

# New Act Clears up Estate, Gift Tax Confusion

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The high state of confusion over the past couple of years regarding the status of the estate and gift tax was resolved with the passing of the American Taxpayer Relief Act of 2012 ("ATRA"). ATRA was signed into law on January 1, 2013 by President Obama. Since the repeal of the estate tax in 2010 and the subsequent reinstatement in December of 2010 under the Tax Relief Act (TRA), estate planning attorneys have been forced to use a crystal ball in advising clients regarding the disposition of their estates due to the uncertainty surrounding the estate and gift tax as a result of the expiration of the estate and gift tax provisions. Had the provisions of TRA expired at the end of 2012, the estate and gift tax would have reverted to \$1 million estate and gift tax exemption amounts, with a 55% tax rate. However, ATRA makes permanent the provisions related to the estate and gift tax contained in the 2010 Tax Relief Act. This article will outline the most important tax changes.

For income tax purposes, many elderly Americans will not notice a difference in their income taxes for 2013. However, it is important to note that for individuals with high incomes (single taxpayers making more than \$400,000, married taxpayers filing jointly making more than \$450,000) that there is a higher tax rate of 39.6%, which is also paired with a higher capital gains and qualified dividends tax increase of 5% (up to 20% from 15%). Additionally, the new Medicare tax will also increase tax liability for the wealthiest of Americans. The Medicare tax will include a .9% surcharge on wages in excess of \$250,000 (for married couples) or \$200,000 (for single filers), in addition to a 3.8% Medicare tax on net investment income for taxpayers with modified adjusted gross income in excess of \$250,000 (for joint filers) or \$200,000 (for single filers).

For estate tax purposes, the estate tax exemption amount remains at \$5 million. This number is indexed each year for inflation. The estate tax exemption amount for 2013 is \$5.25 million per individual. However, for those estates over that amount and therefore, subject to the estate tax, the tax rates have increased. The maximum estate tax rate is now 40%.

The gift tax lifetime exemption also remains at \$5 million. This amount is also indexed for inflation; the lifetime exemption amount is \$5.25 million in 2013. The gift tax rate has also increased in 2013 to a permanent 40% on gifts made above the \$5.25 million lifetime exemption amount. It is the donor's (the person making the gift) responsibility to pay any gift tax liability.

In addition to the gift tax lifetime exemption amount, the annual exclusion amount has increased in 2013 to \$14,000. This means that an individual may gift up to \$14,000 in 2013 (per donee) without the necessity for filing a gift tax return or using any portion of his or her lifetime exemption amount. For married couples, they may combine their annual exclusion amount to gift up to \$28,000 per donee.

ATRA also made permanent the portability provisions contained in the 2010 Tax Relief Act. Portability allows married individuals to add any unused portion of his or her spouse's estate tax exemption to their exemption amount. For example, if husband dies in 2013 with an estate of \$2 million, he will have

\$3.25 million in unused estate tax exemption that may be used to increase wife's estate tax exemption to \$8.50 million (her \$5.25 million exemption plus the \$3.25 million unused exemption from her husband). It is important to note that in order to take advantage of the portability provisions, the surviving spouse must file a timely estate tax return (IRS Form 706) for the deceased spouse's estate. Failure to file a timely return will result in the loss of the deceased spouse's exemption amount. Additionally, remarriage and a second subsequent widowhood affect the portability of the unused exemption amount.

Much of the uncertainty that has existed for the last decade has been banished due to the enactment of "permanent" estate and gift tax laws. Based on the new tax provisions of ATRA, many individuals may want to consult with their CPAs and estate planning attorneys to see how the changes will effect their tax planning goals. While it may not be necessary to execute new estate planning documents as a result of ATRA, it would be beneficial to discuss how the new law affects your testamentary and gifting goals.