

STRENGTHEN SOCIAL SECURITY BY TAXING DYNASTIC WEALTH ACT: WHAT PRACTITIONERS NEED TO KNOW

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Legislative Overview

- 119th Congress proposal (S.___) to reset estate/gift/GST structure toward 2009 levels
- Core transfer tax edits: IRC §§ 2001(c), 2010(c)(3), 2505(a)(1), new 2505(d)
- Earmarks Subtitle B revenues to consolidated Social Security Trust Fund (SSA §201(a))

Effective Date Architecture

- Estate tax changes: estates of decedents dying after Dec. 31, 2026 (Bill §2(c))
- Gift tax changes: gifts made after Dec. 31, 2026 (Bill §2(c))
- SSA trust fund consolidation & transfers effective Jan. 1, 2027 (Bill §3(h))

Estate Tax Rate Table Reset (IRC §2001(c))

- New top brackets inserted: 41% over \$1,000,000; 43% over \$1,250,000; 45% over \$1,500,000
- Base taxes specified: \$345,800; \$448,300; \$555,800
- Compression of marginal rates starts at relatively low taxable estate thresholds

Basic Exclusion Amount Reduced (IRC §2010(c)(3))

- BEA fixed at \$3,500,000 for purposes of IRC §2010(c)
- No inflation indexing stated in text
- Affects applicable credit amount computation via IRC §2010(c)(2)

Gift Tax Unified Credit Constraint (IRC §2505(a)(1))

- Gift credit computed as if BEA were \$1,000,000 (Bill §2(b)(1))
- Also computed as if DSUE were modified under new IRC §2505(d)
- Creates enduring estate-vs-gift exclusion divergence

New DSUE Modification Rule (New IRC §2505(d))

- DSUE for a surviving spouse (last spouse) is ‘as if’ lesser of:
- (1) \$1,000,000; and
- (2) Decedent’s applicable exclusion amount minus amount used to compute tentative tax under IRC §2001(b)(1)

DSUE Mechanics: Interaction with §2001(b)(1)

- §2001(b)(1) integrates ‘adjusted taxable gifts’ into the estate tax computation
- Bill’s DSUE formula subtracts the amount ‘with respect to which tentative tax is determined’
- Effectively DSUE = unused portion of decedent’s exclusion, but capped at \$1M

Express Retroactivity Answer: DSUE

- No explicit retroactive reopening of pre-2027 estates (Bill §2(c))
- Estate-side changes apply only to decedents dying after Dec. 31, 2026
- But gift-side DSUE cap may apply prospectively to post-2026 gifts

DSUE Ambiguity: Pre-2027 Decedent / Post-2026 Gift

- Text does not limit §2505(d) to decedents dying after 12/31/2026
- Trigger is any portability election under IRC §2010(c)(5)
- Risk: previously elected DSUE could be capped for gifts made after 12/31/2026

Portability Strategy Impacts

- Traditional approach: use DSUE via lifetime gifts to 'lock in' exclusion
- Bill may impair DSUE usability for post-2026 gifting (cap at \$1M)
- Greater emphasis on pre-2027 gift timing and/or estate-only DSUE usage
- Consider using any DSUE before end of 2026 to avoid ambiguity of possible \$1M cap

Gift Planning Under Split Exemption

- Post-2026 lifetime transfers face \$1M 'as if' BEA limit (IRC §2505(a)(1) as amended)
- Consider making completed gifts before end of 2026 so \$15M can grow outside the estate where after 2026 only \$1M will be feasible to grow outside estate.
- Increases relative value of: annual exclusion, valuation discount planning (subject to audit), grantor-trust income tax burn
- Note sales and GRATs will be more important with the \$1M exemption post 2026
- May shift planning toward basis management and charitable techniques

GST: Stated Intent vs. Operative Text

- Bill title: 'return ... GST tax to 2009 levels'
- Provided excerpt does not amend IRC §§2601–2664
- Uncertainty: whether GST exemption/rate changes are omitted from excerpt or absent from bill

GST Planning Risk Management

- If GST exemption is reduced to 2009-like levels, pre-2027 allocation becomes urgent
- If GST is unchanged, over-allocation risk is minimal but planning assumptions differ
- Recommendation: plan 'as if' GST could change; document assumptions

Pre-2027 Action Plan: Core Objectives

- Use current higher exemption (if available under current law) before 1/1/2027
- Complete major transfer structures and fund them (avoid 'paper-only' planning)
- Lock down GST strategy given uncertainty
- Observe timing to mitigate step-transaction and implied agreement arguments

Pre-2027 Action Plan: Mechanics & Sequencing

- Phase funding: seed gift → account opening → asset transfers → sales/notes
- GRATs

Estate Planning Under \$3.5M BEA

- Renewed relevance of credit shelter planning for many clients
- State estate taxes may dominate marginal planning in some jurisdictions
- Consider QTIP vs. non-QTIP strategies under tighter federal exclusion

Marital Planning: Credit Shelter vs. Portability

- Portability may still exist but gift-side utility may be capped at \$1M. Also, if exemption is to be reduced to \$3.5M that limits the benefit of portability apart from the \$1M cap
- Credit shelter trust regains importance for asset shifting and GST planning
- Drafting focus: basis, income tax reimbursement, trustee powers, distribution standards

Social Security Trust Fund Funding

- SSA §201(a) amended to create consolidated Social Security Trust Fund
- Appropriates/credits amounts equivalent to 100% of Subtitle B taxes
- Operationally a budgetary earmark, not a taxpayer computation change

Open Issues / Technical Corrections Watchlist

- DSUE cross-temporal ambiguity (pre-2027 decedent; post-2026 gifts)
- GST provisions absent from excerpt despite title reference
- Inflation indexing absent for BEA; interaction with TCJA sunset not addressed

Planning Recommendations (Summary)

- Prioritize completed gifts and GST allocations before 1/1/2027
- Reassess portability reliance; consider bypass trust re-emphasis
- Build documentation and administration protocols to reduce audit and litigation risk

Disclaimer / Scope

- Draft bill not enacted law
- No IRS guidance exists for interpretive ambiguities at draft stage
- Planning requires jurisdiction-specific and client-specific analysis

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