



Estate Planning for 2012: Looming Lower Gift Tax Exclusion Limits

Encourage wealthy clients to consider giving tax-avoiding gifts now to avoid lower exclusion limits scheduled for 2013.

Year-end planning is usually a popular topic with clients in November, but in 2012 clients should jumpstart their planning rather than waiting until year-end. The most compelling situations apply to those who are interested in lifetime gifting and still have excess gift tax exclusion remaining from the increase under the 2010 Act.¹

Taking advantage of higher federal thresholds

Prior to January 1, 2011, the applicable exclusion from gift tax for transfers made during lifetime was \$1 million. The 2010 Act increased the gift tax limit to \$5 million for 2011 and 2012, along with the estate tax exclusion amount and the generation-skipping tax ("GST") exemption amount: all three remain capped through December 31, 2012, at \$5 million.

Those thresholds for gift, estate and GST are scheduled to be reduced under the current federal law to \$1 million in 2013. Therefore, clients interested in gifting should take advantage of the higher thresholds before December 31, 2012.

Transfer tax increase

For clients with taxable estates and excess wealth, gifting up to \$5 million (or gifting the additional \$4 million that was added under the 2010 Act) sooner rather than later is advisable. Nothing good can come from waiting until the end of 2012. A client who fails to take advantage of the current \$5 million gift exclusion amount in 2012 will be subject to a \$1 million limit in 2013 if nothing changes between now and then.

Another factor is the bump up in transfer tax

rates in 2013. The unified rate applicable to transfers beyond the \$5 million exclusion in 2012 is 35 percent. In 2013 under the current law, that rate will increase to 55 percent as the exclusion decreases to \$1 million.

State thresholds are rising

Illinois does not have a gift tax, nor are lifetime gifts made by Illinois residents subject to an additional state gift tax. Accordingly, additional lifetime gifting by Illinois residents coupled with the increased Illinois State Tax Credit for estate and GST tax purposes can provide substantial tax savings to Illinois decedents.

On December 16, 2011, Governor Pat Quinn signed into law Illinois Senate Bill 0397, which increased the Illinois State Tax Credit for estate and GST tax purposes to \$3.5 million in 2012 and \$4 million in 2013 and thereafter. This increase will provide tax-saving opportunities for some clients.

Planning opportunities with QTIPs

The Illinois legislature introduced the Illinois QTIP to allow practitioners to take advantage of the increased federal exclusion (\$3.5 million in 2009) when the Illinois amount was limited to \$2 million. A similar approach may be helpful in 2012 when the federal amount remains at \$5 million and Illinois is increased to \$3.5 million.

In 2013, however, the reverse will apply, where the federal exclusion is reduced to \$1 million and the Illinois amount rises to \$4 million. Thus, in 2013 it may be advantageous to provide for a \$3 million federal QTIP/Illinois family trust equal to the difference between the federal exclusion (\$1 million) and the Illinois amount (\$4 million).

1. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; PL 111-312, 124 Stat 3296.

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