

For The 99.5% Act Proposed Changes to Estate and Gift Tax Statutes

Tim Moll, Rembolt Ludtke LLP
Lyz Smith, Rembolt Ludtke LLP

In addition to the new transfer taxes proposed in the STEP Act, Senator Bernie Sanders recently introduced the “For the 99.5% Act” (the “Act”). The Act is the first formal proposal to significantly modify the estate and gift tax statutes. Although the Act is only a proposal at this point (and not likely to pass in its current form), it gives us a good indication of the types of changes that may be coming soon.

As a reminder, the current estate and gift tax exemption is \$11.7 million per person. Amounts transferred to non-spouse heirs above this exemption are subject to a 40% tax. The entire amount of this exemption can be used for lifetime gifts or for transfers at death. This exemption level was doubled by the Tax Cuts and Jobs Act and is scheduled to revert to the previous exemption (half this amount) on January 1, 2026.

If passed in its current form, the Act would significantly reduce the exemption amounts. The estate tax exemption would be reduced from \$11.7 million to \$3.5 million, and the lifetime gift tax exemption would be reduced from \$11.7 million to \$1 million. Instead of a flat 40% estate and gift tax rate, there would be a progressive rate system as follows:

- 45% for estates between \$3.5 and \$10 million
- 50% for estates between \$10 and \$50 million
- 55% for estates between \$50 million and \$1 billion
- 65% for estates over \$1 billion.

The Act would allow farmers to use special use valuation rules to lower the value of their farmland by up to \$3 million for estate tax purposes.

Currently, donors can make gifts worth up to \$15,000 to any one person in any calendar year and it does not count against the lifetime gift exemption. Under the Act, this general rule would continue however the following transfers would be limited to \$10,000 per year to any one individual and \$20,000 total per year:

- Transfers to a trust
- Transfers of any pass-through entity
- Transfers of an interest subject to prohibitions on sale
- Any transfer that cannot immediately be liquidated by the recipient

The Act would also substantially limit the use of a number of estate planning tools.

- The use of valuation discounting would be limited or eliminated in a number of areas, including valuation of passive or investment-type assets held in pass-through entities and valuation of family-owned entities.

- Assets held in an intentionally defective grantor trust created after the effective date of the Act or contributed after the effective date would be included in the grantor's estate for federal estate tax purposes.
- Grantor Retained Annuity Trusts would be required to include a gift element upon funding and would have to have a minimum term of 10 years.
- Dynasty trusts would be subject to estate tax every 50 years.

As proposed, the Act would be effective January 1, 2022. As noted above, this is the first proposal and is likely to be significantly modified if and when it moves forward in the legislative process.

The attorneys at Rembolt Ludtke will be closely monitoring developments in this area. Please contact us if you have questions—we look forward to serving you!