

Estate Tax Rate Increases and Exemption Amount Made Permanent

The fall from the “fiscal cliff” has been averted with important changes for estate planning. The American Taxpayer Relief Act of 2012, which Congress passed January 1 and President Obama signed on January 2, makes the major provisions of the Federal estate, gift, and generation skipping transfer taxes permanent and provides a welcome contrast to the uncertainty over exemption amounts and rates that the last ten years provided.

The estate, gift, and generation-skipping tax exemptions have been made permanent at \$5,000,000 (adjusted for inflation, \$5,250,000 for 2013). The maximum estate, gift, and generation-skipping tax rate for amounts over the exemption increased to 40% from 35%.

“Portability” has also been preserved. This means that if the estate of the first spouse to die does not exhaust that spouse’s estate tax exemption by funding a “Bypass Trust” for the surviving spouse or bequeathing assets to children or others, then the amount of the unused exemption will be added to the surviving spouse’s own exemption for a total of up to \$10,000,000 (plus inflation adjustments). It is necessary to file an estate tax return to be eligible for portability, even if an estate is below the filing threshold.

Gift giving remains a prudent option to save estate taxes. New York taxes estates in excess of \$1,000,000 at rates of 5% to 16%, New Jersey taxes estates in excess of \$675,000 at rates of 11% to 16%, and Connecticut taxes estates in excess of \$2,000,000 at rates of 5% to 16%. And “portability” does not apply to state estate tax exemptions. Creating a “Bypass Trust” as part of your estate plan in the amount of your state’s estate tax exemption reduces the state estate tax paid on your surviving spouse’s estate. A Bypass Trust is typically set up to benefit the surviving spouse (and/or children). Upon the death of the surviving spouse, the trust assets pass to the other beneficiaries free of estate taxes.

Keep in mind also that New York and New Jersey have no gift tax, making gift giving even more attractive. (Connecticut does tax gifts in excess of a \$2,000,000 lifetime gift tax exemption.) Gifting is advantageous because appreciation on gifted assets grows in the hands of your beneficiaries and is not taxed in your estate, resulting in further estate taxes saved.

Certain lifetime gifts (“the annual gift exclusion amount”) don’t count towards the \$5,000,000 lifetime gift tax exclusion. The annual exclusion amount has increased to \$14,000 for 2013. Married couples can double the annual exclusion amount to \$28,000. This is the amount you can give to each of as many individuals as you choose without using your \$5,000,000 lifetime gift tax exemption. Only gifts that exceed the annual gift exclusion amount are counted towards the lifetime gift exemption.

It had been feared that two popular estate planning techniques could come to an end. Grantor-retained annuity trusts (“GRATS”) allow appreciation on assets to pass to beneficiaries free of gift tax. Another estate planning device, the limited liability company (“LLC”), enables the value of gifted shares in a family business to be discounted because these shares are not as readily saleable as stock in a public company. Both of these techniques were not changed by the new tax law and remain gift-giving options to consider.

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Finally, important as we live longer and longer, creating a trust for your surviving spouse allows your agreed upon estate plan to be honored, with assets passing when you are both gone to your jointly chosen beneficiaries (and not, in the event of a survivor's remarriage, a new spouse or that spouse's family).

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Please contact [Doris Martin](#) or your usual GW attorney if you have any questions concerning these changes in law, or estate planning questions in general.

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