
PREPARING FOR INCREASED ESTATE TAXES BY TAKING ACTION!

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What will happen to estate taxes in 2013?

I wish I had a definitive answer. What I do know is that uncertainty still exists and planning for your future is essential! It appears more than likely that our existing Estate Tax exemption amount of \$5,120,000 per person will expire at the end of 2012 and the estate tax rate will increase from its present 35%. This bulletin will give you some background on the current law, the Obama Administration's proposals to address estate and gift tax issues during 2013, the likelihood that Congress will not focus on estate and gift tax laws regardless of the outcome of the 2012 elections, and how you can be prepared to implement plans to save your estate from paying increased estate and gift taxes in the future.

How did we get here?

Starting in 2001, our government created laws that continued to increase estate tax exemptions and reduce tax rates. This set of laws impacting estate and gift taxes culminated in President Obama's decision to substantially increase the exemption amount to \$5 million for estate and gift taxes, and substantially decrease the estate tax rate to 35% for amounts exceeding \$5 million, but only for a two year period (2011 and 2012). If Congress and the President fail to address the estate tax issue before the end of the year, in 2013 the exemption level will revert to the 2001 level of \$1 million (estate, gift and Generation Skipping Transfer tax) with a maximum tax rate of up to 60% for estates exceeding the \$1 million level.

In 2001, and again during 2008-2010, everyone wrongly assumed that before estate and gift tax laws would expire, Congress and the President would extend existing laws to avoid an inequitable result for people who simply lived longer than short-term political "compromises" in the tax code. We should be prepared for the worst again.

The Obama Administration's Fiscal Year 2013 Revenue Proposals that were recently published (commonly referred to as the "Greenbook") seek to adversely change the current federal estate and gift tax laws from what we have grown accustomed to during the past two years. These proposals will not become law unless Congress adopts the proposals. Given the gridlock in Congress, my bet is that a consensus will not occur any time soon to adopt the Obama Administration's proposals.

Where does this leave us?

For those of us who want to methodically plan, where does this leave us? Assuming Congress and the President don't reach an agreement (which in my opinion, is a high probability), for deaths in 2013 and beyond, families will face a \$1 million estate and gift tax exemption, with increased estate and gift tax rates of 55% (increasing to 60% for estates in excess of \$10 million). I would strongly advise against families with estates in excess of \$1 million to simply do nothing, or assume that Congress and the President will ultimately fix the inequitable result.

What can you do now?

Although your estate is unique from everyone else's estate, you can still take action to save your estate from likely increased taxes. For individuals with small to medium-sized estates, you should seriously consider partial gifts of real estate to family members, creating business entities to hold title to family businesses, or increasing family members' existing interests in business entities without gift tax consequences. All of these options will allow for discounted values that will reduce the gross estate for many families.

For those families who want to keep vacation homes or small businesses in the family, gifting now (before existing laws expire) can be structured to avoid giving up "control," yet passing on more of your estate to the next generation (or beyond).

For individuals with larger estates, you should take advantage of more sophisticated estate planning options to avoid adverse tax consequences in future years. Irrevocable Trusts (life insurance trusts or certain grantor trusts) can result in significant assets being removed from your estate, while still allowing you to manage the assets during your lifetime.

For those estates that are substantial and complex, most economists recognize the benefits of shifting portions of your estate now to take advantage of lower capital gains rates and growth in the next generation's estates (rather than your own). From attorneys to accountants, most believe that estate, gift, generation skipping, and income tax rates will likely increase in the future.

Conclusion - Be Proactive!

Families should continue to consult with tax and legal professionals to maximize the benefits of estate planning and minimize likely increases in estate taxes. Be proactive in addressing your assets and estate planning goals, and don't mimic Congress' inaction by assuming someone down the road will solve your problem for you. You have six months before existing estate and gift tax laws are set to expire. These six months give you the opportunity to carry out your goals of leaving your estate to someone other than the Government. Contact me with respect to your estate plan to discuss opportunities that may benefit your long-term goals.