

ACT NOW: SIGNIFICANT GIFT AND ESTATE TAX BENEFITS MAY EXPIRE AT YEAR END

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On December 17, 2010, Congress made significant, but temporary, changes to the federal transfer tax system, creating significant, and also temporary, gift tax and generation-skipping tax planning opportunities for wealthy families.

Under the new law, Congress increased the federal estate tax exemption to *\$5 million* for 2011 and set the federal estate tax rate at 35%. As of January 1, 2012, the exemption, which was indexed for inflation, is now *\$5.12 million*. Of course, it is important to remember that many states – such as Massachusetts, Maine, Vermont, but not New Hampshire – have their own estate tax systems, typically with much lower exemptions. So an individual who lives in such a state or who owns real estate in any such state will continue to be subject to that state's estate tax, usually without any change as a result of the changes made at the federal level.

More importantly, however, is that Congress also increased the *lifetime gift tax exemption from \$1 million to \$5 million* (now *\$5.12 million* with the inflation indexing), and *the gift tax rate presently is 35%*. Similarly, the generation-skipping transfer (GST) tax exemption has been increased to the same levels as the gift and estate tax exemptions, and now stands at *\$5.12 million* as of January 1, 2012. And like the gift and estate taxes, the GST tax rate is 35%.

Individuals who have made taxable gifts to the extent of the prior *\$1 million* gift tax exemption level can now gift substantially more free of federal gift tax – up to *\$4.12 million*, or *\$8.24 million* for a married couple. And with the increase in the GST tax exemption, individuals can make their substantial gifts to irrevocable “dynasty”-type trusts that will benefit many generations, all free of federal transfer taxes. Moreover, any future appreciation on the gifted assets likewise will escape federal transfer taxation.

These December 2010 changes to the federal transfer taxes were made in light of the then-impending expiration of the 2001 tax law known as EGTRRA. With the “sunset” of EGTRRA, the federal gift, estate and transfer tax exemptions would have reverted to their pre-EGTRRA *\$1 million* exemption levels, and the maximum rates would have reverted to a much higher 55%.

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Unfortunately, however, Congress did not come up with a permanent solution. Once again, unless Congress acts, this new law, too, will sunset at the end of 2012, and beginning on January 1, 2013, we will return to the pre-EGTRRA laws with their much lower exemption levels and their much higher tax rates.

As 2012 draws to a close (or early in 2013, through retro-active changes to the law), Congress may once again extend these unprecedented high exemption levels and low tax rates. But it is possible that Congress will do nothing or, that if it does act, it will eliminate the ability to make such substantial tax-free lifetime gifts. About the only thing that is certain is that the future of the federal transfer tax laws is uncertain!

Therefore, we encourage you to act now, before the window of opportunity closes. By “act now,” we mean that you should consider making large tax-free gifts *before the end of the year*. As always, there are numerous options for tailoring these gifts to you and your family’s unique circumstances, including the faint-of-heart who may not be ready to entirely give up access to a substantial amount of assets.

Because gifting at this level likely will require a lot of thought and planning, likely will involve the creation of new trusts for family members, and may require asset valuations, you should contact us now to let us help you determine whether, to what extent, and how you should be taking advantage of these significant tax law changes and the wealth preservation opportunities.

And even if gifting is not something that you are prepared to consider at this time, we encourage you to take this opportunity to review your estate plan, especially if it has been more than four or five years since you established it or reviewed it. Over time, estate planning and tax laws change, both at the federal and state levels, and your personal and financial circumstances also may have changed. Now is as good a time as any to make sure your estate plan reflects your current intentions, including how your assets are to pass at death and who is to act on your behalf if you become unable to do so; that it is up-to-date with the current state of the law; and that you have properly configured your assets to avoid probate and minimize taxes at your death. If you are unsure about any of these matters, please contact us for a review of your estate plan.

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