

## Estate planning in 2024

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The federal transfer tax exemption amounts increased in 2024 and will be reduced by half at the end of 2025. This client update discusses federal and state transfer tax inflation adjustments, gifting strategies for 2024 and new entity beneficial ownership reporting rules which are now in effect.

### 2024 federal transfer tax inflation adjustments and gifting strategies

For 2024, the inflation-adjusted federal estate, gift and generation-skipping transfer (GST) tax lifetime exemption amounts increased to \$13.61 million for an individual (up from \$12.92 million in 2023) or a combined \$27.22 million for a married couple. Absent new legislation, these increased exemption amounts will expire on December 31, 2025, after which date the federal transfer tax exemption amounts will be reduced to \$5 million, plus the relevant inflation adjustments. The highest federal marginal estate, gift and GST tax rate continues to be 40%.

In addition, for 2024, the federal gift tax annual exclusion amount is \$18,000 per donee (up from \$17,000 in 2023), which allows the first \$18,000 of qualifying gifts to or for the benefit of a particular donee to be excluded from the donor's taxable gifts. Married couples can claim a combined exclusion of \$36,000 per donee if they elect to "split" gifts, even if one spouse funds more than half (or all) of the gift in respect of the same donee. Donors may make annual exclusion gifts to an unlimited number of recipients.

For gifts made by a U.S. citizen or domiciliary to his or her non-U.S. citizen spouse, the available annual exclusion amount is \$185,000 in 2024 (up from \$175,000 in 2023).<sup>1</sup>

In addition, beginning in 2024, unused 529 plan funds may, under certain circumstances, be rolled over to the 529 plan beneficiary's Roth IRA without incurring taxes or penalties, up to the annual Roth IRA contribution limit of \$6,500 and a lifetime rollover limit of \$35,000.

In this context, individuals should consider, where consistent with other family goals and financial considerations, making lifetime gifts to take advantage of the federal gift and GST tax exemption amounts while they remain available at historically high levels. Those who have previously exhausted their exemptions might "top up" existing structures to take advantage of the substantial inflation adjustment for 2024. In addition, it is generally a best practice to make use of the federal gift tax annual exclusion amount each year by making qualifying gifts to or for the benefit of individual donees.<sup>2</sup> Before making significant lifetime gifts, donors should weigh the loss of the income tax basis step-up at death with the transfer tax savings achieved by the gifts and, where possible, make gifts using assets with full income tax basis and assets that are susceptible to one or more valuation discounts. Gifting strategies for 2024 may include the following:

- **For individuals who have not yet fully used the increased gift and GST tax exemption amounts**, an effective way to accomplish such gifting is to make lifetime gifts to an irrevocable "grantor trust." A gift to this type of trust allows a donor to remove assets from his or her estate and allows the donor to continue paying income taxes on the income generated by the gifted assets in subsequent years, effectively making additional tax-free gifts to the trust. In addition, because transactions between the donor and the grantor trust are generally disregarded for income tax purposes, the donor can exchange assets with a grantor trust and make loans to a grantor trust with no income tax consequences. In most cases, the donor's responsibility for a grantor trust's income taxes can be ended at any time in the future, if

desirable. Establishing a trust in a state without a state-level income tax, such as Delaware, may minimize the overall income tax bill associated with gifted assets.

- **For married couples who wish to take advantage of the increased transfer tax exemption amounts but are concerned about how additional lifetime giving may impact their own financial security**, it may be appropriate to make lifetime gifts to a type of grantor trust called a “SLAT” (spousal lifetime access trust), which includes the donor’s spouse as a beneficiary. In this way, a SLAT may allow the donor some indirect benefits of the gifted funds (through the spousal beneficiary’s use) while also offering the advantages of a grantor trust described above.
- **For individuals who have available gift tax exemption and an irrevocable life insurance trust that has obligations for insurance premium payments in future years**, making gifts to such trust in order to “pre-fund” future premium payments is a way to use available gift tax exemption and potentially avoid making taxable gifts to the trust in the future.
- **For individuals who have previously used all of their gift tax exemption amount but not all of their GST tax exemption amount**, it may be advisable to make a “late” allocation of GST tax exemption to an existing irrevocable trust that is not already GST-exempt, with the result that part or all of the trust property would be fully exempt from GST tax going forward. Late GST allocations have no gift tax consequences. These individuals might also consider non-gift estate planning techniques such as sales to grantor trusts and “GRATs” (grantor retained annuity trusts), as discussed in this [client update](#).

## 2024 state transfer tax inflation adjustments

### New York

The New York estate tax exemption equivalent is now \$6.94 million and is phased out for New York taxable estates valued between 100% and 105% of the exemption amount, with no exemption being available for taxable estates in excess of 105% of the exemption amount. The top New York estate tax rate is 16%. Estate taxes paid to New York may be deducted for federal estate tax purposes, to the extent a federal estate tax would otherwise be payable (resulting in a lower effective state-level rate).

There is currently no New York gift or GST tax.<sup>3</sup>

### Connecticut

The Connecticut estate and gift tax exemption amounts now match the federal exemption amounts of \$13.61 million per individual in 2024. Likewise, the Connecticut gift tax annual exclusion amount is \$18,000.

A flat tax rate of 12% will apply to the value of Connecticut taxable estates and gifts that exceed the federal exemption amount. The maximum amount of Connecticut gift and estate taxes that may be imposed is capped at \$15 million. Estate taxes paid to Connecticut may be deducted for federal estate tax purposes (resulting in a lower effective state-level rate), but there is no corresponding federal gift tax deduction.

Connecticut does not impose a GST tax.

## New beneficial ownership reporting rules

### Federal Corporate Transparency Act

Beginning January 1, 2024, all LLCs, corporations, limited partnerships and other entities created in the United States by the filing of a document with the secretary of state or similar office, or created in a foreign country and registered to do business in a state by filing a document with the secretary of state or similar office, unless otherwise exempt, are required to submit a Beneficial Ownership Information (BOI) report to the U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN), containing specified personal information on their beneficial owners.

A beneficial owner is any individual who either directly or indirectly: (i) owns or controls at least 25% of the reporting company’s ownership interests, or (ii) exercises “substantial control” over the reporting company. “Substantial control” is defined broadly and covers senior officers, individuals with authority to appoint or remove senior officers or directors, and individuals who have direct or indirect ability to direct, determine or have substantial influence over important decisions

made by the reporting company. For each beneficial owner, the reporting entity must provide the individual's name, date of birth, residential address, and identifying number from an acceptable identification document, such as a passport or U.S. driver's license, or by applying for a registered number from FinCEN. Reported information will only be available to governmental agencies and entities and, in some cases, financial institutions, and will not be publicly available.

There are 23 exemptions from these reporting requirements, including, among others, large operating companies, publicly traded companies, 501(c) tax-exempt organizations, SEC-registered companies, insurance companies, and banks. In addition, most types of trusts, including charitable trusts and split interest trusts, are exempt from this reporting rule on the basis that most trusts are not created by the filing of a document with a secretary of state; however, where an individual owns or controls a reporting company through a trust arrangement, information about such individual or the trust's beneficial owners may be required to be disclosed.

Individuals who have family LLCs and LLPs will likely be subject to the beneficial ownership reporting rule and should seek guidance about whether and how to file a report with FinCEN. Entities created before January 1, 2024 have until January 1, 2025 to file their initial reports. New entities created in 2024 must file their initial reports within 90 days of the entity's creation, and entities created in 2025 or thereafter must file within 30 days. The penalties for noncompliance are substantial.

A detailed discussion of FinCEN's beneficial ownership reporting rule is available in this [client update](#).

## **New York LLC Transparency Act**

On December 22, 2023, Governor Kathy Hochul signed the LLC Transparency Act, which is modeled after the federal Corporate Transparency Act and will require LLCs to disclose similar types of beneficial ownership information. The original language of the bill would have made such beneficial ownership information available in a publicly searchable database, but under the final version of the law such personal information will only be accessible to government agencies. This adjustment will be made by further legislation known as a "chapter amendment" in the next legislative session. The law will become effective on December 21, 2024 and reporting companies under the LLC Transparency Act will be required to file the required information no later than January 1, 2025.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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- <sup>1</sup> There is a larger annual exclusion for such gifts because, unlike gifts to a U.S. citizen spouse, gifts to a non-U.S. citizen spouse that exceed the annual exclusion cannot qualify for the unlimited gift tax marital deduction.
- <sup>2</sup> Examples of qualifying gifts include outright gifts to an individual donee, contributions to a 529 account, custodial account or minority trust for the benefit of a particular individual donee, and gifts to a "Crummey" trust which grants the particular donee a withdrawal power over the gifted assets.
- <sup>3</sup> However, gifts made within three years of death are subject to New York estate tax.