



Estate Planning Update

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We experienced a flurry of activity at the end of 2012 as clients made decisions about gifting as we approached the fiscal cliff. Now that the crisis is over, we are pleased to provide the following summary of the current law:

1. Current Law The estate tax exemption has increased to \$5 million per person with indexing for future years. This results in an exemption of \$5,120,000 for 2012 gifts made and decedents dying and \$5,250,000 for gifts made or decedents dying in 2013. This means that a married couple may shelter \$10,500,000 from gift tax or estate tax with proper planning. The indexing factor will increase this amount in future years.

2. Gift and Estate Tax Rates The top rate has been raised from 35 percent to 40 percent. The exemption and rate for transfers that are generation-skipping are the same as for gift and estate tax.

3. Portability Married parties may elect an option known as portability to take advantage of remaining estate tax exemption of a deceased spouse. There are advantages and disadvantages of electing portability instead of establishing trusts at the first spouse's death, but it is important to know that the decision to elect portability must be made on a federal estate tax return which will be due nine months after a decedent's death with the option of a six-month extension. Just because an estate is under \$5 million and there is no requirement for filing a federal return does not mean that it might not be in the best interest of a surviving spouse to file a return and make this election. Portability does not apply to the generation-skipping tax exemption.

4. Continued Uncertainty For those who have already implemented marital trust planning, there is now the question of whether to maintain this plan or make changes. We are finding that there is no one answer for all. Each married couple must discuss with an advisor their specific needs and make a personal decision. One option that might be selected is to use disclaimer planning so that the surviving spouse will have a nine-month window in order to make a decision about using a bypass trust to save estate taxes.

5. Annual Gifts An item of good news is that the annual exclusion for gifts has been increased to \$14,000 in 2013.

If you have questions about estate planning, please contact Cynda C. Ottaway or Stacey D. Spivey.

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