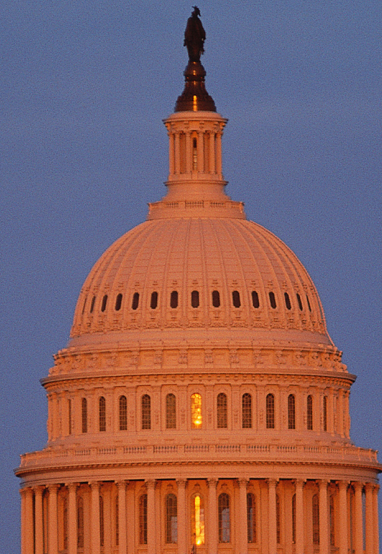




TaxNewsFlash

United States



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Proposed regulations: Basic exclusion amount, estate and gift taxes

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-118913-21) relating to the basic exclusion amount used in computing federal estate and gift taxes for estates of decedents dying after a reduction in the exclusion amount who made certain types of gifts.

The [proposed regulations](#) [PDF 244 KB] were published in the Federal Register on April 27, 2022, and comments must be received by July 26, 2022.

Background

The 2017 tax law commonly referred to as the “Tax Cuts and Jobs Act” (Pub. L. No. 115-97) (TCJA) amended the basic exclusion amount. In particular, for decedents dying and gifts made after December 31, 2017, and before January 1, 2026, the basic exclusion amount is increased by \$5 million to \$10 million as adjusted 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.

Section 2001(g)(2) grants the Secretary of the Treasury authority to prescribe regulations as may be necessary or appropriate with respect to any difference between the basic exclusion amount applicable at the time of a decedent’s death and the basic exclusion amount applicable with respect to any gifts made by the decedent. On November 26, 2019, the Treasury Department and the IRS published final regulations under section 2010 to address situations described in section 2001(g)(2). Read [TaxNewsFlash](#) [PDF 125 KB]

Those final regulations adopted a special rule applicable in cases when the credit against the estate tax that is attributable to the basic exclusion amount is less at the date of death than the sum of the credits attributable to the basic exclusion amount allowable in computing gift tax with regard to the decedent’s lifetime gifts.

Proposed regulations

The proposed regulations would introduce an exception to the special rule for certain transfers that are includible or treated as includible in the gross estate. Examples demonstrating the operation of the exception to the special rule are included.

The proposed regulations are drafted to be applicable to the estates of decedents dying on or after April 27, 2022. The special rule will not be needed until the basic exclusion amount has been decreased by statute, which under current law is scheduled to occur for the estates of decedents dying after 2025. However, if such a decrease is enacted on or after April 27, 2022, but before the issuance of final regulations, to provide that all estates will be subject to the same rules the proposed exception to the special rule is drafted to be applicable to the estates of decedents dying on or after April 27, 2022.

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