitable gift is a gift made outright to a charity, or a gift made to a special trust that is for the benefit of charity, where the tax laws permit part or all of the gift to be eligible for the charitable gift tax (for lifetime gifts) or charitable estate tax deduction (for testamentary gifts).

[2] The details of the Byrd Rule are beyond the scope of this Client Alert; however, to summarize, because a certain legislative process known as "Reconciliation" was used to pass the 2017 Tax Act, and because the increase in the lifetime exclusion cuts taxes and adds to the Federal deficit, the legislative rules require a sunset or "expunging" of the legislation at a certain future date, within ten years of enactment. In this situation, that date is December 31, 2025.

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therefore none of the gifts are subject to gift tax liability. However, if the gifts are made on January 1, 2026, the gifts would incur a gift tax liability of $2.72 million ($6.8 million * 40%). This underscores the real value of the bonus exclusion. For a married couple, the impact is effectively doubled, so the married couple loses $5.44 million in tax value of combined lifetime exclusions.

It is crucial to note that the bonus exclusion is in addition to the original $5 million base amount, and it cannot be used until the entire original base amount (adjusted for inflation since 2010) is exhausted. Consequently, donors cannot access and use the bonus exclusion before December 31, 2025, while preserving the original base amount of $5 million (adjusted for inflation since 2010) for post-January 1, 2026 use.

Strategy Planning

Should all the 2025 lifetime exclusion be utilized by December 31, 2025?

For some, the answer to this question is straightforward. Utilizing the entire lifetime exclusion by December 31, 2025, including the bonus exclusion, eliminates future appreciation on the assets given from the donor's taxable estate and allows for the transfer tax advantages of grantor trust status.[3] A donor who uses all of the bonus exclusion by December 31, 2025 will not face gift tax liability following the sunset with respect to such pre-2026 gifts.

However, for others, giving $13.98 million by the end of 2025 can be an overwhelming, if not impossible, prospect. In 2025, a married couple could potentially give an estimated $27.96 million without triggering gift tax liability. Even for most individuals with substantial estates, this represents a significant portion of their wealth.

Chart A

Projecting the point at which the inflation adjusments will cross over the projected 2026 exclusion plus the potentially lost bonus exclusion of $6,800,000.

#	*Year*	Expected Exclusion 2.68% inflation rate	
1	2026	$7,180,000.00	
2	2027	$7,380,000.00	
3	2028	$7,580,000.00	
4	2029	$7,790,000.00	
5	2030	$8,000,000.00	
6	2031	$8,220,000.00	
7	2032	$8,450,000.00	
8	2033	$8,680,000.00	
9	2034	$8,920,000.00	In the examples on the following sheets, we are looking at the crossover point of having not initially used the potentially lost bonus exclusion of $6,800,000. The crossover point is $13,980,000 (the 2026 exclusion of $7,180,000 plus $6,800,000).
10	2035	$9,160,000.00	
11	2036	$9,410,000.00	
12	2037	$9,670,000.00	
13	2038	$9,930,000.00	
14	2039	$10,200,000.00	
15	2040	$10,480,000.00	
16	2041	$10,770,000.00	
17	2042	$11,060,000.00	
18	2043	$11,360,000.00	
19	2044	$11,670,000.00	
20	2045	$11,990,000.00	
21	2046	$12,320,000.00	
22	2047	$12,660,000.00	
23	2048	$13,000,000.00	
24	2049	$13,350,000.00	
25	2050	$13,710,000.00	
26	2051	$14,080,000.00	
27	2052	$14,460,000.00	
28	2053	$14,850,000.00	
29	2054	$15,250,000.00	
30	2055	$15,660,000.00	
31	2056	$16,090,000.00	

Considerable thought and effort have gone into developing strategies that enable donors to make gifts, utilize the lifetime exclusion, and retain some capacity to benefit from these gifts if future needs arise. Common strategies like spousal limited access trusts (SLATs) are designed to mitigate the financial risks associated with gifting but are not the primary focus of this Client Alert, as ample literature already covers them. Instead, the focus is to delve into the lesser-discussed implications of the upcoming sunset provision.

TIP #1 – Inflation adjustments continue after sunset

It is crucial to understand that, assuming current law, inflation adjustments to the lifetime exclusion will continue indefinitely, even after the base amount reverts to $5 million on January 1, 2026. As illustrated in Chart A, applying a 2.68% annual inflationary rate for all years beginning in 2025, the lifetime exclusion will continue to grow in subsequent years, eventually surpassing the projected 2025 amount of $13.98 million.[4] Therefore, while the bonus exclusion might seem lost, the loss is only temporary, as the bonus exclusion effectively reemerges over time.

TIP #2 – Life expectancy is implicated

If the donor lives until 2051 (the "crossover point"), the entirety of the bonus exclusion will have been restored. For donors not contemplating taxable gifts and who survive until this point, the sunset provision becomes less relevant.

The lifetime exclusion available to a donor is “locked-in” at the time of death. Therefore, if the donor dies before 2051, any remaining deferred bonus exclusion is lost forever. This underscores the importance of

[3] There are potential income tax detrimental impacts of gifts, which are beyond the scope of this article.
[4] We are assuming consistent law for a long time in the future.

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considering the donor's life expectancy when deciding whether to use the entire remaining lifetime exclusion before December 31, 2025.

For younger donors, surviving until the crossover point may not pose significant risks. However, for others, it could be more uncertain. This academic point becomes practical only if the donor can afford to make substantial gifts that exceed the inflationary-adjusted $5 million base amount.

TIP #3 **— the Sunset may not be impactful to everyone**

Even for donors who give larger amounts beyond the annual gift tax exclusion (i.e. $17,000 in 2023), the sunset may not be impactful. For example, some donors opt for making annual taxable gifts (ATGs) to family members or trusts benefiting their loved ones. This strategic approach offers immediate assistance to recipients, as opposed to waiting until the donor's passing for inheritance, and it can yield significant estate tax savings. Instead of giving a lump sum, ATGs serve to mitigate financial risks for donors by making smaller more manageable gifts over the donor's lifetime.[5]

Chart B

Age of Jack		65									Value of Lost Exclusion in the event of Death	
Prior Exclusion Use		$ -		Gift Tax Paid on Prior Gifts		$ -		Desired Annual Gift		$ 500,000		
#	Year	Projected Exclusion Amt @ 2.68% Inflation	Prior ATGs	Desired Annual Gift	Total Taxable Gifts	Exclusion Remaining	Taxable Gift	Gift Tax Payable	Cummulative Gift Tax Payable	Age of Donor	Projected 2025 bonus exclusion of $6,800,000 lost if death occurs b/f crossover point	Value of lost exclusion at 40%
1	2026	7,180,000	-	500,000	500,000	6,680,000	-	-	-	65	6,420,000	2,568,000
2	2027	7,380,000	500,000	500,000	1,000,000	6,380,000	-	-	-	66	6,220,000	2,488,000
3	2028	7,580,000	1,000,000	500,000	1,500,000	6,080,000	-	-	-	67	6,020,000	2,408,000
4	2029	7,790,000	1,500,000	500,000	2,000,000	5,790,000	-	-	-	68	5,810,000	2,324,000
5	2030	8,000,000	2,000,000	500,000	2,500,000	5,500,000	-	-	-	69	5,600,000	2,240,000
6	2031	8,220,000	2,500,000	500,000	3,000,000	5,220,000	-	-	-	70	5,380,000	2,152,000
7	2032	8,450,000	3,000,000	500,000	3,500,000	4,950,000	-	-	-	71	5,150,000	2,060,000
8	2033	8,680,000	3,500,000	500,000	4,000,000	4,680,000	-	-	-	72	4,920,000	1,968,000
9	2034	8,920,000	4,000,000	500,000	4,500,000	4,420,000	-	-	-	73	4,680,000	1,872,000
10	2035	9,160,000	4,500,000	500,000	5,000,000	4,160,000	-	-	-	74	4,440,000	1,776,000
11	2036	9,410,000	5,000,000	500,000	5,500,000	3,910,000	-	-	-	75	4,190,000	1,676,000
12	2037	9,670,000	5,500,000	500,000	6,000,000	3,670,000	-	-	-	76	3,930,000	1,572,000
13	2038	9,930,000	6,000,000	500,000	6,500,000	3,430,000	-	-	-	77	3,670,000	1,468,000
14	2039	10,200,000	6,500,000	500,000	7,000,000	3,200,000	-	-	-	78	3,400,000	1,360,000
15	2040	10,480,000	7,000,000	500,000	7,500,000	2,980,000	-	-	-	79	3,120,000	1,248,000
16	2041	10,770,000	7,500,000	500,000	8,000,000	2,770,000	-	-	-	80	2,830,000	1,132,000
17	2042	11,060,000	8,000,000	500,000	8,500,000	2,560,000	-	-	-	81	2,540,000	1,016,000
18	2043	11,360,000	8,500,000	500,000	9,000,000	2,360,000	-	-	-	82	2,240,000	896,000
19	2044	11,670,000	9,000,000	500,000	9,500,000	2,170,000	-	-	-	83	1,930,000	772,000
20	2045	11,990,000	9,500,000	500,000	10,000,000	1,990,000	-	-	-	84	1,610,000	644,000
21	2046	12,320,000	10,000,000	500,000	10,500,000	1,820,000	-	-	-	85	1,280,000	512,000
22	2047	12,660,000	10,500,000	500,000	11,000,000	1,660,000	-	-	-	86	940,000	376,000
23	2048	13,000,000	11,000,000	500,000	11,500,000	1,500,000	-	-	-	87	600,000	240,000
24	2049	13,350,000	11,500,000	500,000	12,000,000	1,350,000	-	-	-	88	250,000	100,000
25	2050	13,710,000	12,000,000	500,000	12,500,000	1,210,000	-	-	-	89		
26	2051	14,080,000	12,500,000	500,000	13,000,000	1,080,000	-	-	-	90		
27	2052	14,460,000	13,000,000	500,000	13,500,000	960,000	-	-	-	91		
28	2053	14,850,000	13,500,000	500,000	14,000,000	850,000	-	-	-	92		
29	2054	15,250,000	14,000,000	500,000	14,500,000	750,000	-	-	-	93		
30	2055	15,660,000	14,500,000	500,000	15,000,000	660,000	-	-	-	94		
31	2056	16,090,000	15,000,000	500,000	15,500,000	590,000	-	-	-	95		

Consider an illustrative example with Jack, age 65, who has not previously made taxable gifts and who consistently makes ATGs of $500,000 each year following the occurrence of the sunset provision. Chart B provides insights into the implications, considering the sunset provision and post-sunset inflation adjustments to the lifetime exclusion.

Remarkably, Jack avoids reaching a point where gift tax liability is imposed. Jack's plan carries him beyond the age of 95, where the annual inflation adjustment is approaching the value of his $500,000 gift. If this annual giving aligns with Jack's intentions, the occurrence of the sunset provision does not substantially impact his strategy.

The final column in Chart B assesses the potential loss of the bonus exclusion if Jack were to die between 2026 and 2049. This concept follows the theme of this paper, which is to demonstrate the possibility that the sunset provision may not drastically alter all taxpayers' planning and to further highlight the potential for less favorable outcomes related to not using the bonus exclusion by December 31, 2025.

[5] *See e.g.*, Franklin & Law, *Never Pay Estate Taxes - The Annual Taxable Gift Approach with a CLAT Remainder*, 46th Annual Estate Planning Seminar, Estate Planning Council of Portland, Oregon (January 20, 2017); Franklin & Law, *Extraordinary, Efficient, Elegant, Evolutionary: The Annual Taxable Gifts Approach and Testamentary CLAT Remainder*, 51st Heckerling Institute on Estate Planning (January 11, 2017).

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TIP #4 – Sunset comes with an irrevocable choice

Once a donor allows the sunset provision to take effect without fully utilizing the inflationary-adjusted lifetime exclusion by December 31, 2025, the donor is irrevocably committed to this course of action. Subsequently, the donor can only access the bonus exclusion as it gradually reappears over time. Should the donor die before reaching the "crossover point," any remaining deferred bonus exclusion that has not reappeared will be irrevocably lost (refer to the two columns on the far right of Chart B).

Chart C

Age of Jill	65									
Prior Exclusion Use	$ 4,000,000		Gift Tax Paid on Prior Gifts	$ -			Desired Annual Gift		$ 500,000	

#	Year	Projected Exclusion Amt @ 2.68% Inflation	Prior ATGs	Desired Annual Gift	Total Taxable Gifts	Exclusion Remaining	Taxable Gift	Gift Tax Payable	Cummulative Gift Tax Payable	Age of Donor
1	2026	7,180,000	4,000,000	500,000	4,500,000	2,680,000	-	-	-	65
2	2027	7,380,000	4,500,000	500,000	5,000,000	2,380,000	-	-	-	66
3	2028	7,580,000	5,000,000	500,000	5,500,000	2,080,000	-	-	-	67
4	2029	7,790,000	5,500,000	500,000	6,000,000	1,790,000	-	-	-	68
5	2030	8,000,000	6,000,000	500,000	6,500,000	1,500,000	-	-	-	69
6	2031	8,220,000	6,500,000	500,000	7,000,000	1,220,000	-	-	-	70
7	2032	8,450,000	7,000,000	500,000	7,500,000	950,000	-	-	-	71
8	2033	8,680,000	7,500,000	500,000	8,000,000	680,000	-	-	-	72
9	2034	8,920,000	8,000,000	500,000	8,500,000	420,000	-	-	-	73
10	2035	9,160,000	8,500,000	500,000	9,000,000	160,000	-	-	-	74
11	2036	9,410,000	9,000,000	500,000	9,500,000	-	90,000	36,000	36,000	75
12	2037	9,670,000	9,500,000	500,000	10,000,000	-	330,000	96,000	132,000	76
13	2038	9,930,000	10,000,000	500,000	10,500,000	-	570,000	96,000	228,000	77
14	2039	10,200,000	10,500,000	500,000	11,000,000	-	800,000	92,000	320,000	78
15	2040	10,480,000	11,000,000	500,000	11,500,000	-	1,020,000	88,000	408,000	79
16	2041	10,770,000	11,500,000	500,000	12,000,000	-	1,230,000	84,000	492,000	80
17	2042	11,060,000	12,000,000	500,000	12,500,000	-	1,440,000	84,000	576,000	81
18	2043	11,360,000	12,500,000	500,000	13,000,000	-	1,640,000	80,000	656,000	82
19	2044	11,670,000	13,000,000	500,000	13,500,000	-	1,830,000	76,000	732,000	83
20	2045	11,990,000	13,500,000	500,000	14,000,000	-	2,010,000	72,000	804,000	84
21	2046	12,320,000	14,000,000	500,000	14,500,000	-	2,180,000	68,000	872,000	85
22	2047	12,660,000	14,500,000	500,000	15,000,000	-	2,340,000	64,000	936,000	86
23	2048	13,000,000	15,000,000	500,000	15,500,000	-	2,500,000	64,000	1,000,000	87
24	2049	13,350,000	15,500,000	500,000	16,000,000	-	2,650,000	60,000	1,060,000	88
25	2050	13,710,000	16,000,000	500,000	16,500,000	-	2,790,000	56,000	1,116,000	89
26	2051	14,080,000	16,500,000	500,000	17,000,000	-	2,920,000	52,000	1,168,000	90
27	2052	14,460,000	17,000,000	500,000	17,500,000	-	3,040,000	48,000	1,216,000	91
28	2053	14,850,000	17,500,000	500,000	18,000,000	-	3,150,000	44,000	1,260,000	92
29	2054	15,250,000	18,000,000	500,000	18,500,000	-	3,250,000	40,000	1,300,000	93
30	2055	15,660,000	18,500,000	500,000	19,000,000	-	3,340,000	36,000	1,336,000	94
31	2056	16,090,000	19,000,000	500,000	19,500,000	-	3,410,000	28,000	1,364,000	95

TIP #5 – Annual inflation adjustment may lessen gift tax liability

Chart C presents a different scenario involving Jill, also age 65, who makes ATGs of $500,000 each year following the occurrence of the sunset provision. Jill's approach differs from Jack's approach in that Jill has already utilized $4 million of her lifetime exclusion before 2026. Consequently, Jill faces gift tax liability beginning in the 11th year of her plan. However, it's worth noting that her gift tax liability never equals 40% of her total annual gift because each year's gift incorporates the savings from that year's annual inflation adjustment. For instance, in 2037, when her gift tax liability peaks at $96,000, it represents a tax rate of 18.4% in relation to the $500,000 gift. Over time, the annual inflation adjustment grows, progressively shielding more of Jill's $500,000 annual gift from gift tax liability. Hence, assuming the yearly gifts align with Jill's intentions, the occurrence of the sunset provision might not substantially disrupt her plan.

Chart D

Age of Jill	65									
Prior Exclusion Use	$ 13,980,000		Gift Tax Paid on Prior Gifts	$ -			Desired Annual Gift		$ 500,000	

#	Year	Projected Exclusion Amt @ 2.68% Inflation	Prior ATGs	Desired Annual Gift	Total Taxable Gifts	Exclusion Remaining	Taxable Gift	Gift Tax Payable	Cummulative Gift Tax Payable	Age of Donor
1	2026	7,180,000	13,980,000	500,000	14,480,000	-	500,000	200,000	200,000	65
2	2027	7,380,000	14,480,000	500,000	14,980,000	-	500,000	200,000	400,000	66
3	2028	7,580,000	14,980,000	500,000	15,480,000	-	500,000	200,000	600,000	67
4	2029	7,790,000	15,480,000	500,000	15,980,000	-	500,000	200,000	800,000	68
5	2030	8,000,000	15,980,000	500,000	16,480,000	-	500,000	200,000	1,000,000	69
6	2031	8,220,000	16,480,000	500,000	16,980,000	-	500,000	200,000	1,200,000	70
7	2032	8,450,000	16,980,000	500,000	17,480,000	-	500,000	200,000	1,400,000	71
8	2033	8,680,000	17,480,000	500,000	17,980,000	-	500,000	200,000	1,600,000	72
9	2034	8,920,000	17,980,000	500,000	18,480,000	-	500,000	200,000	1,800,000	73
10	2035	9,160,000	18,480,000	500,000	18,980,000	-	500,000	200,000	2,000,000	74
11	2036	9,410,000	18,980,000	500,000	19,480,000	-	500,000	200,000	2,200,000	75
12	2037	9,670,000	19,480,000	500,000	19,980,000	-	500,000	200,000	2,400,000	76
13	2038	9,930,000	19,980,000	500,000	20,480,000	-	500,000	200,000	2,600,000	77
14	2039	10,200,000	20,480,000	500,000	20,980,000	-	500,000	200,000	2,800,000	78
15	2040	10,480,000	20,980,000	500,000	21,480,000	-	500,000	200,000	3,000,000	79
16	2041	10,770,000	21,480,000	500,000	21,980,000	-	500,000	200,000	3,200,000	80
17	2042	11,060,000	21,980,000	500,000	22,480,000	-	500,000	200,000	3,400,000	81
18	2043	11,360,000	22,480,000	500,000	22,980,000	-	500,000	200,000	3,600,000	82
19	2044	11,670,000	22,980,000	500,000	23,480,000	-	500,000	200,000	3,800,000	83
20	2045	11,990,000	23,480,000	500,000	23,980,000	-	500,000	200,000	4,000,000	84
21	2046	12,320,000	23,980,000	500,000	24,480,000	-	500,000	200,000	4,200,000	85
22	2047	12,660,000	24,480,000	500,000	24,980,000	-	500,000	200,000	4,400,000	86
23	2048	13,000,000	24,980,000	500,000	25,480,000	-	500,000	200,000	4,600,000	87
24	2049	13,350,000	25,480,000	500,000	25,980,000	-	500,000	200,000	4,800,000	88
25	2050	13,710,000	25,980,000	500,000	26,480,000	-	500,000	200,000	5,000,000	89
26	2051	14,080,000	26,480,000	500,000	26,980,000	-	400,000	160,000	5,160,000	90
27	2052	14,460,000	26,980,000	500,000	27,480,000	-	120,000	48,000	5,208,000	91
28	2053	14,850,000	27,480,000	500,000	27,980,000	-	110,000	44,000	5,252,000	92
29	2054	15,250,000	27,980,000	500,000	28,480,000	-	100,000	40,000	5,292,000	93
30	2055	15,660,000	28,480,000	500,000	28,980,000	-	90,000	36,000	5,328,000	94
31	2056	16,090,000	28,980,000	500,000	29,480,000	-	70,000	28,000	5,356,000	95

TIP #6 – Gifts after using bonus exclusion trigger gift tax liability in 2026 and beyond

Chart D underscores a critical and somewhat surprising aspect for individuals utilizing the bonus exclusion before January 1, 2026. In this chart, Jill has utilized her entire bonus exclusion by the end of 2025. Starting in 2026, Jill will face a 40% gift tax if she continues to make ATGs of $500,000 each year, and this continues until the "crossover point" in 2051.

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Essentially, gifts made by Jill, and any taxpayer who has used the full amount of the lifetime exclusion prior to 2026, will be fully taxable until the "crossover point."

However, Jill's substantial gifts utilizing her bonus exclusion before January 1, 2026 might eliminate the necessity for further taxable gifts in 2026 and beyond. For instance, suppose in 2025, Jill directed her large gifts to an irrevocable family trust for her descendants, and, from 2026 to 2051, that trust disbursed $500,000 annually to her descendants (equivalent to what Jill would have otherwise given to them). This plan mitigates the risks associated with Jill passing away before 2051 and forfeiting the value of the bonus exclusion.

Nonetheless, unforeseen scenarios may arise in the future. For instance, in 2028, Jill's sister might require financial assistance, and Jill might desire to give her $1 million. It's unlikely that Jill had planned for her sister to be a beneficiary of the irrevocable trust to which she made substantial gifts in 2025. Consequently, if Jill gives her sister $1 million in 2028, the gift will trigger a gift tax of $400,000 ($1 million x 40%) as Jill would have no available lifetime exclusion until approximately 2051.

Chart E

Age of Jill		65								
Prior Exclusion Use		$ 8,000,000		Gift Tax Paid on Prior Gifts		$ -		Desired Annual Gift		$ 500,000
#	Year	Projected Exclusion Amt @ 2.68% Inflation	Prior ATGs	Desired Annual Gift	Total Taxable Gifts	Exclusion Remaining	Taxable Gift	Gift Tax Payable	Cumulative Gift Tax Payable	Age of Donor
1	2026	7,180,000	8,000,000	500,000	8,500,000	-	500,000	200,000	200,000	65
2	2027	7,380,000	8,500,000	500,000	9,000,000	-	500,000	200,000	400,000	66
3	2028	7,580,000	9,000,000	500,000	9,500,000	-	500,000	200,000	600,000	67
4	2029	7,790,000	9,500,000	500,000	10,000,000	-	500,000	200,000	800,000	68
5	2030	8,000,000	10,000,000	500,000	10,500,000	-	500,000	200,000	1,000,000	69
6	2031	8,220,000	10,500,000	500,000	11,000,000	-	280,000	112,000	1,112,000	70
7	2032	8,450,000	11,000,000	500,000	11,500,000	-	270,000	108,000	1,220,000	71
8	2033	8,680,000	11,500,000	500,000	12,000,000	-	270,000	108,000	1,328,000	72
9	2034	8,920,000	12,000,000	500,000	12,500,000	-	260,000	104,000	1,432,000	73
10	2035	9,160,000	12,500,000	500,000	13,000,000	-	260,000	104,000	1,536,000	74
11	2036	9,410,000	13,000,000	500,000	13,500,000	-	250,000	100,000	1,636,000	75
12	2037	9,670,000	13,500,000	500,000	14,000,000	-	240,000	96,000	1,732,000	76
13	2038	9,930,000	14,000,000	500,000	14,500,000	-	240,000	96,000	1,828,000	77
14	2039	10,200,000	14,500,000	500,000	15,000,000	-	230,000	92,000	1,920,000	78
15	2040	10,480,000	15,000,000	500,000	15,500,000	-	220,000	88,000	2,008,000	79
16	2041	10,770,000	15,500,000	500,000	16,000,000	-	210,000	84,000	2,092,000	80
17	2042	11,060,000	16,000,000	500,000	16,500,000	-	210,000	84,000	2,176,000	81
18	2043	11,360,000	16,500,000	500,000	17,000,000	-	200,000	80,000	2,256,000	82
19	2044	11,670,000	17,000,000	500,000	17,500,000	-	190,000	76,000	2,332,000	83
20	2045	11,990,000	17,500,000	500,000	18,000,000	-	180,000	72,000	2,404,000	84
21	2046	12,320,000	18,000,000	500,000	18,500,000	-	170,000	68,000	2,472,000	85
22	2047	12,660,000	18,500,000	500,000	19,000,000	-	160,000	64,000	2,536,000	86
23	2048	13,000,000	19,000,000	500,000	19,500,000	-	160,000	64,000	2,600,000	87
24	2049	13,350,000	19,500,000	500,000	20,000,000	-	150,000	60,000	2,660,000	88
25	2050	13,710,000	20,000,000	500,000	20,500,000	-	140,000	56,000	2,716,000	89
26	2051	14,080,000	20,500,000	500,000	21,000,000	-	130,000	52,000	2,768,000	90
27	2052	14,460,000	21,000,000	500,000	21,500,000	-	120,000	48,000	2,816,000	91
28	2053	14,850,000	21,500,000	500,000	22,000,000	-	110,000	44,000	2,860,000	92
29	2054	15,250,000	22,000,000	500,000	22,500,000	-	100,000	40,000	2,900,000	93
30	2055	15,660,000	22,500,000	500,000	23,000,000	-	90,000	36,000	2,936,000	94
31	2056	16,090,000	23,000,000	500,000	23,500,000	-	70,000	28,000	2,964,000	95

As illustrated in Chart B, the annual inflation adjustment ultimately exceeds the utilized bonus exclusion, and after that point, the inflation adjustment becomes accessible to shelter a portion of Jill's taxable gifts from gift tax liability.

Should Jill have used only a portion of the bonus exclusion before January 1, 2026, the "crossover point" would occur earlier in time. Chart E illustrates this scenario, assuming that Jill had utilized $8 million of her lifetime exclusion by the end of 2025. Now, the crossover point shifts to 2031.

As previously mentioned, employing the entire lifetime exclusion, including the bonus exclusion, by December 31, 2025, offers significant tax and non-tax advantages for those with the means to do so. However, donors need to be aware that future taxable gifts will necessitate the payment of gift taxes.

***TIP #7* – Other strategies exist for enabling gifts without gift taxation**

For donors who have utilized all or part of the bonus exclusion by December 31, 2025, other strategies remain available to facilitate gifts without incurring gift taxes. These strategies include leveraging the annual gift tax exclusion of $17,000 per person, per year, as well as unlimited gift exclusions for tuition and medical payments. Additionally, tools such as GRATs and loans can be employed to benefit family members without triggering gift tax liability.

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Conclusion

The lifetime exclusion is at an all-time high, but it will be halved on January 1, 2026. Donors considering whether to use all or a portion of the lifetime exclusion (and how to do so) in advance of this change face many complex decisions. Hopefully, these tips are of service in your thought process.

* * * * *

FKL Thought Leadership and News:

At FKL, we are committed to being innovative and creative leaders in the trusts & estates practice. Here are some examples:

Lester Law, as of this summer, has now completed his fifteenth year as an instructor at the Florida Banker's Wealth Management and Trust School, presenting on income, gift, estate and GST taxes and estate planning. He also recently presented *Tax Consideration When Migrating to Florida* for the Martin County Estate Planning Council on September 21, 2023 and *Important Tips for Form 706 / Form 709 Preparation (Some Obvious – Others Not so Obvious)* at the 71st Annual Montana Tax Institute on October 13, 2023 in Missoula, Montana.

George Karibjanian recently presented a webinar for Leimberg Information Services based on his November 2022 Bloomberg Tax Management Estates, Gifts and Trusts Article titled *The Analysis and Viability of Statutes Creating "Back-End SLATS"* and will also be presenting a yet-to-be-determined for the Southern Nevada Estate Planning Council in December. In Spring 2024, George will be presenting his *The "Baker's Dozen" – 13 Things That You May Not Know About Preparing a Federal Estate Tax Return* at the ACTEC Florida Fellows Institute in Naples, Florida and at the ACTEC Heart of America Fellows Institute in St. Louis, Missouri.

Nicholeen DePersis was recently accepted into the Washington, DC Estate Planning Council ("WDCEPC") and is currently serving on the Membership Committee of the WDCEPC.

Richard Franklin will be presenting *Well-Being in Estate Planning* during an ABA webinar eCLE program in December 2023. Richard will also be leading a new subcommittee at the American College of Trust & Estate Counsel focused on assisting ACTEC Fellows to incorporate well-being science and ideas into their practices, address client concerns over inheritance, inform estate planning design recommendations, and provide examples and language to prepare trusts that are more likely to improve beneficiary well-being. The new subcommittee will be under the Practice Committee.

We also welcome our new in-house inheritance coach/consultant to our team! Claudia Tordini joined us in July, bringing an extensive background in coaching and consulting. She and Richard Franklin are incorporating researched based ideas from positive psychology and well-being science into the trust & estate setting, with the goal of making inheritance a positive resource for having a better life. Claudia holds a masters from the U. Penn. in organization dynamics and executive coaching, as well as a Wharton MBA and an industrial engineering degree.

If you have any questions about using lifetime exclusion or the changes coming in 2026, please contact one of our lawyers.

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