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ESTATE PLANNING | ELDER LAW | ELDER CARE | PROBATE

Demystification of Estate and Gift Taxation

Presented by:

Karl Lutterloh

Associate Attorney

Course objectives:

To provide a historical and public policy framework for the Gift and Estate Tax, as well as to provide a nuts and bolts understanding of how the these taxes are actually implemented.

1. Definitions

- **A. IRC** — Internal Revenue Code
- **B. Unified Credit** — The total amount you may give away or transfer at death before taxes are owed
- **C. Annual Exclusion Amount** — The total amount you may give to one person other than your spouse before you must file a Gift Tax Return
- **D. Gift Tax** — Tax placed on transfers during lifetime
- **E. Estate Tax** — Tax placed on transfers occurring at death

1. History

a. First iteration of the Estate Tax in the United States was in 1797 and various forms existed until the modern era. Most were used to raise additional revenue to fund wars or government projects.

b. 1916 is when the first modern Estate Tax law was enacted and is a direct link to the current law.

c. 1976 Gift and Estate credit was unified.

- i. In 1976 the exclusion amount was $120,667 ($655,254 in 2025 inflation adjusted)
- ii. Annual exclusion was $3,000 ($17,140.52 in 2025 inflation adjusted)
- iii. Maximum rate was 70%

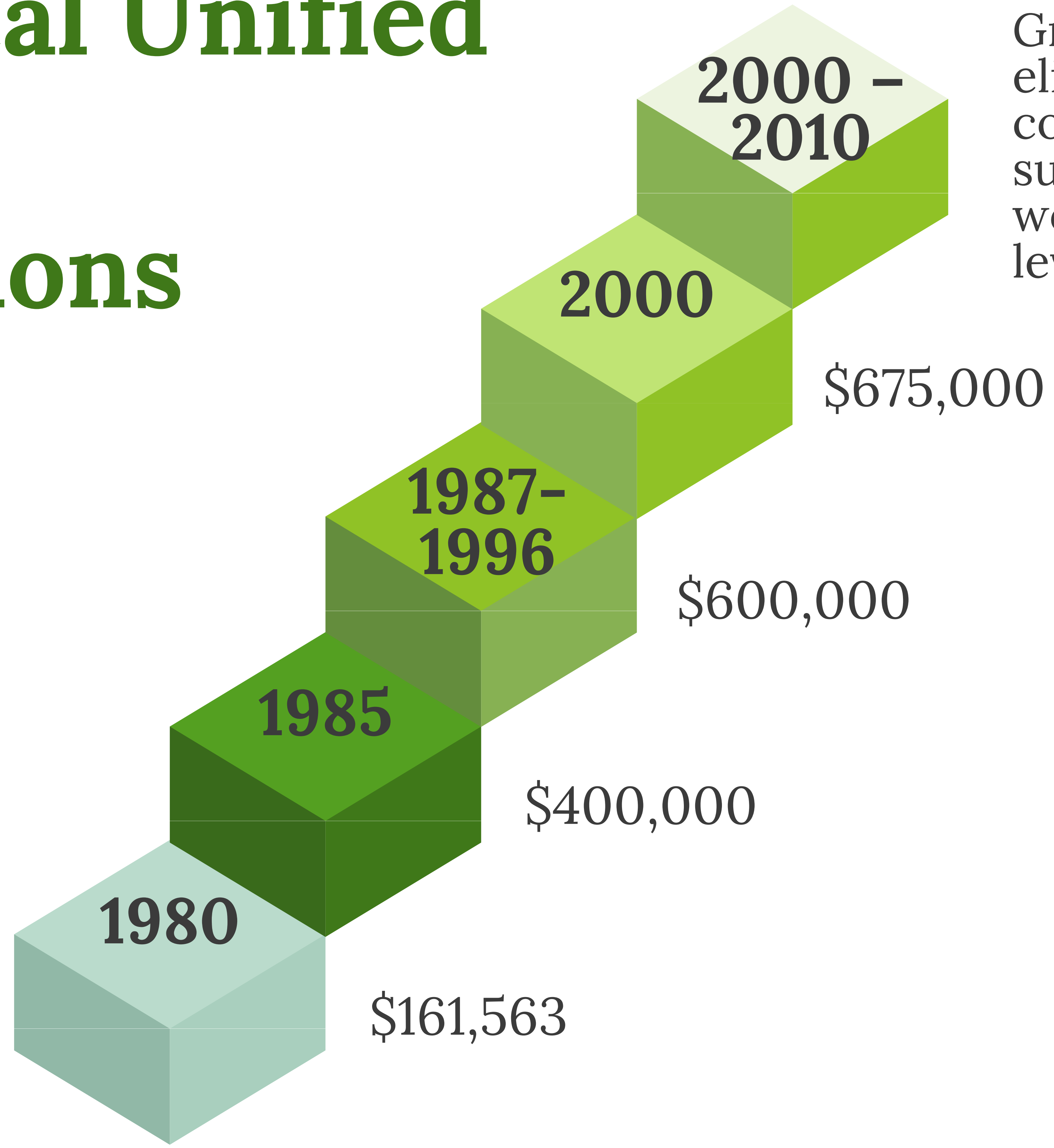
1. Legislation after 1977

A. Various laws were introduced and passed, slowly raising the exemption amount until 2001. The Economic Growth and Tax Relief Act (EGTRA) provided for a $1,000,000 exemption in 2002

B. The Economic Growth and Tax Relief Act also provided for a gradual reduction of the estate tax until 2010 when the Estate tax was eliminated. A $1 Million gift tax exemption was still in place in 2010.

i. The gift tax exemption was in place to prevent vast transfers of wealth, during this period.

1. Historical Unified Credit Exemptions



Gradual reduction to eliminate the tax completely, but at sunset this tax would revert to 2001 levels in 2011.

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1. 2010 and Forward

a. In 2010, a temporary 2-year extension was put into place for a $5 million unified exemption amount.
   i. Note: there was a great deal of debate and controversy surrounding this extension.
b. In 2012 the unified exemption amount was made permanent at $5.25 million indexed to inflation.
c. In 2017 the exemption amount was doubled, but this would expire at the end of 2025
d. In 2025 the exemption amount was raised to $15 million indexed to inflation

1. Public Policy

a. The Estate and Gift Tax is a very controversial measure in the Federal Tax Code.
b. Arguably it is the most progressive form of taxation.
c. The popularity and unpopularity of the tax generally surround the unified exemption amount.

Many myths and misconceptions surround this tax. The central reason for this is generally a fundamental misunderstanding of when taxes are owed and historical fear surrounding middle class families that could be subject to a tax meant only for the very rich.

1. Revenue: Who is actually paying these taxes

A. In 2019, 60% of filed estate tax returns paid no taxes

B. In 2001 2.1% of decedents had taxable estates. In 2025 this number declined to 0.10%.

C. Revenue generated from this tax was $32 billion in 2023 or 0.7% of total federal revenue.

D. Farms subject to the tax accounted for only 0.2% of estates where the decedent principally operated a farm in 2023.

E. Billionaires generally leave the vast majority of their wealth to charitable causes. **

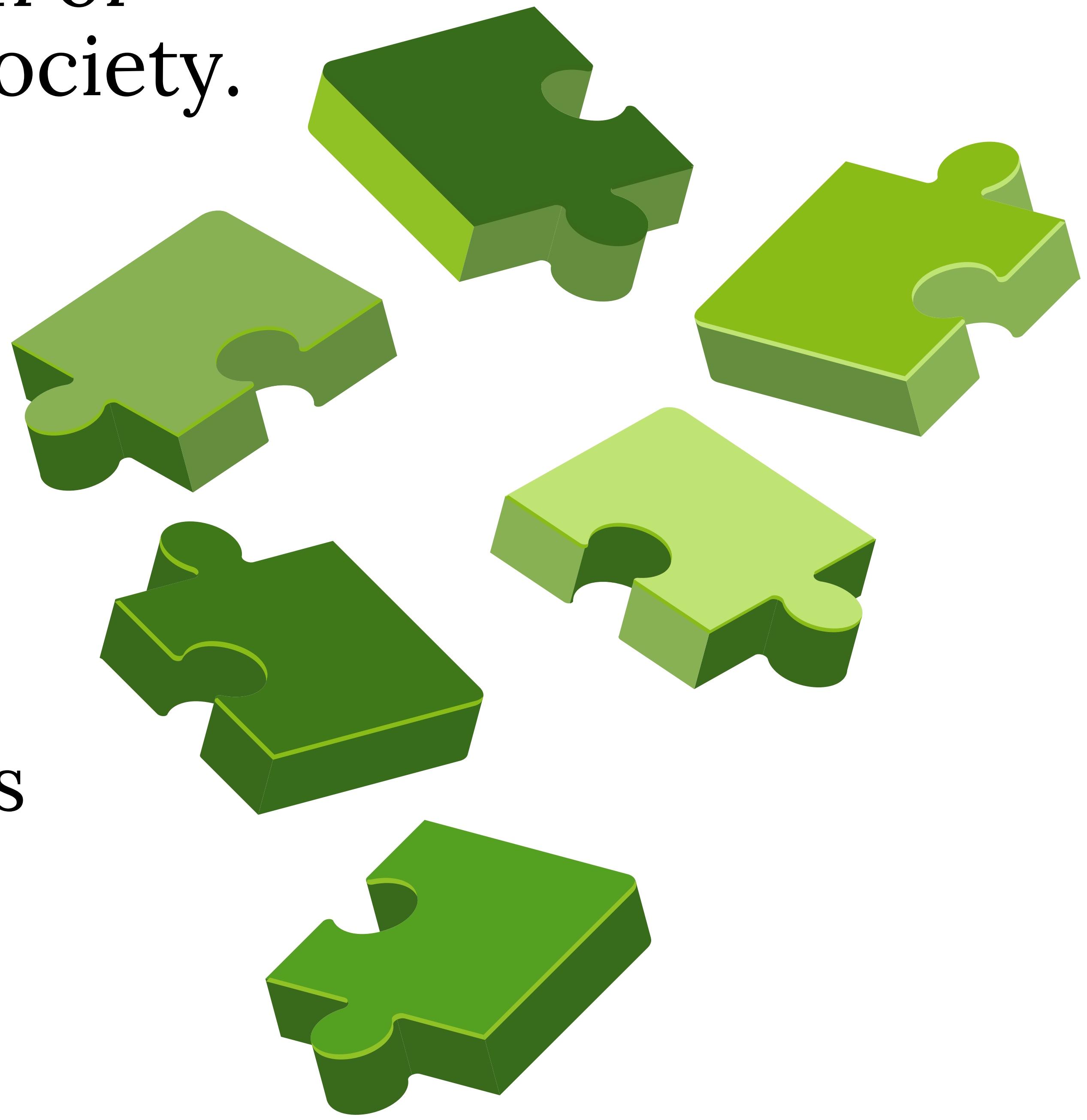
****Could this change with a repeal of the Estate Tax?**

1. Arguments in favor of the current Estate Tax

a. It prevents concentration of wealth in a democratic society.

b. American Dream and American Culture

- Anyone can be anything if they work hard enough. Should there be too much of a concentration of wealth, avenues to success would be cut off.
- The idea that one should be self reliant and self made not simply winning the genetic lottery.



c. Encouragement of Charitable Giving

d. Alternative to Taxation of Unrealized Gains

e. Revenue

f. Public perception that the taxpayer is unsympathetic as well as their heirs

1. Arguments Against

a. Double taxation
  i. Assets were already subject to income tax.
  ii. But what about unrealized gains???
b. Lack of substantial revenue
c. Harms small businesses and family farms
d. Possible effect on the Middle Class (pre-2001 levels)
e. Disincentive to build wealth or invest
f. The Sympathetic taxpayer who did not engage in proper planning
g. Currently this is a tax in "Name Only" for most wealthy families
  i. If this is true, why not just do away with the tax?

1. Proposed Changes

1

Reform Trust Law on the Federal Level

Currently Federal Tax Law looks to State Law to interpret trust provisions.

2

Reporting of assets individually and for Trusts.

3

End Perpetual Trusts

- Note: SC now allows for trusts to last for 360 years!!
- Change made in July 2025.

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1. Proposed Alternatives

A.

Inheritance tax

This would allow an individual to inherit a set amount, and taxes would be based on the amount over the inheritance limit.

Example $1 Million Inheritance limit. If someone had $3 Million then they could give $1 Million to three individuals with no tax owed. If they gave one person the entire $3 Million taxes would be owed on the $2 Million overage.

B.

Wealth Tax

This has been proposed by Bernie Sanders, Elizabeth Warren and the Biden Administration.

Questions exist on the constitutionality of such a tax.

Idea is to tax a percentage of wealth over a certain threshold.

C.

Mandatory Taxation of Trust

Some have proposed a mandatory tax on trust assets even if income is not generated.

Questions?

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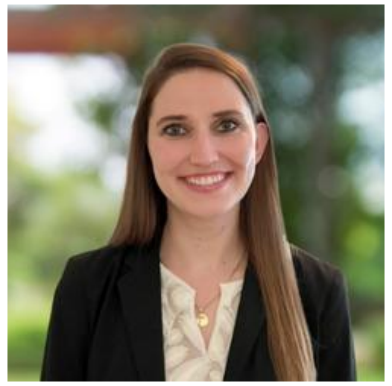






Take Action!

QUIZ

- Review your current plan or create your first one.
- Don’t wait until a crisis.
- We created a quiz to help you determine which type of estate plan best suits your current needs.
  https://lawyerlisa.com/quiz

Lisa Hostetler Brown, Certified Elder Law Attorney, certified by the National Elder Law Foundation | 803-563-5163 | 7511 St. Andrews Rd, Ste 3, Irmo, SC 29063 | Aiken | Simpsonville | Mt. Pleasant | Bluffton | Myrtle Beach

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