

Report from The American College of Trust and Estate Counsel Annual Conference

March 2012 by [Marvin S. Silver](#)

With the sunset of the 2001 Tax Act and reversion to the pre-2001 estate tax exemptions and rates looming (again) at the end of 2012, discussion at The American College of Trust and Estate Counsel (ACTEC) Annual Conference that I attended on March 6-11, 2012 turned to the Obama administration's tax proposals contained in the Treasury Department's so called "Greenbook". Most of the proposals are similar to previous years' proposals.

Without Congressional action, the top estate tax rate will revert to 55% and the estate and gift tax exemptions will revert to \$1,000,000. The administration proposes a return of the estate, gift, and generation skipping transfer taxes to their 2009 levels, which would mean an essentially flat estate and GST tax rate of 45% with a \$3,500,000 exemption, and an almost flat gift tax rate (starting at 41%) for gifts over an exemption of \$1,000,000. This would represent a reduction in transfer tax exemptions from the current \$5,120,000 level and an increase in tax rate from the current 35% level. The administration also wishes to make "portability" of unused estate tax exemptions between spouses permanent, although it is proposed that this should occur at the 2009 exemption levels of \$3,500,000 for estate tax and \$1,000,000 for gift tax.

Other proposals would require consistency in values for transfer and income tax purposes, and a proposed required minimum term for grantor retained annuity trusts. New proposals this year include the coordination of certain income and transfer tax rules applicable to grantor trusts. If such proposals become law, they could have a significant impact on transactions involving irrevocable grantor trusts.

While attempts to predict Congressional action (or inaction) are always difficult, discussion included a likely scenario in which the two political parties in Congress remain incapable of compromise, leaving us to deal with the reversion to pre-2001 Tax Act exemptions and rates on January 1, 2013, while hoping for a tax act in the spring or summer of 2013 that will create new permanent estate tax rates and exemptions that are effective retroactively to the beginning of the year.

We remain in an uncertain tax environment that requires us to continually watch for Congressional action.

For further information contact a member of the
Probate, Trust & Personal Planning Group.

[Deborah DiNardo, dd@psh.com](mailto:dd@psh.com)
[Melissa E. Darigan, med@psh.com](mailto:med@psh.com)
[Lawrence D. Hunt, ldh@psh.com](mailto:ldh@psh.com)
[Michael A. Kehoe, mak@psh.com](mailto:mak@psh.com)
[Kristin N. Matsko, knm@psh.com](mailto:knm@psh.com)
[David C. Morganelli, dcm@psh.com](mailto:dcm@psh.com)
[John J. Partridge, jjp@psh.com](mailto:jjp@psh.com)
[Kathleen A. Ryan, kar@psh.com](mailto:kar@psh.com)
[Marvin S. Silver, mss@psh.com](mailto:mss@psh.com)
[Steven E. Snow, ses@psh.com](mailto:ses@psh.com)