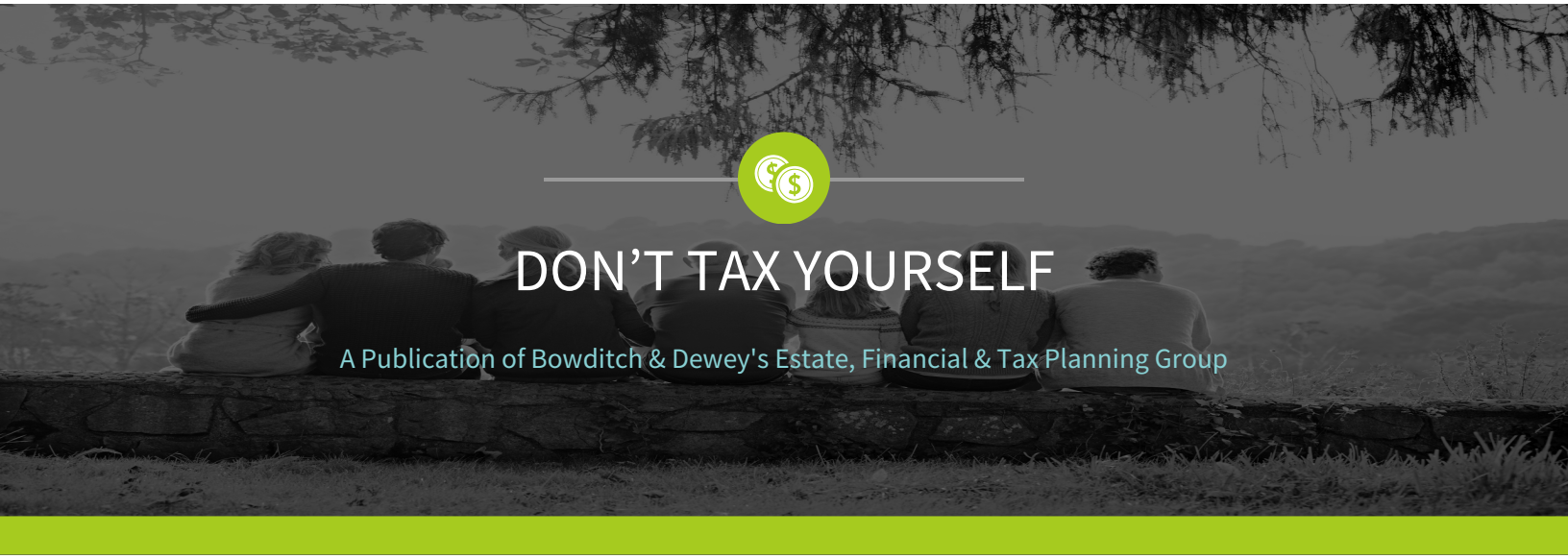

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Gift and Estate Tax Considerations for Crypto Assets

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With the popularity of crypto assets on the rise, there are bound to be gift and estate tax questions when a person transfers crypto assets during life or at death. The IRS treats crypto assets as property for federal tax purposes, stating that "[g]eneral principles applicable to property transactions apply to transactions using virtual currency" (Notice 2014-21). Therefore, the same gift and estate tax rules that apply to property transfers of real estate and stocks apply to crypto assets.

In 2022, at the federal level, a person can pass $12.06 million ($24.12 million for a married couple with portability) to his or her beneficiaries, without incurring a gift or estate tax. This elevated exemption amount is due to expire at the end of 2025 and revert back to $5 million per person ($10 million for a married couple), adjusted for inflation, on January 1, 2026. In Massachusetts, a person can pass $1 million to his or her beneficiaries without incurring estate tax (there is no portability of the estate tax "exemption" for married couples in the Commonwealth).

There are planning techniques that can minimize estate taxes. Married couples can set up revocable trusts with credit shelter provisions. Also, gifts made during life grow outside of a person's taxable estate, thereby protecting future appreciation from generating estate tax. For example, a person can gift his or her individual crypto assets to a spousal lifetime access trust (SLAT) for the benefit of his or her spouse and descendants. The value of the crypto assets, upon being gifted to the trust, are frozen for transfer tax purposes. Furthermore, if an independent Trustee is serving and has the sole discretion to make distributions, then the crypto assets held in trust are protected from most creditors of the beneficiaries (and the donor).

The basis of a lifetime gift of a crypto asset is the same as lifetime gifts of other property. Generally speaking, it is usually the donor's adjusted basis in the asset with some nuances.

The Internal Revenue Code provides a step-up in basis on certain assets at death, changing the basis of an inherited asset to the fair market value as of the date of the donor's death. This step-up has the benefit of potentially eliminating capital gains on crypto assets if the date of death value exceeds the donor's adjusted basis. The one notable exception

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is crypto assets held in a traditional IRA, which do not receive a step-up in basis on the participant's death.

If you have gift or estate tax questions regarding crypto assets, please contact your Bowditch attorney.

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