

Trusts & Estates

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Federal Legislation Avoids “Fiscal Cliff” for Gift and Estate Tax

After much speculation over what changes Congress would make to the estate and gift tax laws, the American Taxpayer Relief Act of 2012 (“ATRA”) delivered clarity in the transfer tax arena. Specifically, ATRA answered previously unanswered questions regarding exemption amounts, top marginal rates, and the permanency of portability. The following summary highlights these and other important transfer tax changes and the implications for our clients’ estate planning.

Federal Estate and Gift Tax Exemptions

Leading up to the fiscal cliff, the biggest question in the estate and gift tax realm was how much estate and gift tax exemption would be available to individuals in 2013. The answer: \$5,250,000. ATRA produced this result by eliminating the “sunset” provisions of both 2010 legislation that had originally established a \$5,000,000 estate and gift tax exemption amount for 2011, and a 2001 act that would have reduced the exemption to \$1,000,000 in 2013. The 2010 act had indexed the \$5,000,000 value for inflation, which resulted in the \$5,120,000 exemption for 2012. ATRA made the \$5,000,000 exemption permanent and inflation increased the exemption to \$5,250,000 in 2013. The exemption will continue to grow as it is indexed for inflation going forward. ATRA also made portability--the ability of a surviving spouse to use the unused exemption amount of his or her deceased spouse--permanent.

Federal Gift Tax Annual Exclusion 2013

The Federal Gift Tax annual
exclusion is
\$14,000 for 2013.

Top Marginal Rate

Possibly the most unexpected change in ATRA is the higher--and now permanent--estate, gift, and generation-skipping transfer (GST) tax rate: 40%. ATRA increased the rate from the previous 35% rate. The new rate is lower than some had predicted; and much lower than the 55% rate scheduled to be in effect in 2013 under the old law.



Federal Generation-Skipping Transfer (GST) Tax Exemption

ATRA also made permanent the inflation-indexed \$5,000,000 exemption amount for GST taxes. Thus, like the federal estate and gift tax exemptions, the GST tax exemption for 2013 is \$5,250,000 and will continue to increase. Portability does not apply to the GST tax exemption.

Charitable Gifts From IRAs

ATRA extended the deadline for making charitable gifts from IRAs. Individual taxpayers who are at least age 70 1/2 may make charitable contributions directly from an IRA until the end of 2013 in certain circumstances.

Qualifying contributions made directly from an IRA to the charity are not taxed

as income to the taxpayer. To qualify, certain requirements must be met, including the following:

- The individual IRA owner making the contribution must be at least 70 1/2;
- The charitable contribution is limited to \$100,000 per individual;
- The contribution must be made directly from the IRA to the charity; and



- The recipient charity must be a public charity or private conduit foundation; contributions may not be made to donor-advised funds or supporting organizations.

Connecticut Estate and Gift Tax

In 2011, the Connecticut General Assembly passed legislation that reduced the Connecticut estate tax exemption to \$2 million for Connecticut residents dying after December 31, 2010, and reduced the Connecticut gift tax exemption to \$2 million for gifts made by Connecticut residents. These Connecticut estate and gift tax exemptions remain unchanged. The rates also remain unchanged beginning at 7.2% on estates and gifts just over \$2,000,000, with a maximum 12% rate for taxable estates or taxable gifts in excess of \$10,000,000. There is no portability of the Connecticut estate tax exemption.

Implications of the New Tax Laws on Your Estate Plan

With the permanency of the federal tax laws finally in place, it is appropriate for clients who have estate plans drafted before 2010 to consider reviewing and revising those plans for several reasons. First, as noted above, Connecticut's estate and gift tax exemption amounts are now much lower than the federal levels, and most estate plans



drafted before 2010 do not account for this separation (known as “decoupling”) between the federal and Connecticut estate and gift tax exemptions. Accordingly, these older estate plans may generate a Connecticut estate tax on the death of the first spouse, and revisions may be necessary to reduce or

eliminate this tax. Second, although portability is now a permanent fixture in the federal tax code, portability is not an option for the Connecticut estate tax exemption or the GST tax exemption. We therefore recommend a review of your estate plan to ensure that your estate planning documents take into account these factors. Additionally, with no expected changes to the federal tax laws on the horizon, you can update your estate planning documents with reasonable assurance that Congressional action will not spur you to redo them again in a few years.



Finally, notwithstanding the federal tax law changes, if you have not recently reviewed your estate plan, we recommend a review now to be sure it meets your family's present needs and is flexible enough to adapt to future changes, whether they are legislative or personal.

Your Trusts & Estates attorneys at Shipman & Goodwin are ready to assist you with reviewing and revising your plans.



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