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Final regulations: Basic exclusion amount, estate and gift taxes (text of regulations)

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register final regulations (T.D. 9884) as guidance concerning the basic exclusion amount used in computing federal estate and gift taxes and reflecting measures enacted by the 2017 U.S. tax law.

The 2017 U.S. tax law (Pub. L. No. 115-97, that is often referred to as the “Tax Cuts and Jobs Act”) amended the basic exclusion amount. With the 2017 tax law changes, the basic exclusion amount doubled from \$5 million to \$10 million per individual (as indexed for inflation). This enhanced exclusion applies to estates of decedents dying, generation-skipping transfers made, and gifts made after 2017, but is scheduled to sunset after December 31, 2025. The exclusion is \$11.4 million for 2019 and will be \$11.58 million in 2020.

The final regulations released today adopt regulations that were proposed in November 2018 with “certain revisions” including additional examples. Read the [final regulations](#) [PDF 308 KB] (six pages as published in the Federal Register on November 26, 2019).

In connection with the final regulations, the IRS issued a related IRS release—[IR-2019-189](#)—stating that “individuals taking advantage of the increased gift and estate tax exclusion amounts in effect from 2018 to 2025 will not be adversely impacted after 2025 when the exclusion amount is scheduled to drop to pre-2018 levels.”

The IRS release also explains that to address concerns that an estate tax could apply to gifts exempt from gift tax by the increased basic exclusion amount, the final regulations provide a special rule to allow the estate to compute its estate tax credit using the higher of the basic exclusion amounts applicable to gifts made during life or applicable on the date of death.

The final regulations also confirm that a deceased spousal unused exemption (DSUE) will be based upon the basic exclusion amount in effect at the time of the deceased spouse’s death, rather than the basic exclusion amount in effect at the death of the surviving spouse.

The purpose of this edition of *TaxNewsFlash* is to provide text of the final regulations.

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