If you have a significant estate, one likely to surpass eleven million dollars individually, or twenty-two million per couple, you should consider gifting assets to your children over the next eight years rather than passing them through your will.

With the federal estate tax law changes that took effect in December 2017, the federal estate tax exemption was increased from $5.29M to $11.18M per individual. This resulted in many people thinking that they should take advantage of the increased exemption amount. However, on January 1, 2026 the $11.18M threshold "sunsets" and will revert back to $5M, indexed for inflation.

Except that the Patriots will be in the Super Bowl next year, we cannot predict the future. Another administration may make this increase permanent, raise it higher, let it revert to $5M, or eliminate it altogether. However, if an estate is under $11.18M, it makes sense to consider gifting using the $11.18M exemption while it is in place. Why? For two reasons: 1) These assets are likely to appreciate over time. Therefore, getting assets (such as stock, real estate, or ownership interests in the family business) out of your estate and to your children "saves" any future estate tax on the appreciated amount. 2) The window to use this increased exemption is likely to close, and the legislature is not talking about "clawing back" any gifts made during the timeframe, over the 8-year period. Alternatively, you could also make gifts to your kids using the annual exclusion only (for 2018, you and your spouse could jointly gift $30,000 to each child), essentially "tax-free" if properly documented.

On the other side of the coin, there are some negatives to consider. You will lose control of the assets given away and the income produced from those assets. You will also lose the tax advantage of a step-up in basis at death in determining gain when gifted property is sold. For purposes of determining gain, the basis of property acquired by gift is the same as the donor's basis (i.e., a carryover basis). In many cases, gifts would have to appreciate substantially to equal the benefit of obtaining a step-up in basis to fair market value at death. For example, a fully depreciated real estate interest used for a gift with a zero-cost

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basis would have to appreciate by 100% to equal the benefit of holding the property until death.

Of course, your gifting program would need to be properly documented by an estate planning attorney. It should be accompanied by appraisals using reasonably discounted valuation methods, as well as gift tax returns filed by your accountant for each year during which you employ the gifting program.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Danielle Justo and Gerald May.