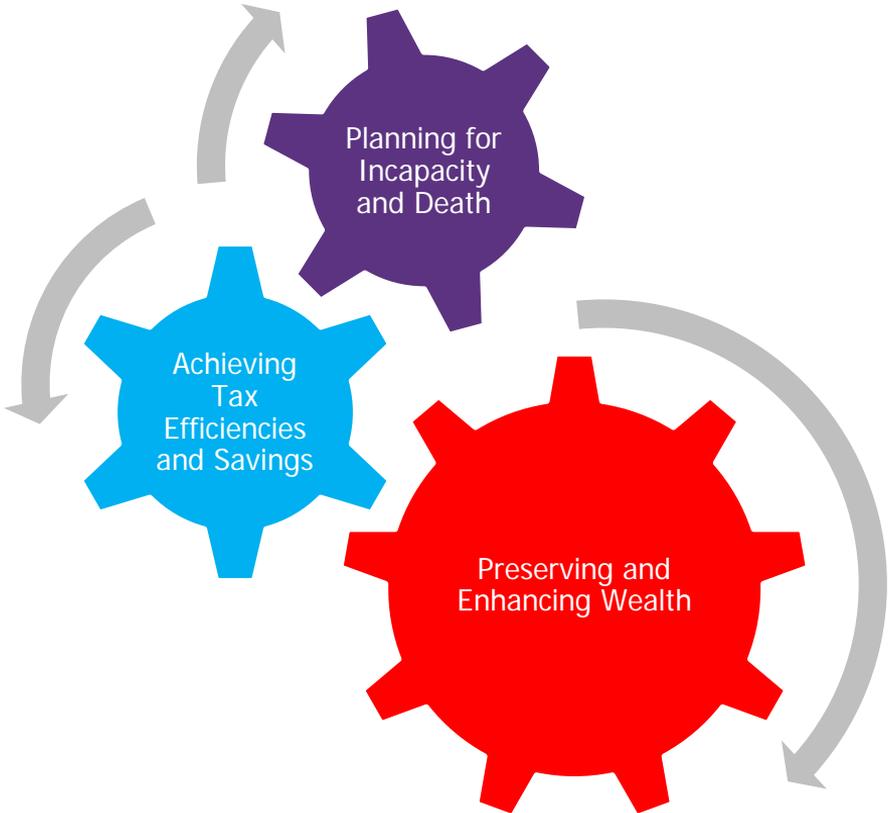


Recent Developments in Estate Planning and Estate Taxes



FEDERAL TRANSFER TAX SYSTEM



Federal Transfer Tax System

The United States government imposes taxes on certain transfers of property.

There are three types of federal transfer tax:

Gift Tax

- Imposed on transfers of property that a person makes during his or her lifetime

Estate Tax

- Imposed on transfers of property at death

Generation Skipping Transfer (“GST”) Tax

- Imposed on certain transfers of property that skip a generation

Rates:

- Each of the gift tax, estate tax, and GST tax is currently imposed at a **40%** top marginal rate

Federal Transfer Tax Exemptions

No transfer tax is due unless a person's taxable transfers exceed his or her exemption amount.

Gift and Estate Tax Exemption

- The gift and estate tax exemptions are “unified,” which means that each person has a certain exemption from both gift and estate tax.
 - In 2022, the gift and estate tax exemption is **\$12.06 million**.*
 - Taxable gifts during a person's lifetime use up the exemption amount (meaning less is available to reduce estate tax at death).



GST Tax Exemption

- Each person also has a GST tax exemption
 - In 2022, the GST tax exemption is **\$12.06 million**.*



*Under current law, the exemption amounts are \$10 million, indexed to inflation. The exemption amounts are scheduled to revert to \$5 million, indexed for inflation, on January 1, 2026.

Exclusion for Qualified Payments for Tuition and Medical Expenses

Tuition Exclusion

To qualify for the tuition exclusion from gift tax, the payment must be:

- For tuition only (not books, supplies, room and board, etc.)
- Paid directly to the institution providing the education



Educational or Medical
Institution

Medical Exclusion

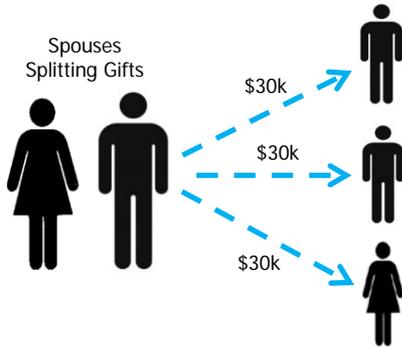
To qualify for the medical exclusion from gift tax, the payment must be:

- For medical insurance or for medical care
- Paid directly to the institution providing the medical insurance or care

Expenses that are subsequently reimbursed by insurance do not qualify for the exclusion

Annual Gift Tax Exclusion

- Certain gifts in amounts up to the annual exclusion amount per recipient per year are excluded from the gift tax
- Such gifts do not reduce a person's gift and estate tax exemption
 - The annual exclusion amount is \$16,000 in 2022*
 - If the donor is married and the couple splits gifts, *either* spouse may give *twice* the annual exclusion amount to each recipient without reducing the couple's lifetime gift and estate tax exemptions
 - Note that both spouses must file gift tax returns to split their gifts, even if the total gifts are under the annual exclusion amount



For example, a couple can give \$32,000 outright to each of their children in 2022 without using any of their lifetime gift and estate tax exemptions.

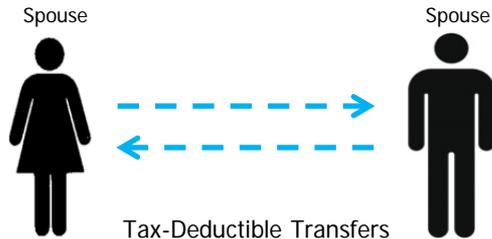
* Under current law, the annual gift tax exclusion is \$10,000, indexed for inflation.

Federal Marital and Charitable Deductions

Marital and Charitable Deductions

Unlimited deductions from gift, estate, and GST tax are allowed for transfers to:

- Transferor's U.S. citizen spouse
- Charity



Federal Estate and Gift Tax Proposals

- Build Back Better Act (9/21)
 - Sunset of 2017 Act accelerated from 1/1/26 to 1/1/22
 - Changes to grantor trust rules
 - Gain recognition on certain sales
 - Changes to valuation discounts
- House Rules Committee (10/21)
 - Omitted these provisions
- New unfinished version of the Build Back Better Act (12/21)

Current Status of Proposals

- None of these provisions are currently included
- Timing is very uncertain
- Potential administrative changes
- Retroactive tax changes?
- Constitutional attack
- Planning for potential legislation
- Current law



STATE INHERITANCE AND ESTATE TAXES

State Estate and Inheritance Taxes

Some states impose their own estate or inheritance taxes, for example:

State Estate Tax	Exemption in 2022	Top Marginal Rate
Connecticut	\$9.1 million	12%
Maine	\$6.01 million	12%
Massachusetts	\$1 million	16%
New Hampshire	0	0
Rhode Island	\$1,648,611	16%
Vermont	\$5 million	16%

Connecticut Estate Tax

- Current exemption of \$9.1 million
- History
 - Prior to 2018: \$2 million for almost 15 years
 - 2019: \$3.6 million
 - 2020: \$5.1 million
 - 2021: \$7.1 million
- 2023: \$12.06 million
- 2026: Drops back to 2017 level of \$5.49 million (indexing for inflation)
- No portability

Connecticut Gift Tax

- Only state that also assesses a state gift tax separate from the federal gift tax
- Applies same gift tax exemption
- Similar state filing requirements

Connecticut Non-Resident Issues

- 2019 amendment to Connecticut General Statutes
- Planning prior to amendment
- Amendment provides that real estate owned by pass-through entity will not prevent imposition of Connecticut Estate tax
- Does not address gift tax issues
- How tax is imposed on non-residents

Maine Estate Taxes

- Current exemption of \$6.01 million
- History
 - 2021: \$5.87 million
- No portability
- No gift tax

Maine Non-Resident Issues

- How it works for non-residents
- How real property may be owned
- Tax trap for unwary nonresident couple

Massachusetts Estate Taxes

- Current exemption of \$1 million
- How an estate is taxed once it reaches threshold
- Application to property outside of Massachusetts
- Application of out-of-state trusts
- Discussion of potential changes
- No Portability
- No gift tax

Massachusetts Non-Resident Issues

- How it works for non-residents
- How real property may be owned

New Hampshire Estate Tax

- Easy - \$0!
- Non-resident concerns

Rhode Island Estate Taxes

- Current exemption of \$1,648,611
- Does not have true estate tax exemption, and instead applies a credit against the Rhode Island estate tax due
- History
 - 2015 & 2016: \$1.5 million
 - 2017: \$1,515,156
 - 2018: \$1,537,656
 - 2019: \$1,561,719
 - 2020: \$1,579,922
 - 2021: \$1,595,156
- Application to property outside of Rhode Island
- Nonresident issues
- No portability
- No gift tax

Vermont Estate Taxes

- Current exemption of \$5 million
- History
 - 2020: \$4.25 million
- Tax rate
- How it is calculated
- What is included in the decedent's gross estate
- Vermont exemption is not tied to the federal exemption and is not indexed for inflation
- No portability
- No gift tax
- Does have generation-skipping transfer tax

Biography



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Sara A. Wells is the Practice Group Leader of the Private Client Group in the Boston office at Morgan, Lewis & Bockius LLP. Sara's practice focuses on the areas of estate planning, estate and trust administration, tax planning, business succession planning, and probate litigation. Sara is ranked in Band 1 by Chambers High Net Worth and is a Fellow of the American College of Trust and Estate Counsel, an Accredited Estate Planner of the National Association of Estate Planners and Councils, a Massachusetts Super Lawyer, a "Massachusetts Lawyers Weekly" 2015 Top Woman of Law, and the Founder of the Trusts and Estates Consortium. Sara has her B.S. in Economics from the University of Florida, her J.D. and LL.M in Taxation from Boston University, and is licensed in Massachusetts, New Hampshire, New York, and Florida.