

Looming Changes in Gift and Estate Tax Laws, and Impact on Succession Planning for Family Farms

29th Annual Agricultural Summit, First Farmers Bank & Trust

January 30, 2024

Polly J. Dobbs, Esq.

[LinkedIn](#)



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

Current Estate/Gift Tax Law (Until 2026)

- Upon death, up to \$13.61 million (as of 1/1/2024) will pass exempt from Federal Estate Tax. A married couple can pass \$27.22 million.
- During lifetime, you may give away up to \$13.61 million of your assets (\$27.22 if married) exempt from Federal Gift Tax, which would reduce the amount of your exemption remaining at death.
- For estates or gifts in excess of this exemption, the maximum tax rate is 40%.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

2

Annual Exclusions & State Taxes

Annual gift tax exclusion is \$18,000 – to as many individuals as donor wishes, without reducing donor's \$13.61 million estate tax exemption or triggering Gift Tax.

State inheritance or estate taxes deserve special attention: Connecticut, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Iowa, Kentucky, Nebraska, and Pennsylvania.

Indiana repealed 1/1/2013

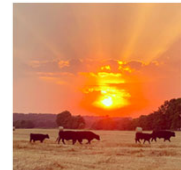


52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

3



Tick Tock – Sunsets in 2026



- Tax Reform under Tax Cuts and Jobs Act of 2017 ("TCJA"), made major changes to the estate and gift tax laws.
- Temporary doubling of the transfer tax exemption is set to expire January 1, 2026, reverting back toward the 2017 levels
 - Around \$7M per person, \$14M per married couple.
- General Election in November – any law can change at any time!
- Now is the time to act.



POTENTIAL
"USE-IT-OR-LOSE-IT"
OPPORTUNITY

52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

4

Portability Election Is Crucial

- A surviving spouse can make a portability election in order to “port” over any unused federal estate tax exclusion (called “Deceased Spousal Unused Exclusion Amount” (DSUE) from the first spouse.
- Election must be made after the death of the first spouse, which requires filing of a Form 706 Federal Estate Tax Return within two years of death, even though no tax is owed.
- IT’S NOT AUTOMATIC!
- Only available since 2011; Many advisors not aware of importance.
- Could be a multi million dollar mistake is not elected!



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

5

Example if Portability Election is Not Made

- Jed and Jane are farmers, with a net worth of \$12M, and one son who farms.
- Jed dies in Jan. 2024, with all assets jointly owned, so they automatically pass to Jane by operation of law.
- Jane’s CPA and Lawyer say there’s nothing to do. No estate tax is due at Jed’s death because of the 100% marital deduction. Plus the exemption is \$13.61M per person this year, no problem...
- Jane dies in Feb. 2029 after the estate tax exemption has sunset to \$7M.
- Son owes \$2M in Estate Tax (\$12M net worth, less \$7M exemption = \$5M taxable estate x 40% estate tax)



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

6

Example if Portability Election is Properly Made

- Same facts: net worth of \$12M, Jed dies in Jan. 2024, with assets jointly owned.
- Jane's CPA and Lawyer help her file a Form 706 to elect portability of Jed's \$13.61M DSUE, using the shortcuts that are available such as skipping appraisals and valuations and estimating date of death value to the near quarter million dollars.
- Jane dies in Feb. 2027 when the estate tax exemption has sunset to \$7M.
- Jane's available exemption is \$20.61M (Jed's \$13.61M + her \$7M)
- Son owes \$0 in Estate Tax



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

7

Portability Timing & Lessons

- Be aware, the Form 706 is "due" 9 months from date of death, and can be extended automatically with Form 4768 for another 6 months. Old rules provided an extra 2 years from date of death under Rev. Proc. 2017-34
- NEW Final deadline, **5 years from date of death** under Rev. Proc. 2022-32.
- **If your spouse died within the last 5 years, file a Form 706 and elect portability**
- **If one of your parents died within the last 5 years, help the survivor file a Form 706**
- **If you know someone who's spouse died within the last 5 years –tell them!**



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

8

Cannot collect and hold DSUE; Can collect and use DSUE

- If DSUE is ported to husband when Wife #1 dies, and husband remarries, the husband cannot collect DSUE on Wife #2's death.
- Husband can use Wife #1's DSUE to shelter lifetime gifts to children, and then be able collect DSUE on second wife's death.
- Ex: Husband and Wife #1 worth \$20M,
- Wife #1 dies in 2024, husband collects Wife #1's \$13.61M DSUE
- Husband gifts \$13.61M worth of farm to children using Wife #1's DSUE
- Husband marries Wife #2, who then dies after 2026.
- Husband collects Wife #2's \$7M DSUE (It helps if Wife #2 is poor).
- Husband has Wife #2's \$7M DSUE, plus his own \$7M+ exemption= \$14M, plenty to cover \$6.39M worth of remaining assets (\$20M - \$13.61 gifted).



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

9

How to Use it or Lose It?

SLAT

- SLAT = Spousal Lifetime (or Limited) Access Trust
- Irrevocable Trust established by one spouse for the benefit of the other spouse and descendants under which the beneficiary spouse can receive limited distributions during his or her lifetime.
- The trust will not be subject to creditor claims if appropriately drafted.
- Not subject to estate taxes on death of either spouse.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

10

SLAT Example

- Farmer Jed and wife Jane are farmers, with a net worth of \$17M
- Jed gifts \$13.61M to a SLAT for the benefit of Jane in 2025. Jane does not make a gift. Jane receives income off the SLAT, and Jed and Jane receive income off the \$3.39M of assets outside the SLAT
- Jed and Jane die in 2026. No Estate Tax is due, because Jane's \$7M exemption is intact to shelter the assets that are included in the gross estate.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

11

NO SLAT Example

- Farmer Jed and wife Jane, who are worth \$17M do no gifting prior to 12/31/2025 sunset.
- Jed and Jane die in 2026. Each have a \$7M exemption, and can shelter \$14M of assets from estate tax, leaving a \$3M taxable estate.
- \$1.2M of estate tax is due to the United States Treasury (40% of \$3M).
- Could have been avoided by using one exemption prior to the sunset.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

12

How Else to Use it or Lose It?

- Gifts to children (or Irrevocable Trusts for their benefit)
- Installment Sales to Irrevocable Trusts
 - Gets appreciation out of estate, to “freeze” value (ex: if development creeping in)
 - Could forgive balance of note and complete gift to the Trust prior to sunset



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

13

What to Gift?

- Gift assets most likely to appreciate
- Land should be transferred into an entity before gifting
 - Survey/Split off home first
 - Survey/Split off bins, dryer, shop, barns, pasture
- Much easier to gift LLC Units than undivided interests
- Consider structure with voting and nonvoting interests
- LLC governing documents contain all your wishes for land management and how ownership may pass
- Gift assets with highest basis, if future sale likely



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

14

Will the Kids Sell? What's your basis?

- ✓ Lifetime gifts remove appreciating assets from donor's estate resulting in estate tax savings.
- ✓ Lifetime gifts = "Carryover Basis" → Recipient receives your low basis in your land.
- ✓ Inherited assets = "Step up in Basis" → Recipient's basis is equal to fair market value on date of death.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

15

Will the Kids Sell? What's your basis?

- ✓ Lifetime gifting may not be advisable if there may be a future sale.
- ✓ Careful analysis of Estate Tax vs. Capital Gains Tax is necessary before gifting.
- ✓ In light of new tax laws, higher exemptions, returning gifts previously received to original donor may be best (wait... what!?).



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

16

How's your Ground Titled? Maximize the Step Up!

- ✓ Step up in basis to fair market value at date of death is very powerful!
- ✓ Many farms are owned ½ by husband (or his trust) and ½ by wife (or her trust). That limits the step up in basis for the whole farm at the second death. Re-examine titling!
- ✓ Old A/B trust planning may have “trapped” an interest in ground in the first deceased spouse's credit shelter trust – may be able to get it out so that it receives a full step up at second death.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

17

Who's Your Successor? Planning for Retirement

- ✓ Has your successor put in sweat equity? Think of your succession plan and estate plan like Deferred Comp.
- ✓ If you don't have a successor, do you want to find one?
- ✓ Sale to Non Related Successor, during lifetime, or at death.
- ✓ Income tax consequences require team approach with CPA well ahead of retirement.
 - ✓ Sale of S corp. stock, on installment, capital gains rates, spread out
 - ✓ Charitable Remainder Trust to auction equipment and sell final grain. Avoids SE tax and defers tax over a term of years, lower rate.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

18

Common Mistake

- “I want to treat all my kids exactly the same.”
- “Fair” does **not** necessarily mean “equal” ownership among kids
- Equal tenants in common ownership ~~may~~ **will** set the stage for a family feud. Partition actions can allow one tenant in common to trigger a court ordered auction, no matter how small an interest he or she owns
- If your kids aren’t in business together during lifetime, don’t throw them into business together after death.



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

19

Common Mistake #2

- “I’m doing nothing because I’m worth less than \$13.61 million,” or the similar reasoning: “Because my wife and I are worth less than \$27.22 Million.”
- Taxes are probably not your biggest problem! Family farms are destroyed more often by feuding families than by taxes.
- Who knows what will happen after 2025? The estate tax exemption reverts to half this level in 2026. Anything could happen between now and then. Are you worth more than \$7M, or \$14M for a married couple?
- You may have a false sense of security that your total assets are under the estate tax threshold. What’s your farm ground really worth today? What are your neighbors selling for? Maybe you have a lurking tax problem now, or as of 2026.

****Life insurance proceeds “count”!****



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

20

HOW DO I START A FARM SUCCESSION PLAN?

- No “one size fits all” solution, and no, you cannot copy what your neighbor did
- Accurate Personal Financial Statement is home base
 - Fair market value, not cost basis or book value after depreciation, or low ball conservative estimate
 - How are things titled – individual, joint, POD/TOD.
 - Need the deeds!
 - Face value of life insurance, not cash value
 - Current beneficiaries of retirement accounts, annuities, life insurance
- Re-evaluate as needed



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

21

Dust it off every 5 years

- Plan for now, based on today’s circumstances.
- Original plan should allow as much flexibility as possible.
- Review when there’s a change in the laws, or a change in circumstances. Adjust if necessary
- No “one size fits all” solution



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

22

Questions?



52 N. Broadway | Peru, IN 46970 | P: (765)470-7090 | F: (765)470-7091 | www.dobbsfolz.com

23