

Estate planning in an uncertain tax environment

There's much more to estate planning than simply considering the impact of the federal estate tax. But it is an important part. If you're currently subject to estate tax or could be in the future, the time to start planning is now.

Background on evolving estate tax exemption

After the Tax Cuts and Jobs Act of 2017 dramatically increased the federal estate exemption, the number of people potentially affected by it dropped dramatically. With indexing, the current exemption is \$12.92 million per person, meaning that only single individuals with assets exceeding that amount at death, or couples with assets exceeding \$25.84 million, currently face the 40% federal estate tax. It's important to keep in mind the power of compounding. If your assets were to earn a 7.2% rate of return, they would double in just 10 years. So, even if you wouldn't be subject to the tax today, with asset growth, you could be in the future.

For the past several years, there has been limited commentary on planning for the federal estate tax. In the last few months, estate tax discussions have accelerated. The primary driver is that under current law, the exemption will be cut in half when it reverts to prior law in 2026. In addition, many states impose an estate or inheritance tax at lower asset levels.

At the same time, members of Congress have introduced a number of proposals, which range from dropping the exemption on one end—to full estate tax repeal on the other end. With such a high level of uncertainty, what should you do?

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Creating liquidity to help pay taxes

A common technique for estate tax planning is to buy life insurance held outside of your estate, generally in an irrevocable trust, to provide liquidity at the time your estate needs it to pay taxes. Since there's an unlimited estate tax marital deduction and the ability to carry over an unused exemption with a portability election, the need for estate tax liquidity typically occurs at the death of the second spouse. For decades, estate planners have recommended survivorship life insurance to address this need. A survivorship policy (i.e., second-to-die insurance) insures two people, so that when the second person dies, the death benefit is paid.

If it turns out that your estate tax need is less than you expected or is eliminated, the life insurance isn't wasted. It can provide a legacy for children and grandchildren or to support a charitable cause that was important to you during your lifetime. In many states, the trust can also build in spendthrift and other protections for the beneficiaries.

Planning for family needs

Even if you don't expect to owe estate tax, having liquidity in your estate can be helpful in addressing family needs. There are several ways to provide liquidity. One is having significant cash on hand. Another is to own assets that are easily converted to cash, such as stocks, bonds, and mutual funds. A third way is to purchase life insurance. For liquidity needs at death, life insurance is a good option. In addition to single life coverage, survivorship is a valuable option when the liquidity need will occur at the death of the second spouse.

Life insurance can meet a variety of needs, such as providing for survivor needs, creating a legacy for children and grandchildren, and establishing support for family members with special needs, perhaps with a special needs trust. For business owners, life insurance can help address how to equalize distributions to children when one child may be receiving the business, and you're looking for ways to be fair to your children that aren't involved in the business.

If you aren't concerned about the inclusion of the life insurance in your estate for federal or state estate tax purposes at death, personally owned insurance may be appropriate. Even then, in situations where you want distributions of the life insurance proceeds paid over a period of time, using a trust as owner and beneficiary of the policy may be more effective.

Knowing your options

You may be thinking, "how can I know what to do in such an uncertain tax environment"? One option you may want to consider is to move ahead with the purchase of permanent life insurance. If the need you're solving for is at the second death of you and your spouse, you may want to consider survivorship life insurance.

If you aren't ready to commit to a permanent survivorship policy, there's a flexible alternative. Rather than having your irrevocable trust purchase a survivorship policy, you can start by purchasing two term policies—one on you and one on your spouse. It's important to make sure the insurance carrier will allow you to convert the two term policies to a survivorship policy in the future. This approach locks in your insurability and gives you some time to decide when you want to convert to a survivorship policy. Once you're comfortable moving ahead with the survivorship policy during the conversion period, you can make the switch without showing proof of insurability, even if your health has changed since you purchased the term policies.

The bottom line

It's important to look at your estate needs not only based on current law, but also on what's scheduled to happen in 2026. There's no way to know with certainty what will happen in Congress between now and Jan. 1, 2026, but you can plan now—whether that need is to pay taxes, provide for your family, or meet your charitable objectives.



You may want to consider bringing more certainty to life's uncertainties by being prepared and acting now."

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Patti Bell specializes in key employee and owner benefit plans, business succession, business protection, and estate planning. She works with business owners and financial professionals to implement comprehensive solutions that help meet employee, business, and personal needs. A Loras College graduate and member of the American Institute of Certified Public Accountants, Patti is a frequent speaker on business planning, executive benefits, estate planning, and related topics.

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