The Wealth Advisor

The Top Ten Reasons You Need to Do Estate Planning in 2012

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My practice is exclusively devoted to estate planning, trust and probate law, in which I am certified as a specialist by the State Bar of California, Board of Legal Specialization. This newsletter highlights legal issues which could affect you personally and financially.

Does it seem like you are hearing more about estate planning lately? Well, you probably are. The financial press and estate planning professionals (lawyers, CPAs and financial advisors) have all been working hard to get the word out that people need to act before the end of the year to take advantage of an unprecedented, and perhaps even historic, opportunity in estate planning.

It's a simple message, but one with tremendous impact: For the rest of 2012 only, which is quickly coming to a close, every American can transfer up to $5.12 million* free of federal gift, estate, and generation-skipping transfer tax.

* Minus certain gifts made in prior years.

Why This Is So Important

To understand why this is such a big deal, we only have to look at history. From 1942 through 1976, the estate tax exemption was $60,000. Then it began increasing yearly, reaching $600,000 in 1987. It stayed at that level for 10 years. During the later part of the Clinton administration, it was increased over 3 years to $675,000 and again stalled, this time for 2 years. Then, in President George W. Bush's first term a series of increasing exemptions was enacted starting with $1 million in 2002 and ending with $3.5 million in 2009, followed by estate tax repeal for one year (2010) before reverting to $1 million in 2011. Most practitioners expected the Federal government to act to prevent that one year of repeal, but it did not.

Then, on December 17, 2010, Congress and the President reached an unexpected agreement and President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, otherwise known as "TRA 2010." It was a mixed bag. The good news: It provided an optional $5 million estate tax exemption for 2010 and a $5 million exemption for 2011 and 2012 that applied not just to estate taxes but also to lifetime gifts and the generation-skipping transfer tax. (The amount for 2012 was adjusted for inflation, resulting in the current $5.12 million exemption.) The bad news: The deal was only for two years. On January 1, 2013, the estate tax exemption will drop all the way back to $1 million (unless the President, the House of Representatives and the Senate all agree otherwise before then).

Here's a table summarizing the history since 1987:

Year	Federal Estate Tax Exemption	Gift Tax Exemption
1987-1997	$600,000	$600,000
1998	$625,000	$625,000
1999	$650,000	$650,000
2000-2001	$675,000	$675,000
2002-2003	$1 million	$1 million
2004-2005	$1.5 million	$1 million
2006-2008	$2 million	$1 million
2009	$3.5 million	$1 million
2010	N/A (repealed) or $5,000,000	N/A (repealed) or $5,000,000
2011	$5 million	$5 million
2012	$5.12 million	$5.12 million
2013	$1 million*	$1.4 million*
* Current law, effective January 1, 2013		

Are You Missing This Opportunity?

If you haven't taken advantage of this exceptional opportunity, you are not alone. Some people think the impending change doesn't apply to them because their estate is less than $5.12 million. (Wrong.) Others think they can't use the exemption unless they die in 2012. (Also wrong.) Others have thought about it, but just haven't gotten around to doing anything about it, perhaps hoping that Washington, D.C. will do something again like it did in 2010. Whatever the reason, unless you do something before the end of the year, you could come to regret your inaction.

Here, then, is another explanation of why it really *is* important for you to plan this year.

The Top Ten Reasons Why You Need to Plan Your Estate in 2012

1. In 2012, every American has a $5.12 million exemption; a married couple can use both their exemptions and transfer up to $10.24 million out of their estates.

2. You do not have to die in 2012 to use your exemption. You can use it to make gifts now, while you are living, including making a gift in trust to your spouse so it is out of both estates.

3. You don't have to use the full $5.12 million exemption to benefit. Those with $1 million to $5 million in assets can save substantial amounts. Even those with less than $1 million should consider some planning to prevent future tax liability and freeze, for gift and estate tax purposes, the value of those assets.

4. If you had already used all of your exemption before 2012, you now have more that you can use this year. For example, if you previously used a $3.5 million exemption in your planning, you have an additional $1,620,000 you can use this year. Even if you used $5 million in 2011, you have an additional $120,000 you can use this year. (Remember, married couples can double the amount.)

5. You do not have to make the transfers in cash or liquid assets, or completely give away your assets. You can transfer illiquid assets like an interest in your business or your home or other real estate to a trust. If you transfer your home, you can continue to live there and take the tax deductions. If you transfer an interest in your business, you can even do it in such a way that you can keep control of the business. By planning now, future appreciation of these assets will not be subject to estate tax, and current depressed values may result in very favorable valuations.

6. You can leverage your exemption and make it worth much more by using discounts and life insurance. Life insurance proceeds, when structured properly, can be completely free of probate, *and* income, gift and estate taxes, *and* can be protected from beneficiaries' creditors and predators, even divorce proceedings.

7. There are proven estate planning techniques available now (including discounting, family limited partnerships, grantor trusts, and others) that may soon be eliminated as Congress looks for more ways to raise revenues. Coupled with the $5.12 million exemption and historic low interest rates, for the next 2 1/2 months families can transfer *significant* assets *at little or no tax*.

8. The generation-skipping transfer tax (GSTT) exemption is also $5.12 million in 2012. The GSTT tax is *in addition to* the federal estate tax and applies when you make a gift or leave an inheritance to someone who is a generation younger than you are (37.5 years for

non-descendants). In 2012, a married couple can use both their GSTT exemptions to transfer up to $10.24 million tax-free to benefit their grandchildren and future generations.

9. If you wait just until January to plan, the amount you can give to your loved ones (current and future generations) may be substantially lower than if you act now. If the President, the Senate and the House of Representatives do not all agree to change the law, not only will the exemptions be lower in 2013, but the tax rates will also be higher, as shown in the chart below.

Year	Federal Estate Tax Exemption	Top Estate Tax Rate	Federal Gift Tax Exemption	Top Gift Tax Rate	GSTT Exemption	GSTT Tax Rate
2012	$5.12 million	35%	$5.12 million	35%	$5.12 million	35%
2013	$1 million*	55%	$1.4 million*	55%	$1 million*	55%
* Current law, effective January 1, 2013						

10. If you have a substantial estate and use your entire $5.12 million exemption in 2012, unless the President, the Senate and the House of Representatives all agree to change the law, it would be better to give more this year and pay the gift tax at the current 35% rate instead of paying it at 55% in 2013.

Planning Tip: It will also cost you less to pay a gift tax now instead of paying an estate tax after you die, even if the tax rate is the same. For example, a taxable gift of $1.00 makes you liable for $.35 in gift tax for a total of $1.35. But the same $1.35 in your estate taxed at 35% will net just $.88 to your heirs.

How an Experienced Estate Planning Attorney Can Help
Most estate planning attorneys have counseled many families, and they have seen the results of proper and improper planning. An experienced estate planning attorney can guide you through the estate planning process and will be able to bring in other experienced professionals as their various areas of expertise are needed to help put your plan into place.

You should never give away assets you might need, and any kind of gifting program must be done under careful professional guidance and supervision to be sure everything is done correctly. It is also important to take full advantage of other tax-free gifting opportunities before you start using your exemption.

Make Annual Tax-Free Gifts

Federal law currently lets you give up to $13,000 per year to as many people as you wish without incurring a gift tax or generation-skipping transfer tax.* A married couple can give twice this amount, or $26,000 per year per person. (These amounts are currently tied to inflation and may increase to $14,000 and $28,000 for 2013.)

* Not all gifts in trust are entitled to either or both exemptions and estate planning attorneys knows those rules.

Over time, a great deal can be transferred through annual gifts. For example, if you give $13,000 a year to five beneficiaries for five years, you will have removed $325,000 from your estate for estate tax purposes, not including any growth on these assets. The amount removed from your estate is increased significantly with each additional $13,000 beneficiary or by spouses combining their annual exclusions.

When you give more than the annual tax-free amount, the excess will be considered a taxable gift and will be applied to your federal gift and estate tax exemption (currently $5.12 million). Remember, you can make substantially bigger gifts this year with a higher exemption than you can next year if the exemption is lower.

Make Unlimited Gifts to Charity and Pay Beneficiaries' Medical Care and Tuition Expenses

You can also make unlimited tax-free gifts to charity and for medical care and tuition expenses as long as payment is made directly to the charitable organization, medical facility or educational institution. The beneficiary does not have to be related to you.

Use Discounts and Advanced Planning Techniques

Your estate planning attorney can help you implement advanced planning solutions that will best suit your goals and objectives, and make the best use of the various wealth transfer techniques that are currently available.

What We Can Expect in 2013

No one knows what will happen with the law in the future, but it is very likely that the *gift tax* exemption will fall significantly, perhaps to $1 million even if a deal is struck among the President, Senate and House of Representatives. This is true even if the *estate tax* exemption stays the same or falls to a lesser number, like the $3.5 million proposed by the President's budget.

Unless the Bush era tax cuts are extended, *all* taxes (income, capital gain, dividend, estate, gift and generation-skipping transfer taxes) are set to go higher on January 1, 2013. There will also be a new 3.8% surtax on certain investment income and a 0.9% surtax on certain earned income that is part of the Affordable Health Care Act.

Conclusion

The next 2 1/2 months really provide a unique estate planning opportunity to transfer substantial assets--an opportunity that may be gone on January 1, 2013. You owe it to yourself and to your family to meet with us as soon as possible to find out how much *you* can save by implementing estate planning before the end of this year.

TEST YOUR KNOWLEDGE

1. For the rest of 2012, America has a $5.12 million lifetime federal gift and generation-skipping transfer tax exemption. T F

2. Most people have already taken advantage of this opportunity. T F

3. A married couple can use both their exemptions and transfer up to $10.24 million out of their estates if they do it before January 1, 2013. T F

4. You have to die in 2012 to use the $5.12 million exemption. T F

5. You have to use the full $5.12 million exemption to benefit. T F

6. If you used all of your exemption before 2012, you cannot use more this year. T F

7. To use the exemption while you are living, you have to make the transfers in cash or liquid assets. T F

8. By planning now, future appreciation of these assets will not be subject to estate tax, and current depressed values can result in very favorable valuations. T F

9. In 2012, a married couple can use both their GSTT exemptions to transfer up to $10.24 million tax free to benefit their grandchildren and future generations. T F

10. There are proven estate planning techniques available now that may soon be eliminated as Congress looks for more ways to raise revenues. T F

Answers
True: 1, 3, 8, 9, 10
False: 2, 4, 5, 6, 7

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