



## News From Giordani, Swanger, Ripp & Phillips, LLP

### **Estate and Gift Tax Update—Changes on the Horizon**

#### **For Clients and Friends of GSRP, LLP**

Benjamin Franklin famously said “in this world nothing can be said to be certain, except death and taxes.” If he were alive today, he might revise his comment, because for the last ten years, there has been nothing at all certain about taxes, particularly with the U.S. transfer tax system.

#### **History**

In 2001, Congress enacted sweeping changes to our transfer tax laws (encompassing estate, gift and generation-skipping tax), gradually increasing the amount individuals can transfer free of tax, and simultaneously reducing the tax rate. By 2009, an estate tax rate of 45% applied to taxable estates in excess of \$3,500,000, and individuals could make gifts of up to \$1,000,000, without incurring a gift tax. The 2001 legislation further provided for outright repeal of transfer taxes beginning in 2010, but only for one year at which time the law would revert to that in place before the 2001 legislation. Pre-2011 law results in a tax-free transfer amount of \$1,000,000 and a maximum rate of 55%.

#### **The Pending Change**

Fast forward from 2001 to late 2010. Facing the return of the transfer tax at the unpopular pre-2001 levels, Congress enacted very generous transfer tax legislation (but only for 2 years). The 2010 legislation raised the tax-free amount to \$5,000,000, and lowered the maximum tax rate to 35%. (The 2010 legislation also provided for indexing these levels, and the threshold for 2012 is thus \$5,120,000).

However, the 2010 legislation provided for only a 2-year fix. Absent new legislation, taxpayers, and advisors are once again facing uncertainty in implementing estate plans. Beginning in 2013, the tax-free transfer threshold will be \$1,000,000, with a maximum tax rate of 55%.

The following chart summarizes the exemption and rate levels for 2011-2013:

<b>Exemption &amp; Rate</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Estate Tax Exemption	\$5,000,000	\$5,120,000	\$1,000,000
Maximum Estate Tax Rate	35%	35%	55%
Lifetime Gift Tax Exemption	\$5,000,000	\$5,120,000	\$1,000,000
Maximum Gift Tax Rate	35%	35%	55%
Lifetime GST Tax Exemption	\$5,000,000	\$5,120,000	\$1,000,000*
Maximum GST Tax Exemption	35%	35%	55%

\*Indexed for inflation since 1998

### **The Opportunity**

The tax benefit of making gifts before the end of 2012 is obvious for many people given this potential decrease in the exemption amount. Further, today's economic environment offers additional planning opportunities to leverage these historically high exemptions. Various estate planning techniques, including loans, sales, and gifts to annuity trusts, are more effective when interest rates are low (and potential future investment returns are greater). It is no secret to investors that interest rates are currently at extremely low levels, making these planning techniques very attractive in appropriate situations.

It is clear that the current transfer tax environment, along with very low interest rates, offers some unique opportunities to make significant gifts and employ gifting techniques that may reduce potential estate tax liability, but only if structured and implemented prior to the end of 2012. Please contact us to discuss how you can make the best use of these opportunities.

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