

PUBLISHED BY



## Important Estate Tax Provisions in President Obama's 2012 Budget Proposal

*Posted at 9:37 AM on February 25, 2011 by Gary A. Phillips*

For those people who thought there would be a lull in proposed estate/gift tax legislation as a result of the sweeping 2010 tax law, that is not the case. President Obama's 2012 budget proposal released last week contains numerous important estate and gift tax proposals, which are as follows:

- Returning the estate/gift tax to 2009 levels, meaning a \$3.5 million estate tax exemption amount, a 45% estate/gift tax rate and a \$1 million lifetime gift tax exemption.
- Making permanent the new portability rules with respect to enabling the surviving spouse to use the deceased spouse's unused exclusion amount.
- Adding another category of restrictions for family controlled entities that would be required to be disregarded for valuation purposes. A key component of planning involves the use of leverage and valuation discounts to reduce (i) the value of lifetime gifts if assets are transferred during life and (ii) the value of a decedent's assets at death. This proposal potentially could limit the utility of family owned investment partnerships and limited liability companies.
- Limiting the use of GRATs to a minimum term of 10 years and requiring the remainder interest to have a value greater than zero.

This proposal has been floating around for some time now, and is another attempt to have the usefulness of GRATs minimized.

- Limiting the duration of generation-skipping transfers in trust to ninety (90) years from the creation of the trust. With many states eliminating rules related to the duration of trusts, this proposal is aimed at recapturing revenue lost with the permitted perpetuity of trusts.

As these proposals are debated, we will keep you apprised of any developments.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North  
25 Main Street  
Hackensack, NJ 07601  
Phone: (201) 489-3000

900 Third Avenue  
16th Floor  
New York, NY 10022  
Phone: (212) 752-8000

500 Delaware Avenue  
Suite 1410  
Wilmington, DE 19801  
Phone: (302) 652-3131

300 East Lombard Street Suite 2000  
Baltimore, MD 21202  
Phone: (410) 230-0660

301 Commerce Street  
Suite 1700  
Fort Worth, TX 76102  
Phone: (817) 810-5250