

Estate Planning News Alert – November, 2012

Once In A Lifetime Year-End 2012 Estate Tax Planning

On the day after the presidential election there will be **55 days left in the year!**

Clients hope that the presidential election will provide clarity concerning the future of transfer tax rates and exemptions. We respectfully suggest that regardless of the election results, our best advice for clients is to fully use any remaining gift tax and generation-skipping transfer tax exemptions this year. See a Summary of rates and exemptions attached. We have developed a toolbox of techniques for use by married couples, companion couples or single persons. Please communicate with us if you are interested in taking advantage of what some have called the “golden age of estate planning.” What follows is a selected list of articles from a wide range of published sources to support the notion that acting now is critical.

Estate Planning: The Clock is Ticking – Use it or Lose it Before 2013

The Florida Bar Journal, February 2012

by David Pratt, Lindsay A. Roshkind, Scott L. Goldberger

To Give or Not to Give, Up to \$5.12 Million

The New York Times, June 22, 2012

by Paul Sullivan

The \$5 Million Question

Forbes, August 20, 2012

by Ashlea Ebeling

Decision Time For Estate Planners As Tax Exemption Is Set to Expire

The Wall Street Journal, October 1, 2012

by Charles Passy

Year-End Estate Tax Considerations – TIME IS RUNNING OUT

Forbes, October 23, 2012

by Rob Clarfeld

How To Extend the Gift-Tax Holiday

Barron's – Penta, October 25, 2012

By Christiana Cefalu

Shumaker is a full-service law firm of over 200 attorneys with five offices in three states serving the Midwest, the Southeast and Florida. Our trusts and estates attorneys specialize in helping individuals, families and business owners achieve their tax and estate planning goals. Please contact any of our trust and estates attorneys if we can be of assistance

SUMMARY OF TRANSFER TAX LAWS FOR 2009-2013¹

Tax Aspect vs. Tax Year	2009	2010	2011-2012 ²	2013	Best Guess ³
Annual Exclusion Gifts ⁴	\$13,000	\$13,000	\$13,000	\$14,000	Same
Tuition & Medical Direct Payments	Unlimited	Unlimited	Unlimited	Unlimited	Same
Gift Tax Exemption & GST Tax Exemption	\$1,000,000*	\$1,000,000*	2011 - \$5,000,000* 2012 - \$5,120,000*	\$1,000,000* \$1,430,000 ⁵ *	\$1,000,000* up to \$5,120,000*
Estate Tax Exemption	\$3,500,000 *	Unlimited ⁶	2011 - \$5,000,000* 2012 - \$5,120,000*	\$1,000,000*	\$3,500,000* up to \$5,120,000*
Top Transfer Tax Rate	45%	35%	35%	55%	35% to 45%
Discounts for hard to value assets like LLC's, LLLP's and fractional interests; (2) gifts & installment sales to IDGT's; (3) 2-Year Zeroed-out GRAT's; (4) GST exempt duration of 360 years for trusts.	Available	Available	Available, subject to rulings, regulations, case law and pending legislation.	Available, subject to law changes for 2013 and thereafter.	Our best advice is to use these techniques now or you may never get another chance in 2013 or thereafter.
Portability - Estate Tax Exemption ⁷	No Portability	No Portability	\$5.0 or \$5.12 Million	No Portability	Portability Reinstated

¹ This Summary has been prepared in November, 2012 by Bruce H. Gordon, Shumaker, Loop & Kendrick, LLP, Co-Chair of the Trusts & Estates Department, Tampa, Florida.

² For the years 2011 and 2012 all three transfer tax exemptions (gift tax, estate tax and GST tax) are unified at \$5.12 Million, but they are not unified in 2013. The full use of the large gift tax and GST tax exemption in 2012 is encouraged and strongly advised for many Shumaker clients.

³ This is our best guess of what changes Congress will enact for 2013 and thereafter, but such changes are not guaranteed nor can amounts or timing of changes be predicted with precision.

⁴ Annual exclusion gifts (those made outright or in trust, if the gift in trust is properly qualified as a present interest) do not count against the lifetime gift tax exemption (or against the GST tax exemption if the skip is one generation to a grandchild). However, the annual exclusion amount is not cumulative and to the extent annual exclusion gifts are not made, the amount of any unused amount lapses with the passing of each December 31.

⁵ The \$1.0 Million GST tax exemption amount is indexed for inflation so the amount of the GST exemption for 2013 has been established at \$1,430,000 if the prior tax law returns.

⁶ For a death in 2012 an estate could elect out of estate taxation, but with a limited step-up in income tax basis.

⁷ The total amount that could pass estate tax-free (\$10 Million per couple in 2012) will increase by cost of living adjustments beginning in 2012 in \$10,000 increments. The estate tax exemption is currently portable, but the GST tax exemption is not portable and probably will not be in 2013 or thereafter. Therefore, it is critical to fully use the GST tax exemption in 2012 if possible.

* Less portion of gift tax exemption used for prior taxable gifts or GST exemption used for direct skips or allocated to a GST exempt trust.