# Estate Planning 2013: Changes That May Affect You

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On January 2, 2013, after much debate, President Obama signed the American Taxpayer Relief Act of 2012 (the Act) into law. The Act makes significant changes that will affect many estate plans, but it also provides important estate planning opportunities. The following summary describes key provisions of the Act.

**Estate Tax Exclusion**

Commencing on January 1, 2013, the Federal Estate Tax exemption has been indexed for inflation and increased from $5.12 million in 2012 to $5.25 million in 2013. There continues to be an unlimited marital exemption between spouses, which provides for no estate tax due upon the death of the first spouse. It is not until the death of the surviving spouse that an estate tax, if any, would be due.

Furthermore, the Act increases the tax rate from 35% to 40% for decedents dying on or after January 1, 2013 with estates in excess of the exemption amount. It is important to note that the Commonwealth of Massachusetts has continued to apply a $1 million threshold for the state estate tax at a rate between 3% and 16%, depending upon amount of the decedent's assets.

**Federal Gift Tax Exemption**

The Act permanently unifies the federal gift tax exemption amount and the federal estate tax exemption at $5.25 million in 2013, indexed for inflation. Thus, you may gift or devise as much as $5.25 million without incurring any transfer tax liability. However, all gifts that use a portion of this gift tax exclusion will reduce the estate tax exclusion available upon your death. The Commonwealth of Massachusetts continues to provide for no state gift tax.

**Annual Gift Tax Exclusion**

Another notable change within the Act is the inclusion of an inflation adjustment to increase the annual gift tax exclusion from $13,000 to $14,000 per donee. As such, you may gift up to $14,000 to any one individual in 2013, without the necessity to file a federal gift tax return. For married couples, the annual gift exclusion is now double this amount - $28,000 for 2013.

**Basis Adjustment for Property Acquired From a Decedent**

The Act did not alter the regulations regarding basis adjustment for property acquired from a decedent. The basis of property acquired from a deceased individual is generally stepped up (or down) to its fair market value at the date of death, which typically eliminates capital gains on the property. As such, if a beneficiary inherits property and sells the property at its market value at the date of the decedent's death, there will be no capital gain liability upon the beneficiary even if the decedent purchased the property for significantly less than the beneficiary's sale price.

**Estate Tax and Gift Tax Exclusion Portability**

The Act provides that the concept of estate and gift tax exclusion portability will become permanent. Portability provides that spouses may share their unused $5.25 million estate and gift tax exclusion with each other. This means that a surviving spouse may use the other spouse's unused portion of his or her $5.25 million estate tax exemption, and it allows spouses to effectively use a combined $10.5 million exclusion.

However, portability is not automatic. The surviving spouse must make this election on a Form 706 upon the first spouse's death. If the filing is not made shortly after the first death, the benefit may be lost. So, even if the deceased spouse's estate will not be taxable, (ie. total assets valued less than $5.25 million,) the surviving spouse will be required to file a Form 706 in order to take advantage this exemption. Moreover, in the event of a remarriage and subsequent death of the new spouse, the surviving spouse will no longer have the ability to take advantage of the unused estate tax exclusion of the first deceased spouse.

The 2012 Taxpayer Relief Act provides significant wealth transfer opportunities by making the largest exemption amounts against estate and gift tax permanent. So, to ensure that you minimize your tax liability, and that your assets will be distributed according to your wishes, you need to review your estate plan now. Furthermore, changes in your personal situation, including births, deaths, marriages and divorces, may also require a change in your estate plan, and now is a great time to resolve to do so. The first step is to consult an experienced estate planning attorney to take advantage of the opportunities currently available.

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