

# LEGAL EASE



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## Changes in the tax laws and how it can affect wills for spouses

Federal estate tax, gift tax, and generation skipping tax (GST) have been part of the estate planning and estate administration landscape for many years. For much of the 80's and early 90's, the exemption amount, that is the amount that was protected from tax, was \$600,000. In the early 2000's, the amount began to rise significantly due to a series of amendments to the tax law by Congress, until in 2010 no federal estate tax was assessed on decedents' estates who died in that year. However, in 2011, a new tax law was passed which applied federal estate tax, gift tax, and GST to decedents' estates and raised the exemption amount to \$5 million. This amount increased each year subsequent due to an inflation factor built into the law. Then President Donald Trump signed a law in December, 2017 that increased the federal tax exemption to approximately \$11.1 million for each individual (\$22.2 million for a couple). On January 1, 2026, the estate tax exemptions will revert to the 2017 levels (\$5.49 million for individuals) unless another revision of the law is made.

As a result of the new tax laws, fewer decedents' estates will be responsible for estate taxes, at least for the next seven years. This situation presents planning opportunities for high net worth individuals and couples to pass wealth down the generations through various methods. However, for most of us, it is great opportunity to review estate planning documents, and reconsider an estate plan that may have been developed when the federal estate tax exemption was much lower. Many couples had Wills with marital deduction trusts tied to the federal estate tax exemption that were intended to shelter assets. In fact, these trusts may be funded with much larger amounts of money than was originally intended, thus "tying up" money for the surviving spouse in a way that is not necessarily tax advantaged for the children to avoid high estate taxes. It can make estate administration much more complicated and the overall result may not be what is in keeping with your current wishes.

Note that the federal estate tax rules are not the same as the Pennsylvania inheritance tax rules. However, the generous gift tax exemption and the increase in the annual gift tax exclusion amount (\$15,000 per intended beneficiary annually; \$30,000 per couple) allows for gifting during one's lifetime either outright or to pre-established trusts or education accounts that can reduce the size of the taxable estate at one's death. A discussion of your overall estate plan can provide clarity on this. *(The IRS rules for gifting are not the same as the rules related to the eligibility for Medicaid; consult with an elder law attorney before giving large amounts of money away if you or your spouse anticipates requiring long term nursing home care within five years).*

The latest tax laws preserved the portability rules also. When one spouse dies, the survivor is encouraged to file the appropriate IRS forms to preserve the unused portion of the decedent's federal estate tax exemption. The surviving spouse can then add the unused portion to her intact exemption amount to capture a larger exemption and hopefully avoid any estate tax to heirs.

Take this opportunity to review older Wills and make sure that current law and your wishes are "driving" your estate plan.