

▶ GSB Estate Planning Alert

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MOST AMAZING GIFTING OPPORTUNITY IN HISTORY ABOUT TO DISAPPEAR?

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SUMMARY

As you may have heard, Congress increased the federal gift and estate and generation-skipping transfer tax (“GST”) exemptions to \$5 million per person for 2011, and \$5.12 million per person in 2012.¹ These exemption amounts are the largest in history. Absent further legislation, these highest exemption amounts ever will expire December 31, 2012 - less than four months from now. If the current law expires, the gift and estate tax exemption will drop to \$1 million per person and the generation-skipping transfer tax exemption to \$1.39 million per person beginning January 1, 2013. This historical opportunity to drastically reduce your taxable estate will be lost in less than four months.

Not only will the exemption amount decrease, but the tax rate on the amounts above the gift and estate tax exemptions will increase from the current flat rate of 35% to graduated tax rates of up to 55%, and the generation-skipping transfer tax rate will be a flat 55%. This is more than a 150% increase in the highest marginal tax rate. The next few months may be the last chance to make a large gift to reduce your overall transfer taxes.

The table below illustrates the magnitude of the potential changes:

| | 2012 | 2013 Scheduled |
|----------------------|-----------|----------------|
| Gift Tax Exemption | 5,120,000 | 1,000,000 |
| Gift Tax Rate | 35% | 55%* |
| Estate Tax Exemption | 5,120,000 | 1,000,000 |
| Estate Tax Rate | 35% | 55%* |
| GST Tax Rate | 5,120,000 | 1,390,000 |

* Highest rate: applicable to amounts over \$3 million

¹Historically the lifetime exemptions for gift and estate taxes have not always been the same. For example, the amounts were not the same in 2004 through 2010.

Separate Planning Required to Reduce Washington and Oregon Estate Taxes

Some states, including Oregon and Washington, have state estate taxes separate from the federal estate tax, with lower exemption amounts. Oregon allows a \$1 million exclusion per person for estate tax purposes. The Washington State estate tax exemption is \$2 million per person (state estate taxes are deductible in calculating federal estate tax liability). If the federal estate tax exemption ultimately settles at a level higher than the state estate tax exemption, you may have a taxable estate for Oregon or Washington purposes only. This is where gifting becomes key. There is no gift tax in Oregon or Washington. Thus, with careful gifting planning, you may be able to substantially reduce your overall estate taxes.

Gifting Strategies to Maximize Gifting Efficiency

Gifting is one of the most powerful tools for reducing your overall transfer tax liability. Properly executed gifts made during your lifetime will not be subject to estate taxes upon your death. Moreover, post-gift appreciation will escape estate taxes; thus, by gifting assets that you anticipate will continue to appreciate, you can reduce the future value of your estate. Gifting will also reduce your taxable estate for state estate tax purposes. Finally, gifting today can help to ensure your assets are used and distributed according to your wishes by allowing you the opportunity to interact with your donees and educate them regarding investment and business best practices.

In addition to outright gifts of money or property, there are ways to structure gifts so that you do not immediately have to part with the gifted property. For example, a Grantor Retained Annuity Trust provides you with an annuity from the gifted assets for a period of time. You could also transfer your family vacation home to your children using a Qualified Personal Residence Trust. That vehicle allows you to continue to use the vacation property for the duration of the trust term.

If your estate consists largely of illiquid assets, you may need to consider how to pay the eventual estate tax without forcing a fire sale. In some of those cases, a properly-owned life insurance policy may be a good solution. You may also want to review any buy-sell agreements you have for your business entities, or if you do not yet have a buy-sell agreement, you may want to consider putting one in place. We would be happy to discuss various strategies to fit your individual wishes and circumstances.

Estate and gift planning is unique to each and every situation. There is no one-size-fits-all solution. Through careful and thorough assessment of your unique circumstances, we can craft a plan and course of action that best fits your goals and desires. Because these favorable gifting opportunities may never appear again, we urge you to contact us soon if you are interested in taking advantage of the current unusual planning opportunity.



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