

Clary Redd Discusses Estate and Gift Taxes Clawback from Trusts in *Financial Planning*

In the News

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Partner [Clary Redd](#) discussed the [Treasury Department's potential plan to allow the IRS to "clawback" certain types of gifts completed under higher estate and gift tax exemption levels in a recent *Financial Planning* article](#). The development, which remains unfamiliar to many advisors and estate planners, poses a threat to wealthy individuals who use trusts to move assets out of their estate to avoid estate tax.

According to the article, lifetime estate and gift tax exemptions reached a historic high in 2018 when they nearly doubled due to the 2017 Republican tax-code overhaul. These limits could revert back to prior levels before 2026, when the reversion is scheduled under current law, based on the current draft tax bill from the House Ways and Means Committee. This House provision could work together with Treasury's recently issued Priority Guidance Plan to mandate clawbacks of certain types of gifts.

"Treasury is targeting lifetime gifts that would, ostensibly, use the donor's gift tax basic exclusion amount (lifetime exclusion) while at the same time being designed so that the donor retains a beneficial interest in the gifted property," Redd stated.

Redd defined "a classic example" of this strategy to be gift to a grantor retained income trust, or GRIT. A GRIT is an irrevocable trust in which the grantor retains an income stream (as contrasted with an annuity) for a term of years.

"GRITs are attractive to wealthy individuals who want to use up their lifetime exclusion before it's sliced in half come 2026 but are also nervous about whether they can afford to lose entirely the economic benefit of the gifted assets," Redd explained.

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The article states that Treasury Secretary Janet Yellen has called for wealthy Americans to “pay their fair share of tax”. Redd noted that Treasury is “hostile to a concept that would enable a taxpayer to ‘have his cake and eat it, too’” or to put assets into a trust that utilize a taxpayer’s lifetime exemption but aren’t a “real” gift.

Redd analyzed other key estate planning developments in his annual “[Year in Review](#)” [article in the January 2021 issue of *Trusts & Estates* magazine](#) and is a frequent columnist for *Trusts & Estates*.

Redd concentrates his practice in estate planning, estate and trust administration and estate and trust-related litigation. He has a preeminent, national reputation for developing and implementing unique solutions to complex problems, resolving intra-family disputes efficiently and sensitively and providing practical advice for current and future generations.

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