

Use It or Lose It

Estate Planning in 2011 & 2012

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Our tax code is a mess, mostly because our political system is a mess. Since 2001, when President George Bush reached a compromise with Senate Democrats on his EGTTTRA tax package, our estate tax system has been a ridiculous dog's breakfast. The estate exclusion went from \$600,000 in 2001 to \$3.5 million in 2009 to unlimited in 2010, then was scheduled to decline to \$1 million in 2011, as the entire Bush tax cut regime was scheduled to "sunset" automatically.

Throughout this period of changing estate tax rates, even when the estate exclusion was briefly unlimited, the gift tax exclusion was stuck at \$1 million. So George Steinbrenner, who died in the magic year of 2010, paid no Federal estate taxes on a \$1.1 billion estate, but could have given away only \$1 million during his lifetime without paying gift taxes.

Having the gift tax exclusion different than the estate tax exclusion immensely complicates planning. Fortunately, the December 2010 compromise between President Obama and Republican Senator Jon Kyl corrected this issue. At least for now, the estate and gift tax exclusions are unified at \$5 million each.

Unfortunately (remember, our political system is a mess), the unified \$5 million exclusion is only in place through the end

of 2012. Under current law, we are scheduled to go back to a unified \$1 million estate and gift exclusion in 2013, with a marginal estate tax bracket of 55%. (See graphs 1 and 2.) Washington will be trying to sort out the post-2013 tax regime right in the middle of a Presidential election. No telling what nonsense they will come up with.

All this uncertainty creates urgency about considering ways to use the \$5 million gift exclusion today. Graph 3 illustrates the following example. Imagine you have a \$20 million estate. If you and your spouse give away half by the end of next year, and die January 1, 2013, your estate will (under current law), be taxed on \$10 million at a 55% marginal estate tax rate; your estate will pay \$5.5 million in Federal taxes, and your heirs will net \$14.5 million. If you don't make any gifts and die in early 2013, with the exclusion reduced to \$1 million per taxpayer, you will have an \$18 million taxable estate at 55%; your estate will pay \$9.9 million in estate taxes and your heirs end up with \$10.1 million².

Is passing nearly \$4.5 million more wealth to your heirs instead of Uncle Sam worth doing some planning today? Does the Pope wear a funny hat?

Chart 1: Unified Estate & Gift Exclusion

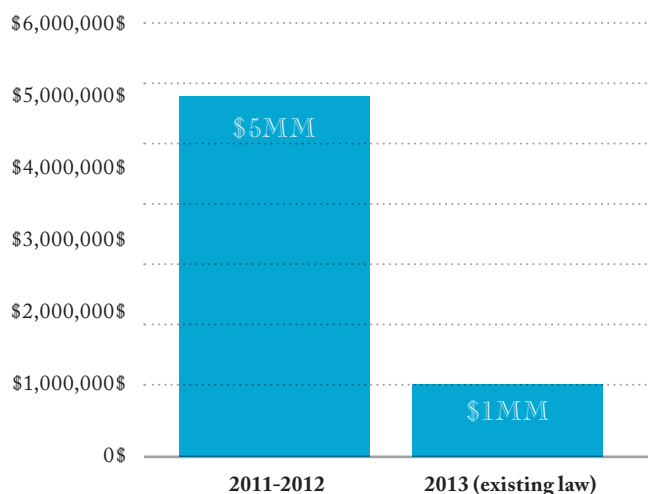
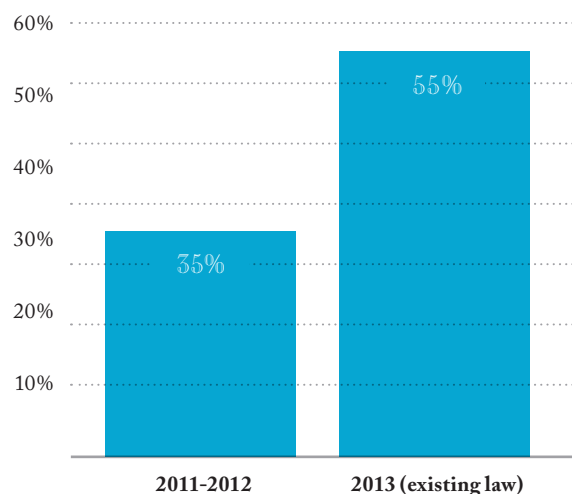


Chart 2: Marginal Estate Tax Rate



¹This example assumes a husband and wife with joint assets totaling \$20 million. It also assumes the \$5 million exclusion "sunset" in 2013, as currently scheduled. Of course, nobody knows what Congress and the President will do over the next fifteen months.

²Assumes no action by Congress, and annual exclusions expire as scheduled.

Many estate attorneys we've consulted regard the \$5 million planning opportunity as a "use it or lose it" proposition. If you take advantage, you are unlikely to be worse off, tax-wise, than if you stand pat, and you are very possibly going to be much better off. (At least, your heirs will be.)

We believe that any individual with a taxable estate above \$1 million, or a couple with a taxable estate over \$2 million, should at least engage the issue of whether to give some assets away today. We are working closely with estate planning attorneys on gifting strategies to be put in place before the end of next year. The current very low interest rates make certain planning strategies, such as Charitable Lead Trusts, especially interesting.

This type of planning can be complex, and we strongly recommend starting discussions as soon as possible. We are happy to work with your existing estate planning attorney to address these issues, or to refer you to a qualified attorney with the appropriate expertise.

UPCOMING EVENT

November 16

Building Capital for Retirement (CE for CPAs)
Presented by: James S. Hemphill, CFP® ChFC®, CIMA

View and register for events:
www.tgsfinancial.com/events.btm

PAST EVENTS

September 6 & 7

TGS Financial Advisors held two *Market Update* events at our office to discuss the recent market volatility, the firm's perspective and our latest portfolio strategies.

September 13

TGS Financial Advisors and law firm Hamburg, Rubin, Mullin, Maxwell & Lupin held a joint event, *Keeping It: A Discussion on Protecting One's Assets*, specifically as it applies to small business owners and doctors.

Chart 3: Potential Benefit of Gifting

