

Update on Estate and Gift Tax Law

Planned Giving Roundtable of AZ
June 13, 2012

Estate Tax Basic Exclusion and Maximum Tax Rate

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$5,000,000 (or unlimited)	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%

**Gift Tax Applicable Exclusion and
Maximum Tax Rate**

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$1,000,000	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%

**GST Applicable Exclusion and
Maximum Tax Rate**

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$5,000,000	0%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%

Portability

- “Applicable Exclusion Amount”: the sum of:
 - Basic exclusion amount (\$5 million), and
 - Unused exclusion amount of a deceased spouse (“DSUEA”)
- Increases the applicable exclusion of a surviving spouse by any unused exclusion of a predeceased spouse

Computing DSUEA

- Lesser of:
 - Basic Exclusion Amount; or
 - Excess of Basic Exclusion Amount, over the amount on which tentative tax is computed
 - $BEA - (TE + ATGs)$

Portability – Limitations Period

- If the executor elects to increase the applicable exclusion amount, then the limitations period on the predeceased spouse's return will be opened
- Limitations period is opened only for purposes of making a determination of the unused exclusion amount

Electing Portability

- Executor of the first spouse must elect portability on a timely filed return (including extensions)
- Election is irrevocable
- Effective for estates after 12/31/2010
- Notice 2011-82, October 17, 2011

Extension to Elect Portability

- Notice 2012-21, March 5, 2012
- Six-month extension to file Form 706 and elect portability
- Form 4768 within 15 months of death
- “Qualifying Estate”

“Qualifying Estate” (Notice 2012-21)

- The decedent is survived by a spouse
- The decedent’s date of death is after December 31, 2010, and before July 1, 2011
- The fair market value of the decedent’s gross estate does not exceed \$5,000,000

Protective Claims

- Rev. Proc. 2011-48, Oct. 17, 2011
- Final Regulations under IRC 2053
 - Issued in 2009
 - Amount deductible (for a claim or expense) limited to the amount actually paid
- Protective claim – preserve the estate’s right to a refund for future amounts paid

Requirements for Protective Claims

- Filed before expiration of limitations period
- In writing
- State each ground upon which a refund is claimed
- State facts sufficient to apprise of the exact basis of the claim
- Documentary evidence of authority of person filing the claim

Forms for Protective Claims

- Form 843, Claim for Refund
- Form 706, Schedule PC
 - Only available after 2012
- A separate claim must be filed for each claim or expense for which a deduction may be claimed

Tax Gap – Estate Tax

Tax Gap allocable to estate taxes (billions):

	<u>2001</u>	<u>2006</u>
■ Nonfiling	\$2	\$3
■ Underreporting	\$4	\$2
■ Underpayment	<u>\$2</u>	<u>\$2</u>
■ Total	<u>\$8</u>	<u>\$7</u>

E&G Program Non-Filer Projects

- Internal Non-filer Projects
- Federal/State Initiatives
- IRS Whistleblower Office

Post 2012 Legislation

- Exclusion of \$1 million
- Top Rate of 55%
- Additional 5% surtax on certain large estates
- State Death Tax Credit/Deduction
- QFOBI Deduction

Questions?

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