

YOUR ACTIVE WEALTH PODCAST

# Tax Talk: Mid-Year Check In

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**Featuring:**

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[00:00:01] **VO:** Is your wealth strategy supporting your long-term goals? Welcome to *Your Active Wealth* with BNY Wealth, where we offer insights that can help you move closer to your goals. We'll tackle timely topics through the lens of the five pillars that comprise our Active Wealth framework: Invest, Spend, Manage, Borrow and Protect, and provide guidance on navigating the unpredictable, to help you build and sustain wealth.

[00:00:32] **Elizabeth:** Hi, I'm Elizabeth Luk, Head of Delaware Trust for BNY Wealth and the host of today's episode. Welcome back to *Your Active Wealth*. Many people don't think about taxes until it's spring and when Tax Day is fast approaching. However, there are multiple considerations to be aware of this year, prompting the need for earlier conversation and decision making. In addition, the middle of the year is a great time to check in with your advisor and evaluate potential strategies that can minimize adverse impacts to your wealth. Today, we're speaking with Jere Doyle, Senior Wealth Strategist at BNY Wealth, who regularly stays up to date on all the latest tax regulations and strategies in an effort to help his clients keep more of what they earn. Jere will touch on timely tax provisions to take advantage of before they expire, such as the estate and gift tax exemption from the 2017 Tax Cuts and Jobs Act, and he'll explain some of the nuances around the Corporate Transparency Act, including reporting requirements and reminders for those who will be affected. He'll also provide valuable insight around the IRS' recent position on grantor trusts. So, it's my pleasure to welcome Jere, who we are delighted to have share his expertise on the most pressing tax issues of today. So, broadly speaking, why should our listeners focus on tax planning in the middle of the year?

[00:01:54] **Jere:** Well, tax planning is a yearlong effort. It's not something you only do at the end of the year. It's really a collaboration between a number of people: your tax advisor, your attorney, your insurance professional, your wealth advisor, etc. You want to make sure that all those people are informed of what's going on during the entire year, because you may run into certain transactions that, had you consulted your tax advisor, they might be able to tell you a different way to structure a transaction in order to minimize or even eliminate any tax consequences. So, I think it's important that you keep in contact with these people. It is a collaboration with a number of different advisors, and as a result, it is something that you have to do all year long as opposed to just waiting at year end.

[00:02:43] **Elizabeth:** So one of the biggest topics on people's minds, particularly business owners, is the Corporate Transparency Act. While many are aware it went into effect in January, there are far-reaching impacts with a lot of moving parts. Could you provide some detail, for example, who is affected and what they have to do?

[00:03:00] **Jere:** Yes, it still stuns me how many people aren't really aware of the fact that the Corporate Transparency Act even exists, and what it requires. The Corporate Transparency Act was basically enacted on January 1st, 2021, and the purpose of the act is to prevent anti-money laundering and to catch illegal activities. So, what has to happen is certain foreign and domestic reporting companies, and I'll define what a reporting company is in just a minute, have to report to the Financial Crimes Enforcement Network, FinCEN, certain information about the company itself and also about its beneficial owners, and I'll define what a beneficial owner is

in just a second. So, what is a reporting company? It's generally any type of an entity who has to file some type of a document with the Secretary of State in order to come into existence. For example, a corporation, an LLC, or a limited partnership have to file certain documents with the Secretary of State in order to maintain their legal existence. A general partnership or a sole proprietorship, they don't have to file anything with the Secretary of State so they are not a reporting company, and they are not subject to the reporting requirements under the Corporate Transparency Act. Now, there are 23 exemptions from reporting under the act, but most of those exemptions deal with highly regulated companies. There is one exception that a lot of people ought to be aware of, and that's for a so-called "large operating company" that is defined as a company that has a physical existence in the United States, has more than \$5 million of gross receipts or sales on its prior years' income tax return, and has more than 20 full time employees. That type of a company is also exempt from reporting requirements. So, who has to report here? First of all, beneficial owners have to report. Who is a beneficial owner? It's basically (1) somebody who directly or indirectly owns or controls more than 25% of the reporting company, or (2) exercises substantial control over the reporting company. And people who exercise substantial control are defined as, for example: the chief executive officer, chief operating officer, chief financial officer, even the general counsel of a company is deemed to be somebody who is a beneficial owner. Now, if they are a beneficial owner, what do they have to report? Well, they have to report (1) their name, (2) their date of birth, (3) their current residential address, and (4) some type of a unique identifying number from a identification document like a driver's license or passport number. And this information has to go to the reporting company, who then turns over and furnishes that information to FinCEN. What does the reporting company have to report? The reporting company itself, in addition to the beneficial owner, has to report the full legal name of the company, their business address, the jurisdiction of their formation, and a taxpayer identification number so that the FinCEN can identify them. Now, to make things easy what FinCEN has done is they will allow people, a beneficial owner, to report the information I talked about earlier, you know, their name, their address, etc. to FinCEN, and FinCEN will give them what they refer to as a FinCEN identifier, kind of like a social security number, so that if the beneficial owner is a beneficial owner of multiple companies, they get their FinCEN identifier rather than every single time reporting their name, date of birth, the residential address, they can simply furnish to the reporting company their FinCEN identifier number and the reporting company can then turn that FinCEN identifier over to FinCEN. Now, what happens if you don't comply? If you don't comply, there are penalties that are applicable. There's a \$500 a day civil penalty and there's a possibility of criminal penalty and jail time as well. So, when is this effective? For companies that were already in existence at the beginning of this year, then they have until January 1st, 2025 to report this information. Companies that were formed during 2024 have 90 days from the day of formation to report this information. And if your company is formed after the end of this year, you only have 30 days from the time of formation to get this information together. So, this is relatively important, and a lot of people have to be aware of these reporting obligations, and this covers not only companies, but think about a vacation home that's held in an LLC. The members of that LLC that hold the vacation home would also have to report, as well as like the local pizza shop that's formed as an LLC, or restaurant. So, this is kind of important that people have to know about this.

[00:08:04] **Elizabeth:** Thanks Jere, that's a lot of information! So, what would be the most important reminders for those who are affected?

[00:08:12] **Jere:** First of all, know that the Corporate Transparency Act exists. Second of all, figure out if your company is subject to the law, and if it is, get the FinCEN identifier right away, and then make sure people timely file so that you don't run into an issue with penalties.

[00:08:32] **Elizabeth:** Okay, switching gears to another big topic. Many favorable tax provisions that resulted from the Tax Cuts and Jobs Act of 2017 will sunset by the end of next year. Can you touch on, not only the estate and gift tax exemption, but the generation skipping transfer tax exemption and explain what it means for them to sunset?

[00:08:54] **Jere:** Yeah, what happened basically in 2017 is that the estate and gift tax exemption, which at the time was \$5 million, doubled. And then with an inflation adjustment, the estate and gift tax and generation

skipping tax exemption has increased to an amount of \$13,610,000 for this year. So, everybody in the United States has an exemption of \$13,610,000 from the estate, gift and generation skipping tax. What will happen is after the end of next year, starting in 2026, that exemption will revert to \$5 million indexed for inflation. So, it will go down to probably in the range of \$7.5 million. So that exemption that's available now, that \$13,610,000, is going to be reduced to an amount that is about \$7.5 million. And what we mean by sunset is basically the provision in the law that provided for that very large exemption is going to go away. It's going to disappear after 2025, as a result of the tax legislation. They basically said this is only going to last from 2018 through 2025, and then we're going to revert back to what the law was prior to 2018. So as a result, the big exemption we have right now is going to be dramatically reduced.

[00:10:23] **Elizabeth:** So, can you give a few examples of strategies for our listeners to consider discussing with their advisors so they can maximize the use of the gift tax exemption and the GST exemption before they sunset?

[00:10:37] **Jere:** Yeah, one of the things that people want to think about is using the exemption before it basically is reduced after 2025. And a couple of things that people could think about was, first of all, make an outright gift to lower generations before the exemption is reduced. The other thing that a lot of people are looking at is using a spousal lifetime access trust and transferring assets to a spousal lifetime access trust. Basically, a spousal lifetime access trust is an irrevocable trust where I would name my spouse, and maybe my children as discretionary beneficiaries. The whole idea behind a spousal lifetime access trust or a SLAT is to use my exemption, but at the same time retain some type of control over the assets in the trust. So, what I might do is I might set up an irrevocable trust, name my spouse and my children as discretionary beneficiaries. I would then make a transfer of assets into the trust. That would be a gift for gift tax purposes, and I would use up some or all of my \$13,610,000 exemption since my spouse is a discretionary beneficiary. If in fact, we, my wife and I, need the money later on that we've transferred into this trust, the trustee can make a discretionary distribution to my spouse, and so we have access to that money. So, a spousal lifetime access trust is basically a technique where I can make a transfer into a trust, use up my gift tax exemption, but at the same time, if I need access to the money later on, the trustee can make a discretionary distribution to my spouse. Now that works great as long as my spouse and I remain married, and my spouse does not die. So that's a valuable thing that people can use right now. And the other thing people can do is they can just transfer assets to an irrevocable trust right now, the transfer will be irrevocable. You won't retain any control over the assets in the trust, but that trust can be set up to last for multiple generations. In other words, we refer to that as a dynasty trust as the assets pass from one generation to the next, there's no transfer tax as they go from generation to generation.

[00:13:06] **Elizabeth:** That's great Jere. Are there other pieces of legislation set to expire, which you would like to quickly mention because it could be helpful for our listeners to start planning for them now?

[00:13:17] **Jere:** Yeah, in addition to the exemption potentially being reduced after the end of next year, there are a couple other things that people have to realize. First of all, the income tax rate, the maximum income tax rate on ordinary income right now is 37%. That's the highest rate. If the law sunsets like it's scheduled to after 2025, the highest marginal income tax bracket will go up from 37% to 39.6%. That was the law prior to 2018. In addition, the standard deduction that people take will be cut in half. It increased, it doubled basically as a result of the Tax Cuts and Jobs Act. And if nothing happens and the standard deduction rules as they exist today, sunset then what we're going to have is a standard deduction that's going to be reduced, cut in half, and you're going to have a lot more people that are going to itemize their deductions. In addition, the state and local income tax limitation, currently you can only deduct up to \$10,000 of your real estate taxes -on your state and local income taxes. That is also set to expire, but don't count on that happening. But under the law that's set to expire, that means you'll be able to deduct a lot more in real estate taxes -on your state and local income tax. For those people who are out looking for a residence or vacation home, be aware of the fact that the limitation on the deductibility of your interest right now, you can only deduct the interest on up to \$750,000 of debt. We're going to go back to the old law, where you can deduct interest on up to \$1 million of debt, and you also can deduct interest on up to \$100,000 of home equity indebtedness. And then finally, there's a so-called deduction called the section 199A deduction, which is designed to basically equalize the tax rates for pass through entities like partnerships and S

corporations with C Corporations. C Corporations now have a 21% tax rate, and the 199A deduction is designed to equalize that tax rate. Whether or not it works perfectly is not crystal clear, but is designed to equalize the tax rate for partnership and S Corporations with the C Corporation tax rate that is also going to expire. So, unless Congress does something, you're going to find that people who run their business through a partnership or an S Corporation are going to face, probably much higher income tax rates than they would be if they were a C Corporation.

[00:16:06] **Elizabeth:** Thanks for that, Jere. So, can you tell us a little bit about the IRS' recent position on modifying grantor trusts to include a reimbursement provision, and how it could affect wealth planning in the future?

[00:16:19] **Jere:** Yeah, this came out at the end of last year in the form of a chief counsel advisory from the Internal Revenue Service. And basically what a grantor trust is, it's usually an irrevocable trust over which the grantor retains certain powers that will cause the grantor to be taxed on the income that's earned in that trust. So, the trust is not a separate taxable entity. If the grantor has retained certain powers then the grantor is going to be taxed on that income. And in a lot of cases what people will do is they will put so-called tax reimbursement provisions in the trust. So you'll have a situation where the grantor is required to pay the tax on the income that is earned in the trust, but the trustee can have discretion under the trust document to reimburse the grantor from the assets in the trust for the income tax that the grantor paid on the income that was earned in that trust. Well, in some situations, people have not included a tax reimbursement clause in the trust itself. So what the government did, it came out at the end of 2023, and they basically said that if you don't have a tax reimbursement provision in your grantor trust and you modify the trust to add a tax reimbursement provision, they're going to deem that to be a gift from the remainder beneficiaries of the trust back to the grantor. So that's something that everybody has to be aware of. That upset quite a few tax practitioners when that chief counsel advisory came out at the end of last year. There are still a lot of unanswered questions, but people have to be aware of that provision, if they do modify the trust, the government is most likely going to take the position that that's a gift from the remainder beneficiaries of the trust back to the grantor. And, you know, some states have already taken care of that, like I think there are some advantages to different states like your state, Delaware, Elizabeth. So, you know, maybe you can expound on how Delaware has handled that.

[00:18:30] **Elizabeth:** Yeah. Thanks, Jere. Well, I'll give you three potential advantages for having a trust in Delaware as it relates to the tax free reimbursement clause to grantors. So one, if you have a Delaware trust, you don't have to modify the trusts for the grantor to be reimbursed for the income taxes. If the trust does not already have an express provision in the document that allows the trustee, in its discretion, to reimburse the grantor for taxes, the trustee can actually just rely on the Delaware statute to make that reimbursement. So back in 2019, before this CCA came out at the end of 2023, Delaware had already enacted a statute that gives the trustee the discretion to reimburse the grantor for taxes. So, you don't have to modify the trust for this purpose. So that's a huge advantage of Delaware. So, a second potential advantage is that Delaware has a spendthrift statute that provides creditor protection so that the grantors creditors cannot access the trust, because the grantor receives the reimbursement from the trust. And a third potential advantage is that Delaware allows the trustee to reimburse the grantor for all taxes paid for the trust. Some state statutes only cover capital gains tax, for example. Or they may cover just, you know, straightforward traditional income tax. While Delaware statute covers all forms of taxes that could arise from the trusts, like foreign taxes, you know, income, capital gains, any taxes that arise from the trust. This is an important detail that should be considered. So, Delaware does offer that advantage as well. And I've seen a lot of clients move their trust to Delaware to take advantage of these points. So, thanks for asking that question, Jere. All right, as we wrap up here, do you have any final takeaways for our listeners?

[00:20:44] **Jere:** Takeaways are as follows: Tax planning basically is a year-round event. You ought to expect some type of legislation. Congress is already talking about what they're going to do about the sunset provisions under the Tax Cuts and Jobs Act. So, we'll most likely have some type of legislation after the election. And I think most importantly, if people are planning on taking advantage of the current increased gift tax exemption which, as I said earlier, is \$13,610,000: don't wait until the last minute. Get your things in place right now. Get trusts drafted,

maybe get appraisals done so you don't have to panic at the last minute. You can get things in place now, and you can pull the trigger later on and transfer assets next year. But I think it's important for a lot of people, if they're thinking about using the exemption or some of the exemption to get any documents in place right now, and they can make a decision next year. If they don't do that, I think what they're going to find is, they're going to find that attorneys, accountants, and appraisers are all going to be too busy helping other people trying to do last-minute tax planning to take advantage of the increased exemption.

[00:21:57] **Elizabeth:** So, don't wait till the last minute, right?

[00:22:00] **Jere:** That's right.

[00:22:01] **Elizabeth:** Well great insights, Jere. Thank you for joining us today. To learn more about mid-year tax planning tips, I encourage you to reach out to a BNY Wealth Manager or visit [bnymellonwealth.com](http://bnymellonwealth.com). Thanks for joining and we'll see you on our next episode of *Your Active Wealth*.

[00:22:18] **VO:** Thank you for listening to this episode of *Your Active Wealth*. Be sure to subscribe to this podcast on Apple Podcasts, Spotify, Google Podcasts or Stitcher and visit [bnymellonwealth.com](http://bnymellonwealth.com) to view the latest insights on the subjects that matter most to you.

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