THOUGHT LEADER FORUM

Wealth Management: Insights on Estate Tax Changes and Estate Planning

Highland Private Wealth Management, Peterson Russell Kelly Livengood (PRK Livengood), and Sweeney Conrad, P.S., in partnership with the Puget Sound Business Journal, sponsored a recent roundtable discussion about Wealth Management. PSBJ President and Publisher Don Baker moderated the conversation with Melanie Abigania, Principal, Sweeney Conrad, P.S.; Wendy Allard, Partner, Peterson Russell Kelly Livengood (PRK Livengood); and Ben Johnson, CPWA, CFP, Principal, Highland Private Wealth Management. Read on as the panelists weigh in.

DON: What are the estate tax changes coming in 2026?

MELANIE: Unless Congress acts by January 1, 2026, the estate gift and generation-skipping transfer tax exemption amounts will be cut in half and adjusted for inflation.

DON: What are the estate exemptions (federal) today, and what are they scheduled to be in 2026? Also, what is the WA state estate exemption?

BEN: The federal exemption is currently $13.61 million per person. Something to be aware of when using the exemption, it starts from the bottom up and includes any prior taxable gifts. So, if you give $6.8 million, you've only used the bottom half of your exemption and won't have touched the top, or bonus part of the exemption that is scheduled to go away. To use any of the bonus exemption, you must give more than $6.8 million, adjusted for inflation. The Washington state exemption is just under $2.2 million, and to my knowledge no changes coming to that.

DON: Who owes estate taxes?

BEN: The estate pays estate taxes before the funds are distributed to the beneficiaries. The personal representative of the estate typically writes the check.

DON: Wendy, can you speak to the "claw back" and "deceased spouse unused exemption"?

WENDY: Historically, we had a $5 million federal estate tax exemption. In 2017 it increased to $10 million under the Tax Cuts and Jobs Act, and the base exemption is adjusted for inflation, which is how we arrive at the $13.61 million federal exemption that we see today. As we just discussed, the base $10 million exemption is set to sunset and revert to $5 million at the end of 2025. The concern was what happens if you use up your exemption during the large exemption window but die after 2025 when the exemption reverts to a lower amount? The IRS issued regulations to address this. In that scenario, the taxpayer would be able to use whichever is higher: the gift tax credit from the prior gift or the estate tax credit available at death. In other words, you are not penalized for using a larger exemption that has expired.

DON: What has the current administration proposed in terms of changing the estate laws and how soon could this happen?

BEN: The current administration has proposed many changes to help cut the deficit, pay for new social programs, and strengthen Social Security and Medicare. The proposal would significantly alter or eliminate many wealth transfer strategies used today. Some of these include limiting discounts, tightening rules around grantor trusts and GRATs, shortening the duration of the GST exemption, and maxing annual exclusion gifts to $50K per donor. For those that have more than $100 million, they are proposing a minimum income tax that could result in taxing unrealized gains.

Another change they've proposed is having a capital gain realization event on gift or death, with an exclusion of $5 million of the gain. That's a change from today, where there's a cost basis step-up at death and no capital gain tax when making a gift. Biden has also proposed increasing the capital gains tax materially for taxpayers who make over $1 million per year, so transferring a highly appreciated asset could be costly in the future.

DON: And how soon could that take effect?

BEN: The effective date could be any time after the election, which is why it is important to consider planning sooner rather than later.

MELANIE: The current administration has also proposed lowering the current lifetime estate and gift tax exemption amount to around $3.5 million per individual and increasing the estate tax rate from 40% to 45% on amounts exceeding the exemption.

WENDY: Another thing to note is the proposed change regarding annual exclusion gifts. Each person can currently give $18,000 per person per year without the gift being reportable for federal gift tax purposes. But to qualify for the annual exclusion, the gift must be a present interest, which disqualifies most gifts made in trust. One of the current administration's proposals is to eliminate this present interest requirement, but also to lower the annual gift tax exclusion to a flat $50,000 per year for all gifts rather than a set amount per recipient. This change would significantly reduce the ability to make annual gifts outside of the gift tax reporting requirements.

DON: Who should consider planning before year-end? Who would you recommend act with the most urgency and consider planning before 2024 year-end?

WENDY: We don't know if any of this legislation is going to pass. A few years ago, we saw a proposed elimination of grantor trusts, which would have negatively affected many taxpayers. There was a lot of panicked planning done in response to that proposal. I would say that the first consideration in determining whether you need to do something immediately is whether that plan makes sense for your situation and is something that you are comfortable doing, regardless of the election results. If the planning is not something that you would be comfortable doing absent the proposed tax changes, then that planning is likely not something that is a good choice for you.

The bigger horizon is going to be at the

Continued on next page

end of 2025, as it is more probable that Congress will do nothing to prevent the sunset of the exemption from occurring. In fact, President Biden recently announced that he intends to let much of the Tax Cuts and Jobs Act, which includes the higher federal estate tax exemption, expire if he is re-elected.

DON: Melanie, what type of planning should people be considering this year as they are looking at the potential changes in 2025 for 2026?

MELANIE: Individuals with net estates of more than $6 million ($12 million for married couple) should consider planning to avoid the 40% estate federal tax on amounts in excess of the 2026 estate tax exemption. Consider transfer or gifting of income-producing assets to family members who might be in the lower tax brackets or into a trust. Consider gifting more than the annual gift tax exclusion which is currently $18,000 per person. Consider meeting your estate planning and tax professionals to fully discuss your options and objectives, determine a plan, and implement that plan accordingly.

DON: For people who are below the federal estate tax exemptions, what sort of planning should they be considering?

MELANIE: For those individuals who are below the federal estate tax exemptions, estate planning should still be considered. If you want to choose who will inherit your possessions and valuables, who you want to name as guardian for your child or children in the event of your premature death, or if you want to reduce taxes, you need to do some estate planning. Our goals in life also change, and so that's another important reason to look over your estate plans.

BEN: Washington state estate taxes would apply if your estate were over $2.2 million. So, it's important to review your exposure and ensure your estate documents provide flexibility for the surviving spouse. Also, Washington does not tax gifts, so gifting lowers exposure.

WENDY: Adding to what Ben said, there are specific strategies people can use to reduce their Washington estate tax exposure. One of the key differences between the Washington and federal exemptions is the ability to port a spouse's unused exemption.

The deceased spousal unused exemption, or DSUE, is the amount of the federal estate tax exemption that a deceased spouse has left at death after applying such exemption to his or her lifetime gifts and to the assets passing in his or her estate. Federal law currently allows a deceased spouse's estate to port the DSUE to the surviving spouse to use either during the spouse's lifetime or at his or her death. To do this, the decedent's estate must file a federal estate tax return and affirmatively elect to port the DSUE to the surviving spouse.

Washington does not similarly allow the porting of the unused Washington exemption, so our planning techniques are a little bit different when planning for the Washington estate tax.

DON: How might family businesses be affected by the Biden administration's plan?

BEN: Great question. One of the issues family businesses face is how illiquid their assets are, which makes them vulnerable if there's a large tax bill due to death. Since many estate strategies business owners have historically utilized would either be eliminated or curtailed, it makes sense to consider gifting a portion of the business using strategies available today. It's also important to plan so there is less risk of having to sell the business due to the tax burden. The estate of a family business owner may be able to defer payment of estate taxes for many years if it meets certain requirements, and there is a provision in Biden's plan to defer the proposed gains tax until the business is sold or no longer run by the family. In both cases, there would be interest payments on the taxes deferred, and it could limit the business's access to capital.

DON: Essentially, some family businesses could be forced to sell and have the

MEET THE THOUGHT LEADERS:

MELANIE ABIGANIA, CPA
Principal
Sweeney Conrad, P.S.

Melanie specializes in tax compliance, consulting, and planning for high-net-worth individuals, trusts, and estates. She is a dedicated partner, assisting clients on small business issues, income tax planning, and estate and gift tax planning. Melanie's approach is built on a foundation of trust- helping clients navigate this often delicate and complicated work. She looks beyond the numbers to the people and is a resource, putting clients at ease during difficult periods. Melanie is a member of the American Institute of Certified Public Accountants and the Washington Society of Public Accountants.

WENDY ALLARD
Partner
Peterson Russell Kelly Livengood
(PRK Livengood)

Wendy's practice focuses on estate planning, probate, and business transactions. Her accessible and warm-hearted approach puts clients at ease, making the legal process less daunting and intimidating. Wendy has extensive experience managing various estates, from the less complicated to the highly sophisticated. Wendy uses her tax background to leverage clients' business strategies with focused estate planning to minimize their federal and state taxes while facilitating their personal and family goals. She has an LL.M. in Taxation in addition to her law degree and is a member of the East King County Estate Planning Council.

BEN JOHNSON, CPWA®, CFP®
Principal
Highland Private Wealth Management

Ben has been advising executives, business owners, and multi-generational families for over two decades. He helps clients navigate the associated financial and emotional complexities that come with wealth so they can make great decisions about their money and achieve a better return on life. Ben holds the Certified Private Wealth Advisor® and Certified Financial Planner® designations and has a B.A. in Finance and Economics. He's a member of the Seattle Estate Planning Council and the East King County Estate Planning Council.

MODERATOR: DON BAKER | *President & Publisher,* Puget Sound Business Journal

business go out of the family's hands - out of their control, because of the tax.

BEN: Yes. However, planning can make a huge difference. I would add that life insurance is a way to provide liquidity to pay the taxes. That may be more important to consider in anticipation of the decrease in exemptions or the changes Biden is proposing.

DON: Wendy, when making gifts, people often choose to make gifts in a trust. Can you explain what trusts are and why they can be beneficial versus just making an outright gift?

WENDY: A trust is a vehicle used to hold and manage an asset. In creating a trust, there are three different roles to keep in mind. There is a grantor, or the person who makes the gift. There is a trustee who manages the gift and follows the trust's terms. And there is a beneficiary who is receiving some sort of benefit either in the present or in the future. Using a trust allows the grantor to lay the guardrails and implement different instructions that either trigger the release of the asset to the beneficiary, or meter out benefits over time. You can account for many future contingencies, such as divorce or bankruptcy, and prevent creditors from attaching claims to a gift in trust that has not yet been distributed out to a beneficiary. Additionally, you can plan around specific circumstances, like a beneficiary who is a minor or someone who has special needs. Trusts allow a lot of flexibility to bend to the beneficiary's needs over the longevity of the gift.

DON: Any other thoughts on trust difference to share?

MELANIE: While an outright gift is a simple way to transfer assets, setting up an irrevocable trust may be a better way to preserve assets for the future and provide a longer legacy. A gift in trust may allow you to maximize the amount transferred by taking advantage of the gift, estate, and generation-skipping tax exemptions.

DON: What is the generation-skipping tax?

MELANIE: The generation-skipping tax is a federal tax on transfers of assets to individuals (or to a trust for their benefit) that are more than one generation below the transferor or grantor. This would include gifts or transfers from a grandparent to a grandchild. This tax is equal to the federal gift and estate tax rate, which is 40% in 2024 and is in addition to any other federal gift or estate tax that may be owed. The exclusion for gifts or transfers to the skip-generation is similar.

> "While an outright gift is a simple way to transfer assets, setting up an irrevocable trust may be a better way to preserve assets for the future and provide a longer legacy."
>
> **MELANIE ABIGANIA**
> Sweeney Conrad, P.S.

BEN: When you place assets in a generation-skipping trust, it stays out of your children's estates. And, while tax considerations are important, it's a vehicle that can serve as a family resource for generations, customized to your values with guardrails to help future generations thrive.

DON: Family real estate can be a good asset to give. What are some ways clients can efficiently give real estate?

BEN: One option is through a qualified personal residence trust (QPRT), where the grantor receives a discount on the value of the gift and continues to use the property. This is best for an asset you plan to keep in the family, like a vacation home that serves as a family gathering place. Once the initial term is up, the grantor must pay rent to the trust or person to whom the property transfers. Other ways to gift real estate include forming an LLC and gifting units of the LLC to children or to a trust for them. You can also directly gift real estate to a trust or to a person without forming an LLC.

DON: And if you pay rent, does the rent payment go into the trust and stay there - going to the children?

BEN: The rent would be used to pay some of the expenses of the property, i.e., insurance, property tax, things like that - but anything that's left over would be available for the beneficiaries. It could stay in trust, or it could be passed to the beneficiaries for them to use for their own purposes.

WENDY: A qualified personal residence trust (QPRT) is an IRS-blessed technique that freezes the value of the residence at the time the gift is made. For example, if we think the real estate market is going to continue to appreciate, we can calculate what the residence's present value is and apportion that value between the trust's term and the remainder interest. The grantor remains in and uses the home over the term of the trust. The future appreciation in that home or vacation home is then pushed out to the remainder beneficiaries. To the extent that the grantor plays the odds and does not die during the trust term, the grantor has effectively gifted that asset out of his or her estate. The bet is that the grantor is going to outlive the term of the trust, but if that does not occur, the home continues to be held in the grantor's estate, just as it was before the implementation of a QPRT. In other words, it is a fairly low-risk strategy with some significant tax-saving potential.

BEN: And it's a more effective strategy now that interest rates are higher. Higher interest rates provide a more significant discount, so a smaller gift value is used. Keep in mind that QPRTs are best for people facing federal estate tax as you lose the step-up in cost basis at death when you make the gift.

DON: What should parents consider before making substantial gifts to their children?

MELANIE: The first and foremost consideration is to examine any monetary gift in the context of your entire estate. Whatever amount you're considering giving or what its intended use, develop a gifting plan before making any decisions: how much, when, and why.

BEN: I would echo Melanie's comments. Many of my clients, especially those with children in their 20's or younger, wrestle

Continued on next page

Estate Planning: A Team Approach —Your Wealth Advisor

Highland Private Wealth Management proactively oversees and coordinates all the pieces of your financial picture, including estate planning. We bring context to how estate planning strategies can fit into your unique financial plan and legacy. We go beyond your net worth to evaluate what means the most to you, helping you maximize the impact of your wealth and legacy, so that you experience a **life fully lived**.

HIGHLAND

HIGHLAND PRIVATE WEALTH MANAGEMENT
(425) 739-6500 | 10900 NE 8th Street, Suite 1122 | Bellevue, WA 98004
(509) 925-6080 | 301 Umptanum Rd, Suite 5 | Ellensburg, WA 98926
www.highlandprivate.com

"I would advise people not to push planning off. I have so many clients that say, 'I'm just going to see how the election goes and then figure out what I'm going to do.' At that point, we are going to be deluged with inquiries, and we are not going to be able to help everyone who needs help."

WENDY ALLARD
Peterson Russell Kelly Livengood

with the question of "how is this going to impact their development?" When a child learns they have a significant trust fund, it could change the way they live their lives, for better or worse. It's important to look at each child and how it may impact them. Are they mature enough? Are they equipped for the money? Do we have more work to do before making the gift? It may be best not to give until you have more clarity, even if that means losing tax benefits. At the same time, I've seen many families transfer significant amounts of wealth, even outright, and the children have done just fine with it, going on to live very productive and fulfilling lives.

WENDY: Additionally, it is important to consider whether you can afford to make this gift. People may get excited about maximizing the estate tax exemption before 2025 ends, but that excitement should not eclipse common sense and whether the use of the current exemption amount is prudent. Overgifting could put you in a compromised position in the future. Bringing advisors into the discussion can help hone the level of gifting that is right for you.

DON: The exemption is a lifetime exemption, right?

ALL: Yes.

BEN: It's also a good idea to consider how much is enough for the children or grandchildren – and what may be too much. If they will have more than what you consider enough after taxes, the potential tax changes may not be that relevant. In that case, you might settle on an amount and leave the rest to charity or pay the taxes. I have clients who think of it that way and others who want to transfer as much as possible because they don't know how large their family will eventually be or what needs may come up.

DON: What should you consider if you are interested in leaving a portion of your estate to charity?

WENDY: I recommend looking at all of your assets to ensure that you are gifting to charity in the most tax-efficient manner. If you have traditional IRAs (not Roths), those are great assets to leave to charity because the charities don't bear the income tax on their liquidation. I have also had clients want to "zero out" their estate, meaning they wish to use their federal estate tax exemption and structure the remainder of their estate so that they pay little to no estate tax. For those clients who want to use up their federal exemption for their individual beneficiaries and leave everything else to charity, their planning makes use of a math formula that can be incorporated into their documents. Clients can also take advantage of charitable gifting using trusts. For example, if someone wishes to benefit his or her children for a specific term or for their lifetimes, with the remainder passing to charity, a charitable remainder trust may be a good option.

BEN: I would add that a donor-advised fund is an excellent place for people to consider leaving assets to and listing their children as successor managers. Ideally, involve the children in the DAF during your lifetime, as it is a great way to do philanthropy together as a family. Another consideration when planning for the Washington estate tax is to keep in mind that the funds go to the Education Legacy Trust Fund. This isn't a charity per se, but it supports early learning and childcare programs, expanding access to higher education, and other educational improvement efforts.

MELANIE: A charitable bequest can be a statement in either your will or trust that details which assets (and how much of them) you would like to leave to a particular charity. You can also set up a private foundation, a charitable organization primarily funded by you, your family, or a small group of donors. It differs from a public charity because it isn't funded by contributions from the public. While it offers you as a donor greater control, it's a significantly more complex strategy to implement than a donor-advised fund, for example.

DON: Wild card question: What if someone wanted to leave a significant amount or all of their estate to a pet?

WENDY: I have had that! Washington allows for the creation of a trust for one's pet. It is important to make sure that the caretaker of the pet and the trustee of the trust, if different persons, have good interaction with each other to ensure that the pet is properly cared for. It is also important to discuss what happens when the pet is gone and how the assets are distributed after the pet's death.

MELANIE: Pets, for many households, are a part of the family. For some, pets are their children. With a trust, it's the same when you're leaving money to your children; the trustee you want would be someone you know would be looking out for what you would want for your children. It's the same with pets. As Wendy said, we want to ensure there's an interaction; they know and care for your pet and would do the things that you want as if this were their own pet or children.

WENDY: There is definitely some uniqueness to a pet trust. When dealing with a human beneficiary, they have rights and the ability to self-advocate. If a human beneficiary is being neglected or if a trustee isn't properly making distributions to or for them, they can go to court. Because the pet cannot similarly speak for itself, you can name a person to enforce the intention of the trust, which could be the pet's caretaker or a different person. If the trustee is also the pet's caretaker, you may wish to name another person for advocacy purposes. Because of the complexities of using a trust, many clients instead make a monetary gift to the pet's caretaker and rely on the caretaker to use the funds for the pet's benefit.

Estate Planning: A Team Approach —Your Attorney

At PRK Livengood, we know that each person's estate, family goals, relationships, and distribution wishes are unique. Our client-centered approach is based on a thorough and strategic understanding of the law, taxation, and your own business and personal goals. As a part of your estate planning team, we guide you in how best to provide for your loved ones and charitable interests so that you can live your life with confidence and peace of mind, knowing that your loved ones will be thoughtfully provided for.

PETERSON RUSSELL KELLY LIVENGOOD
10900 N.E. 4th Street, Suite 1850, Bellevue, WA 98004
(425) 462-4700 | www.prklaw.com

DON: How should I consider the cost basis set-up that I can receive at death vs. gifting appreciated securities and saving estate tax but losing the step-up?

BEN: It's basically a math exercise comparing the potential estate tax savings of giving vs. losing the cost basis step-up at death. Keep in mind that the potential capital gain tax is only on the appreciation over the cost, whereas the estate tax is on the total amount over the estate exemptions. In doing the analysis, you look at who would be paying the capital gain if the asset was gifted, when the gain might be realized, how large it could be, their tax bracket, and potential future tax laws.

DON: How should someone think about this if Biden's plan to tax gain on death comes to fruition?

BEN: If you are potentially impacted by Biden's plan and have (or expect to have) unrealized gains over the capital gain exemption, you might consider giving appreciated assets prior to the election if it makes sense for non-tax reasons as well. The decision will depend on your wealth level, gift capacity, tax brackets, estate tax considerations, implications if there is no change to the law, and so forth.

WENDY: If our current step-up-in-basis structure is replaced with a deemed capital realization event on death, there may be some difficulties for the estates that contain a significant portion of illiquid assets. For those estates, a deemed realization of capital gain is just that—it is merely deemed. A sale that generates proceeds does not actually occur, so no actual funds are generated with which to pay the tax. Without the actual income realized to pay that capital gains tax, it could put many estates in a financially difficult position. Under current laws, there is the ability to make installment payments of the estate tax if the estate has at least 35% of closely held business interests. I don't know if anything similar is proposed with a potential capital gains tax. But I can see how a deemed capital gains event could leave many people in the difficult position of having a tax liability without the funds to make payment.

DON: Any other thoughts from anyone?

BEN: All this involves looking at different scenarios and making decisions based on individual circumstances. While future laws are unknown, we have an idea of how they could change, so we can plan with that in mind.

WENDY: Something to keep in mind is that you cannot take advantage of a capital loss if a capital gains structure replaces the basis step-up on death —any loss on a deemed sale is just gone.

DON: When should people seriously start thinking about making changes?

WENDY: Yesterday. Based on what we have seen with the proposed changes by this administration in 2021, I saw a lot of panicked clients starting in September, and we were beyond our capacity to help everyone through the end of the year. It was not just attorneys who were overwhelmed, but accountants, financial advisors, and certified appraisers charged with determining the value of gifted assets. I would say that the next year-and-a-half is going to be similar, but much, much more intense, and the industry is going to get flooded early. I would advise people not to push planning off. I have so many clients that say, "I'm just going to see how the election goes and then figure out what I'm going to do." At that point, we are going to be deluged with inquiries, and we are not going to be able to help everyone who needs help.

MELANIE: There may be some laws that take effect January 1, 2025. We don't have a crystal ball, but some say it's probably not going to happen. We'll just let everything sunset in 2026, but depending on the election, there may be some things that will take effect sooner rather than the end of 2026. As Wendy said, people should start thinking about it sooner- which is right now.

BEN: Keep in mind that if you were to set up one of these trusts that we've talked about, it can take three months or longer lead time, because you must decide what you want your trust to accomplish, have documents drafted, select trustees, establish the accounts, and so on. Some strategies can take more than a year to implement.

DON: What would you encourage readers to do next?

MELANIE: Rather than wait until the law sunsets, have a conversation with your attorney or tax and financial professionals and, if necessary, act now.

BEN: It's a great opportunity to identify what your family's needs are today while being prospective about what they may be in the future. It's also a time to step back and explore questions such as what the money is for, the impact you want to make on the community, and how you want to invest in your family.

WENDY: The proposed federal changes and the exemption sunset are not going to affect everyone. What the proposals have done, however, is make estate planning an issue that people are talking about. I see the national attention on this as a check engine light— a way to look at the broader picture and internally look at your own situation and ask, do I have my own affairs in order? Do I have my kids adequately provided for? Do I have beneficiaries named on all my retirement plans and life insurance policies? Do I have enough life insurance? Even if the federal estate tax will not affect you and your loved ones, all of those other things will.

> "It's a great opportunity to identify what your family needs are today while being prospective about what they may be in the future. It's also a time to step back and explore questions such as what the money is for, the impact you want to make on the community, and how you want to invest in your family."
>
> **BEN JOHNSON**
> Highland Private Wealth Management

Estate Planning: A Team Approach —Your CPA

Sweeney Conrad was built on a foundation of **people first**. This means that as a part of your estate planning team, Sweeney Conrad's professionals go beyond your numbers, crafting tailored strategies to meet your specific needs and objectives. Trust in our expertise to navigate complex tax considerations, securing a prosperous legacy for you and your loved ones.

SWEENEY CONRAD, PS
(425) 629-1990 | 10210 NE Points Dr. Suite 300, Kirkland, WA 98033
www.sweeneyconrad.com