

# 2024 Year-End Tax Planning: It's Not Too Late

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In our Year-End Tax Newsletter, we're covering a number of key tax planning topics, including:

- Corporate Transparency Act Update
- Tax Implications of the 2024 Presidential Election
- Eight Tips for Saving Taxes in 2024

## Corporate Transparency Act Update

As this Newsletter is going to press, an important nationwide decision was recently issued on December 3, 2024, by the United States District Court for the Eastern District of Texas. The Court held that the Corporate Transparency Act's required reporting of beneficial ownership was likely to be found unconstitutional, and the Court issued a *nationwide* preliminary injunction enjoining FinCEN, the U.S. Treasury agency, from requiring corporations, limited liability companies, and other specified entities from registering and disclosing required information under the Act. The Corporate Transparency Act (the Act) was enacted in 2020 and created a federal obligation to report beneficial ownership information of enumerated entities formed in the United States or doing business in the United States. The Act was intended to bring transparency to entities that were formed or utilized to facilitate fraud, drug trafficking, corruption, tax evasion, organized crime, or other illicit activities. The reporting obligation under the Act became effective beginning in 2024 unless one of the 23 exemptions applied. Publicly traded corporations are generally exempt from the filing requirement, while small businesses, such as "mom & pop" entities, must file under the Act. For purposes of the Act, Reporting Entities are divided into three classes:

- Domestic or Foreign Reporting Entities formed or registered before January 1, 2024, must report on or before January 1, 2025 (one year after the effective date of the Act.).
- Domestic or Foreign Reporting Entities formed or registered in 2024 have 90 days to file their initial report.
- Domestic or Foreign Reporting Entities formed in 2025 or later have 30 days to file their initial reports.

Many persons who are required to report their entity are unaware of their obligation to report. Complicating matters is that civil and criminal penalties can apply for a failure to report, and most CPA and law firms do not want to assist their clients because of the unknown ramifications resulting from assisting their clients.

While at least two courts have held the Act to be unconstitutional, their decisions only applied to the plaintiffs in those cases and thus were inapplicable to other third parties. The December 3 decision by the Texas court invalidating the Act applied its holding nationwide and, as part of its decision, also issued a preliminary injunction against the government's enforcement of the Reporting Requirement. This signifies that the Texas Court's preliminary injunction applies to everyone who is required to file under the Act and has not done so. As expected, the U.S. Department of Justice has appealed the Texas Court's preliminary injunction holding to the Court of Appeals for the Fifth Circuit. In the interim, FinCEN (which is the

Federal Agency charged with administering the reporting requirement) will not require an entity to report, although an entity and its controlling persons may *voluntarily* report.

The appeal in the Texas case needs to be followed closely. If the preliminary injunction is set aside, entities and their beneficial owners will need to file. It is expected if the preliminary injunction is set aside, that FinCEN will then issue new filing deadlines.

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### **Tax Implications of the 2024 Presidential Election**

President Barack Obama once famously said, "Elections have consequences." The election of President Donald Trump and the Republican Congress is no exception. While President Trump does not take office until January 20, 2025, hints of tax legislation, both renewed and new, have been forthcoming. While not certain, the following are likely:

1. An extension of the 2017 Tax Cuts and Jobs Act (TCJA). This signifies that the current Federal exemptions for Estate Tax, Gift Tax, and Generation Skipping Tax (Transfer Taxes) will not be reduced after 2025 as provided in the TCJA. In fact, these exemptions are likely to increase due to the inflation adjustments contained in the TCJA and potential new legislation. In 2025, a taxpayer who has not made any lifetime gifts will have a Gift/Estate Exemption and Generation Skipping Transfer Tax Exemption of \$13.99 million. The TCJA would reduce these exemptions by one-half beginning on January 1, 2026. Thus, a married couple who dies in 2026 and who has never made reportable lifetime gifts can bequeath or gift, or both, nearly \$28 million dollars before incurring any Federal Estate or Generation Skipping Transfer Taxes at the rate of 40%. It is also possible, that new legislation will increase these exemptions from the current amount. This was done in 2010 when Congress raised it from \$5 million to \$10 million.
2. Since the 2017 tax cuts are likely to be extended, in many cases, it is better to die with assets than to give them away during life. At death, the assets generally receive a date of death "stepped up" income tax basis, while a gift during life transfers only the donor's income tax basis. Unless a married couple has a taxable estate of \$28 million or more, Federal taxes are generally not a consideration. State Death taxes, however, are a consideration and should be reviewed, especially if the Taxpayer owns property in more than one state. Now is a good time for you to review your Estate Plan and documents with your professionals. Taxpayers often have old documents that are no longer efficient. This review should be completed at least once a year.
3. President Trump has promised that he will encourage legislation to exempt income tax from tips, overtime, and social security.
4. Tax legislation always has unexpected provisions. It is important to closely follow the developments after President Trump takes office on January 20, 2025. President Trump has promised that tax legislation will be forthcoming very quickly.

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### **Eight Tips for Saving Taxes in 2024**

5. **Loss Harvesting:** Do you have any investments that have unrecognized capital losses, and do you have any capital gains in 2024? If you do, you can offset your capital gains by generating capital losses before the end of 2024. For example, suppose you sold Nvidia in 2024 for a capital gain of \$100,000, and you hold three stocks that have an aggregate loss of \$100,000. By selling the loss stocks before the end of 2024, you can offset the federal tax on the \$100,000 gain. If you want to reestablish your position in the loss stocks after you sell them, generally you must wait 30 days. However, there are creative ways to avoid the 30-day rule.

6. **Gifting:** If you plan to make gifts, make the gifts *before* the end of 2024. If a monetary gift is made to a family member by personal check, make sure that the donee actually cashes the check before the end of 2024. Also, do not make a gift of money to a family member who intends to retransfer the money in whole or part to another family member. The IRS is keenly aware that an intermediary can be used to avoid making a reportable and possibly taxable gift. For example, suppose you and your spouse want to gift \$100,000 to each of your three children for Christmas in 2024. If you and your spouse transfer \$100,000 to each child after applying the annual exclusion, you will be deemed to have gifted \$64,000 per child, or a total of \$192,000, for which a gift tax return, for 706, will be required to be filed, notwithstanding that no gift tax is required to be paid. Some taxpayers have tried to be creative by transferring \$12,500 to each of their three siblings and their respective spouses, who immediately retransfer it to the children of the donors. This is an indirect gift. The IRS will treat the transfer to the siblings as transitory and treat the donors as making \$100,000 gifts to each of their children.
7. **Transfers to Non-Citizen Spouses:** Often, married couples will have a disproportionate amount of property. For estate or gift planning, it may be desired to increase the amount of assets of one spouse to another spouse. If the recipient spouse is a U.S. citizen, there is an unlimited gift tax exclusion. However, if the recipient spouse is a non-U.S. citizen, notwithstanding that the recipient spouse has a green card, there is no unlimited gift exclusion for a spousal gift to a non-U.S. citizen spouse. However, the annual \$18,000 gift tax exclusion for gifts made in 2024 is increased to \$185,000 for 2024 for gifts to non-citizen spouses. If this helps with your tax planning, the gift (preferably money) should be completed before the end of 2024. Again, the IRS is very active in challenging year-end gifts as incomplete and not made until the next year.
8. **Charitable Contributions:** If you are making a charitable contribution of any kind, make sure you receive a contemporaneous receipt from the donee regarding the amount of the gift and whether you received any consideration for the contribution. Furthermore, gifts of property will generally require a “Qualified Appraisal” by a “Qualified Appraiser.” If you plan to make a charitable contribution of property, it is essential you consult with your tax advisor *before* you make the contribution and be thoroughly appraised as to the documentation required. Gifts of Bitcoin and other virtual currency require special attention. If you're unsure who you want to make a charitable contribution to but want to make a charitable contribution, consider the use of a Donor Advise Fund.
9. **Sec. 401(k) and IRA Planning:** If you have not maximized your contribution to a Sec. 401(k) or IRA, do it before the end of the year. If you have not taken all of your required minimum distribution for 2024, you should do so immediately so as to avoid the imposition of a 25% penalty.
10. **Pay Expenses in 2024 Instead of 2025:** If you receive a deduction in the year you pay an expense, and if paying an expense would be more helpful in 2024, pay the expense in 2024. However, confirm with your tax advisor that the payment in 2024 will be allowed as a deduction in 2024.
11. **Accelerate Income in 2024:** While accelerating income into 2024 may appear counterproductive, if you are likely to be in a lower tax bracket in 2024 instead of 2025, accelerating income into 2024 that you would normally receive in 2025 may be a good strategy. Conferring with your tax advisor is a must before you implement this strategy. It is advisable to have your tax preparer do a pro-forma return for 2024 with the income and without the income to see which year, 2024 or 2025, is a better choice.
12. **Section 529 Planning:** Section 529 can be an effective way to save for someone's college education. Whether it is your student or someone else's student, if you have the desire and the where-with-all to make or maximize an allowable contribution for the year, you should do it. However, gifts to Section 529 plans are aggregated with other gifts to the same person and can require filing a gift tax return.

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