Estate planning enables you to protect your family in numerous ways. As laws change and your life evolves, it is necessary to periodically review your plans with your attorney to see if adjustments are needed. This could involve changing the person nominated as a trustee or guardian, or a fundamental shift in resources to meet new needs or take advantage of new opportunities created by lawmakers.

In particular, a change in presidential administration often leads to new monetary and tax policies that can significantly affect a family's financial situation in the future, especially through resource transfers. Here, we describe a few of the changes that could impact your plans, but to fully understand whether your strategies or documents need adjustments, it is a good idea to schedule a personalized review with your attorney.

Estate Tax and Planning Issues in Texas

Unlike many other jurisdictions, the state of Texas does not levy a separate estate tax or an inheritance tax. This simplifies certain aspects of estate planning because the efforts can be focused solely on federal estate tax issues.

However, Texas laws complicate estate planning in other ways. For instance, because Texas is a community property state, each spouse has a 50% ownership interest in assets acquired during the term of their marriage. When one spouse passes away, that spouse's 50% interest can be eligible for a basis that is "stepped up" to market value. Because the basis is the value used to determine capital gain when the property is sold, a stepped-up basis can reduce or eliminate future capital gains.

Community property laws can create complex and unexpected challenges for blended families and couples who reside in a house purchased by one spouse before the marriage. It is important to ensure that couples have plans in place to distribute property as they intend when one of them passes away, because otherwise the law's automatic provisions may lead to unintended consequences.

Overview of Federal Estate Taxes

Estate tax is a tax paid on assets transferred after the owner's death. The federal government imposes a tax rate of 18% to 40%. So, assets subject to this tax can be decimated. Assets that are exempt from estate tax are protected.

A few decades ago, estate tax exemption levels were low, and many families were surprised to find themselves subject to estate tax. It was often necessary for them to sell homes and small family-owned businesses to pay the tax.

When lawmakers increased the exemption levels, many people began to forget about the potential for these taxes. However, the high exemptions were scheduled to end at the close of 2025, and because no one was certain what new levels would be, many planners tried to build plans that could provide shelter from estate tax for more modest estates.

Now, new tax laws establish continuity and certainty for the future. The plans built with flexibility to accommodate a lower estate tax threshold may now need to be revisited with the new parameters in mind.

Federal Gift Taxes

Planning to reduce estate tax liability often also includes reducing gift tax liability. The federal government imposes a tax any time someone transfers money or property of value that exceeds a threshold over the course of their lifetime.

However, a certain amount may be given each year that does not count toward the lifetime limit. That amount is currently set at $19,000 per year. Many families find it beneficial to spread anticipated wealth transfers over time to avoid potential gift taxes. The lifetime threshold is now $15 million, which sounds like a tremendous amount, but given the rate at which real estate continues to appreciate in our area, it remains an issue to keep in mind. The same 18%-40% taxation rate applies to gift taxes just as it does to estate taxes.

Generally, gift taxes are not imposed on transfers between spouses. However, if

one spouse is not a U.S. citizen, then the gifts valued at more than $194,000 per year will be counted toward the lifetime gift tax threshold.

New Estate Tax Thresholds

The estate tax exemption level starting in 2026 is now $15 million per person. A married couple could enjoy an exemption of $30 million if the right steps are taken when the first spouse dies. The appropriate forms must be filed with the IRS before the required deadlines in order to preserve the deceased spouse’s unused exclusion.

The exemption threshold applies to lifetime gifts as well as to transfers at death.

Unlike the previous estate tax threshold, which had an expiration date, the new exemption levels are set to remain in place without a sunset provision. Instead, there are procedures in place to increase the threshold annually to account for inflation.

Generation-Skipping Tax

Among the strategies once used to reduce federal estate tax was transferring assets to younger beneficiaries, such as grandchildren. The federal government closed that loophole by creating the Generation Skipping Transfer Tax. The GSTT applies to outright gifts, distributing trust income to grandchildren, and setting up a trust so that assets pass to a third generation after the second generation passes away.

This tax can reach 40%. However, the exemption threshold for this tax has also been raised to $15 per individual giver.

Rising Thresholds Signal That It’s Time for New

Strategies

For many people, the certainty established by the new, higher tax thresholds caused a massive sigh of relief. However, that sigh of relief should not signal a time to sit still. It is time to adjust plans to account for the new expectations.

Part of the planning process is to review assets and their projected valuations. A tax threshold that seems too high to matter may seem much closer when future values are considered, especially for families with business interests.

If plans were created around specific expectations, it is probably necessary to adjust the amounts or the planning vehicles. For instance, many older wills and some trust documents may include outdated funding formula clauses. Amounts or funding sources may need to be changed.

Moreover, if it has been three years or more since your estate plans underwent a comprehensive review, this is the right time to assess whether adjustments are needed due to changes in the markets, property values, goals, or family dynamics.

Strategies to Minimize Liability

Depending on the situation, your estate planning attorney may recommend a variety of options to reduce potential tax liability.

Gifting

As always, gifting is expected to remain a popular strategy. Making annual gifts at the maximum allowed level can avoid problems with the lifetime threshold years down the line. For some families, an accelerated gifting strategy that uses 529 education plans makes good economic sense. Individuals can make a one-time gift of up to $95,000 per beneficiary without imposing on the lifetime tax exemption, so long as funds are deposited in a qualifying plan. This effectively condenses five years’ worth of giving into a single year to jump-start educational funding. However, gifts made during subsequent years could count toward the gift tax lifetime exemption.

Charitable giving strategies also often provide effective ways to reduce estate and income tax liabilities. However, new requirements could require adjustments to giving strategies to maximize benefits.

Irrevocable Trusts

Many different types of irrevocable trusts can be used to remove money from the pool that could be subject to taxation. For instance, grantor retained annuity trusts allow for appreciating assets to be placed in the trust (which removes them from the estate) while providing annuity payments during the grantor's lifetime. When the trust term ends, remaining assets can pass to beneficiaries without estate tax liability. Another type of irrevocable trust, a spousal lifetime access trust, allows indirect access to funds while removing assets from the estate.

These are just a small sample of the trust vehicles available. Different types of charitable trusts are among the most popular, both for their tax benefits and for their ability to further philanthropic goals.

Estate Planning Involves Much More Than Creating Documents

Estate planning should focus on planning for the right results rather than just producing the right documents. Those documents can be a key part of executing the plan, but developing the plan is the critical first step. If you try to approach the process piecemeal, it is nearly impossible to create a cohesive plan that covers the critical details.

If it has been a while since you developed or reviewed your estate plans, this is a good time to schedule a review. At The Nordhaus Firm, we offer free consultations to explain how we can help you create a secure future for your family. To schedule a time to talk, call us at 214-726-1450 or contact us online today.