

MORRISSEY, HAWKINS & LYNCH
ATTORNEYS AT LAW

CLIENT ADVISORY – AMERICAN TAXPAYER RELIEF ACT OF 2012

January 3, 2013

On January 1st, Congress passed the American Taxpayer Relief Act of 2012 (the “new Act”), which was signed into law by President Obama on January 2nd.

Among many other aspects of our federal tax policy, the new Act addresses the federal transfer tax legislation that was set to sunset on December 31, 2012, directly impacting many of our estate planning clients. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “Tax Relief Act of 2010”) would have returned estate, gift and generation-skipping transfer taxes to 2001 amounts and rates. The new Act continues the \$5 million lifetime exemption against estate, gift and GST taxes created under the Tax Relief Act of 2010 but increases the tax rate from 35% to 40%. The \$5 million exemption amount will be indexed for inflation going forward. The inflation-adjusted exemption amount for 2012 was \$5.12 million. However, the IRS has yet to issue guidance as to what the inflation adjustment will be for 2013. It may be set at \$5.25 million.

The new Act continues the unification of the estate and gift taxes. That means individuals may use their \$5 million lifetime exemption to make tax-free gifts during life or to shield bequests at death from estate tax. The annual per person gift tax exclusion amount has also increased for inflation in 2013 from \$13,000 to \$14,000. Gifts under the \$14,000 per person exclusion amount do not count towards an individual’s \$5 million lifetime exemption. Married couples can elect to gift-split, doubling the annual exclusion amount to \$28,000.

The new Act also continues the portability of the exemption between spouses. If one spouse does not use all of his or her \$5 million exemption, it may be carried over and used by the surviving spouse for lifetime transfers or at death, provided the predeceased spouse makes the election on a timely filed estate tax return.

It may be noteworthy that the new federal gift and estate tax structure is now “permanent.” While it is difficult to categorize anything that is subject to our government’s fluid political mood swings as permanent, the year 2013 marks the first time since 2001 that we have a federal gift and estate tax system that is not scheduled for repeal.

Finally, the new Act makes permanent several other technical rules that have been in place since 2001 but never on a permanent basis, many of which are vital to certain estate plans. These include provisions affecting qualified conservation easements, qualified family-owned business interests, the payment of estate taxes in installments for closely-held business interests and the repeal of the 5% surtax on estates exceeding \$10 million.

As always, if you have any questions about the specific impact of the new legislation on your estate plan, please do not hesitate to contact us. In addition, if there have been any changes in your family or circumstances that would necessitate re-evaluating your estate plan, please let us know.

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