

Trusts and Estates Law Update - January 2014

Article By:

Timothy J. Dengler

Estate, Gift and GST Tax Changes

Effective January 1, 2014, the unified federal gift and estate tax exemption was increased to \$5.34 million dollars. This change reflects an adjustment for inflation from last year's \$5.25 million exemption amount. In January 2013 as part of the "fiscal cliff" negotiations, Congress established the limit at \$5.25 million to be adjusted annually for inflation.

What this change means is that an individual can now give up to \$5.34 million during their lifetime, or pass away with an estate valued up to \$5.34 million dollars, without paying any Federal gift or estate tax.

The annual gift reporting limit remains at \$14,000 per person. Total annual gifts less than this amount do not need to be reported and are not subject to gift tax. Total annual gifts in excess of this amount count against the donor's \$5.34 million lifetime gift exemption.

Should You Make Changes To Your Estate Plan?

1. **Review Existing Estate Plan.** It is critical that all estate planning documents and overall estate plan be reviewed in light of the changes in order to avoid unwanted estate tax and asset transfer consequences and to maximize the benefits available under the new law. This is especially true for clients who executed their Wills prior to 2001. This is also an appropriate time to review the ownership of your assets to confirm that the manner in which you own your assets is coordinated with your estate planning documents. In addition, this may also be a good time to confirm who the beneficiaries are of your retirement plans and life insurance policies to ensure that they too are consistent with your estate planning objectives.
2. **Taking Advantage of The Increased Gift and GST Tax Exemptions.** Clients who did not do so in late 2012 or 2013 should consider making gifts to use the increased gift and GST tax exemptions. Such gifts will remove future appreciation and accumulated income from the client's estate and that of the beneficiaries, without additional gift, estate, or GST tax. Clients who have made \$5.25 million gifts in 2012, furthermore, can make another \$90,000 in gifts, because of the inflation adjustment in the applicable exclusion amount. Coupled with the \$14,000 per done annual exclusion, the prudent estate planning client can make very significant lifetime transfers without incurring a gift tax.
3. **Integrating Portability Into The Estate Plan.** Portability was made permanent by the new

law. Generally, the conventional By-Pass trust is a superior vehicle for reducing estate tax than is a portability election, because it avoids estate taxes on the appreciation and accumulated income in the By-Pass trust between the deaths of the two spouses. Portability, however, can be a superior technique in cases where: (a) the couple hold most of their assets in a form that cannot be used to fund a By-Pass trust, such as joint tenancy with a right of survivorship or contractual rights (such as life insurance and retirement benefits); (b) the estate consists largely of retirement benefits that will make funding a By-Pass Trust less effective as a means of avoiding estate taxes; or (b) the decedent dies without having an estate plan that includes a By-Pass trust. In addition, most wills for married couples should now address the question of whether the executor should be required to elect portability, or be given discretion to elect portability.

4. **Irrevocable Life Insurance Trusts (ILITs).** If you have an existing life insurance trust have you and the Trustee should conduct a comprehensive review of the underlying insurance policy. Like other financial tools, life insurance policies need to be managed and adjusted to keep pace with market conditions and with the insured's needs and goals. This is also a good time to make sure the Trustee has completed all necessary crummey letters, maintained accurate trust records and utilizes a trust banking account.
5. **Filing All Returns On Time.** The law continues to get more complicated and the burdens of filing timely gift and estate tax returns grow ever more significant. In addition to penalties for late filing and late payment, there are many elections that can be made only on a timely filed return.
6. **State Estate Taxes.** Residents of both New Jersey and New York still have other concerns – the state estate tax. In New Jersey, the state exemption amount remains at \$675,000 and in New York the state exemption amount remains at \$1 million. This means that residents of those states may be subject to state estate tax even if there is no federal estate tax. While the state estate taxes are not as burdensome as the federal tax, they remain substantial nonetheless. Therefore, despite the relaxation of the federal estate tax, the overall cost of estate taxes will remain a concern for many.