

## **VIDEO TRANSCRIPT: Gifts: Maximize Your Options Before the Law Changes after 2025**

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***Bruce van Vreede:***

Hello everyone. I'm Bruce van Vreede, Director of Marketing with Brady Ware CPAs and Advisors. I'm here with Mark Kassens who leads our Gifts, Estates, and Trusts Practice. During this video series, we're covering numerous issues with all three of those areas, but we decided to start with gifts: what are the latest tax rules and guidance as it relates to that particular area? There have been a lot of changes over the last few years, most notably the Tax Cuts and Job Act of 2017. So we thought it'd be a good idea to get everyone up to speed on where we are. Mark, where are we with things?

***Mark Kassens:***

Where are we? Well, the annual gift tax exclusion for 2023 is \$17,000 per donee. That means the first seventeen thousand dollars of a present interest gift to each donee during a calendar year, those are subtracted from the total gifts that someone makes in calculating the amount of taxable gifts. The taxable gifts are subtracted from your lifetime exemption, which we'll discuss in just a few minutes.

Gifts are not taxable for income tax purposes, and they're not deductions for the donor, either. When we're talking about taxable gifts, we're talking about being subject to the gift and estate taxes, not income tax. So there are transfers that are not subject to gift taxes at all. They don't count against your lifetime exemption, and it doesn't matter if you give over seventeen thousand dollars when we're talking about making gifts to a qualified educational organization for someone's tuition. So if your grandchild is going away to Harvard, you can pay their tuition, and it is not considered a gift. Or if they have medical expenses, and you make those payments directly to the provider and those expenses are not later reimbursed, those are eligible for the limited gift that don't count against your lifetime exemption.

***Bruce van Vreede:***

All right. Mark I heard you mentioned a phrase "present interest." What does that mean? What are you talking about there?

***Mark Kassens:***

Yeah, sure. That's an outright gift. For example: a check, handing someone cash, buying a car for them, giving them the car...that's a present interest gift. They have the benefit right. They could also have gifts through a trust to where they don't have the enjoyment of that asset or that income in present time. It's a future interest. So you have to take additional steps to make those gifts to trust—or the eventual gift—you have to take extra steps to make that a present interest.

You have what's called Crummey withdrawal rights. You have to have a letter that's given to the beneficiary to notify them that they have a withdrawal right or it's usually 30 days, sometimes 60 days, or

90 days. They can take those assets out of the trust or just contribute it to the Trust on their behalf. Just a word of advice: beneficiaries don't exercise that right that they have. They don't exercise the power.

***Bruce van Vreede:***

So where are we? What do married couples have to know?

***Mark Kassens:***

Married couples can each use their annual exclusion. Those are individual exclusions. And if only one spouse is doing the gifting in any given year, they can elect to split the gifts with the spouse, and that basically equals out the exemptions between the married couple.

***Bruce van Vreede:***

The IRS seems to do a pretty good job of tracking all sorts of things for us. Over time, what's the IRS doing? And what do people need to be paying attention to?

***Mark Kassens:***

Gift tax returns are filed on an annual basis if there are taxable gifts to report in any given year. So what you do is keep a running tab, basically, of all those gift tax returns that have been filed during your lifetime. You report those on your current year gift tax return, and basically recalculate all of your used lifetime exemption. Whatever the current year exclusion is and all that just kind of gets melded into one gift tax return. It's all kept track of, so your lifetime gifting is always reported on the current year of gift tax returns.

***Bruce van Vreede:***

I'm sure everybody wants to know if they're tracking the limits. What is the current number at for lifetime exemption?

***Mark Kassens:***

In 2023, that number is \$12.92 million dollars, and that amount will increase for inflation in 2024, and then again in 2025. So if you're married, you have that \$12.92 million dollar lifetime exemption, and your spouse has another \$12.92 million dollar lifetime exemption. Which means if you pass away without using your entire amount that can transfer to your surviving spouse, so your unused exemption is portable. It can be given to your spouse, and they use that first before they use their remaining exemption. We also track that portability on the gift tax returns that are filed. There's a lot going on in just a pretty simple gift tax return that we have to keep track of.

***Bruce van Vreede:***

There's been a lot—particularly because of COVID—of other Congressional legislation that we've seen in the news over the past few years. But since the Tax Cuts and Jobs Act of 2017, I don't think gifting has really been impacted by any of that later legislation. So under the TCJA, where are we with it? And how long are we operating under these rules?

***Mark Kassens:***

Prior to the Tax Cuts and Jobs Act of 2017, the lifetime exemption was \$5 million dollars per person. So with the passage of the TCJA it doubled. Since 2017 and until the end of 2025, it's being indexed for inflation. The 2017 TCJA was a Reconciliation bill, so it had to be revenue neutral. While that was primarily a tax cutting bill, they also had to be tax increases to offset some of those. And you also have to have an expiration date, so everything sunsets. There's a definitive time when they have to get the budget back in order because of the revenue offsets, and tax cuts, and all that good stuff that Washington gives to us. So that means that it has a shelf life. The expiration date for this one is 12/31/2025. In 2026, it resets to prior law that was in existence before the 2017 TCJA. So it'll basically be cut in half. It will be cut down...basically you take it back to the \$5 million dollars that it started, and then you index that \$5 million dollars every year up to 2026. It'll be somewhere around \$6.5 million dollars at the time. It could be a little bit more depending on how inflation goes the next few years.

The IRS has said after that does sunset that they will not fall back those people that use their increased lifetime exemptions. We're basically going from \$13 million dollars today down to half of that in a couple of years. They won't penalize you for using that \$13 million dollars. This really gives us a unique opportunity to plan and utilize that \$13 million dollars, and it's going to be more than that in 2024, likely, to use that additional exemption before it resets to the to the lower amount.

***Bruce van Vreede:***

What's the best thing for somebody to do? How do you plan out? You said that's a pretty unique situation, so how does somebody take advantage of that and then be ready for the new laws?

***Mark Kassens:***

Sure. That really depends on each individual, their estate plan, their goals, and their business succession plans. But again, planning is really key in this, whether it be using irrevocable trust, a life insurance trust, intentionally defective grantor trust, spousal lifetime access trust, beneficiary deemed ownership trusts, there are several options available that can utilize your maximum lifetime exemption now before everything falls off that cliff on December 31, 2025.



***Bruce van Vreede:***

Well, it's never simple. There are always a lot of nuances to everybody's unique situations. Mark, thank you for covering and giving us a good overview of that great information. Thank you all for listening in. Some of this information—those are a lot of numbers that Mark was throwing out—so we have a cheat sheet on those facts and figures for download on this very same page that you're seeing a video. Feel free to reach out to Mark directly with any questions, and we'll try to put you all on a great path for the next few years. Thank you again for listening, and stay tuned for more discussions on estates and trusts.

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