

2012 – The Year to Review your Estate Planning Opportunities

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There are some unique opportunities to consider in estate planning, prior to the end of 2012, when current law is set to revert back to 2001 levels, unless Congress acts.

The 2010 Tax Act set the estate, gift and generation-skipping transfer tax exemption amount at \$5 million per person and the top rate of tax at 35% for 2012 (when the exemptions will be indexed for inflation). This allows a married couple to transfer up to \$10 million of wealth without generating a federal gift or estate tax.

Schedules of Exemption and Rates for various years:

Calendar Year	Estate tax exemption	GST tax exemption	Gift Tax exemption	Top estate, GST and gift tax rates
2002	\$1,000,000	\$1,000,000	\$1,000,000	55%
2009	\$3,500,000	\$3,500,000	\$1,000,000	45%
2010	n/a*	n/a*	\$1,000,000	35% (gift tax only)
2011	\$5,000,000	\$5,000,000	\$5,000,000	35%
2012	\$5,120,000	\$5,120,000	\$5,120,000	35%
2013	\$1,000,000	\$1,000,000 **	\$1,000,000	55%

* Estates of decedents who died in 2010 could elect (1) no estate or GST tax but a modified carryover basis regime or (2) 2011 estate and GST exemption amounts with unlimited step-up in basis.

** Indexed for inflation

What are the opportunities?

- **Take advantage of the window to use your increased gift tax exemption.** The gift tax exemption is \$5 million per person for 2012 (when it is indexed for inflation) and is scheduled to revert to \$1 million per person in 2013.

You may want to consider, if appropriate, utilizing a substantial portion (or even all) of your \$5 million gift and GST tax exemption by making a gift to your family members, in order to remove the value of the future appreciation from your estate. Keep in mind that assets that have declined in value but are expected to rebound can be ideal candidates to transfer as a gift because the “cost” of the gift is less and the expected increase in value occurs outside

the estate. Note that those professionals, such as physicians, who are concerned about malpractice and liability exposure may want to transfer assets into a “protective trust” known as a domestic asset protection trust. These trusts must be formed in one of several states allowing them.

Non-married partners may want to take this opportunity to re-title ownership of assets

- **Consider a Lifetime Credit Shelter Trust.** You can name your spouse as a beneficiary of an irrevocable trust created to receive a gift in the amount of your increased \$5 million lifetime exemption which could give you indirect access (through your spouse) to the assets you have given away.
- **Use your gift tax exemption to purchase life insurance.** You can also use part (or all) of your increased lifetime exemption to make gifts to irrevocable life insurance trusts to fund premiums on insurance policies. This potentially provides an opportunity to leverage the gift tax exemption into a larger estate tax-free death benefit. For example, a husband and wife who are each 55 and in excellent health could make a one-time premium payment of \$620,000 to an irrevocable life insurance trust, which is the owner and beneficiary of a second-to-die life insurance policy (a lifetime guaranteed universal life policy), and obtain approximately 5 million death benefit.
- **Make Annual exclusion gifts.** Make annual exclusion gifts by December 31. Each person may make annual, gift tax-free gifts of \$13,000 (\$26,000 for married couple) to any number of individuals.
- **Review estate planning documents.** It is now especially important to review your estate planning documents to ensure that any formulas contained in your documents, which may transfer certain amounts individuals or trusts based on the estate tax exemption or GST tax exemption still make sense for you, given the recent significant increase in those exemptions. Those clients who live in a state such as Minnesota with an independent state death tax should also review formula allocations in their estate planning documents that take into account state death taxes to assess the effect of the federal estate tax exemption, which is now significantly greater than most state death tax exemptions.
- **Fund education through 529 plans.** Consider funding 529 plans by December 31 to apply 2012 annual gift tax exclusion treatment to the contributions. You can “front-load” 529 plans by making five years’ worth of annual exclusion gifts to a 529 plan. In 2012, you could transfer \$65,000 (\$130,000, for a married couple) to a 529 plan without generating gift tax.
- **Opportune estate planning strategies.** Take advantage of historically low interest rates by creating intra-family loans or establishing Grantor Retained Annuity Trusts (GRATs), which are irrevocable trusts designed to transfer the appreciation in an asset to beneficiaries at a nominal gift tax cost. For GRATs created in January 2012, the hurdle rate is at an all-time low of 1.4%, meaning that assets inside the trust need only to grow in excess of 1.4% in order to succeed in transferring wealth estate and gift tax free.

Note that there is proposed legislation in Congress to restrict the ability to use certain short-term GRATs in the future. The proposed change would require: 1) a 10-year minimum term for GRATs; 2) a remainder interest, valued at inception, to be greater than zero – thereby eliminating the use of “zeroed-out” GRATs (i.e., those that do not generate a taxable gift); and 3) annuity payments to be structured so that the payments do not decrease over time.

- **Family limited partnerships.** If appropriate, consider discussing with your attorney or tax advisor whether to establish a family limited partnership or family limited liability company in advance of possible legislation that could curtail the ability to take valuation discounts on transfers of interests in these types of entities of gift or estate tax purposes.

It is unclear what Congress will do to change the current law in view of the economic realities of today; however, the value of these planning techniques will not be reversed by future changes if implemented properly. If assets gifted now increase in value, that appreciation will still be removed from any taxable estate. Therefore, although there is much uncertainty, it still can be worthwhile to plan today.

About SDK

Schechter Dokken Kanter CPAs has a team in place to help you with your estate planning needs. New in 2012, we offer a specially-designed Estate Planning Tool Kit, which allows us to help you create your legacy, by documenting you assets and wishes in a bound, comprehensive format. Contact [Barb Ritzen](#) or [Jill Abrahamson, CPA](#), to begin the process today.

