

THE FISCAL "CURB"

For gift and estate tax purposes, the much feared "fiscal cliff" turned out to be more like a "fiscal curb" as Congress has now enacted legislation largely leaving in place the tax rules which have been in effect for the last two years.

For the first time in twelve years, we now have "permanent" provisions applicable to estate tax, gift tax and generation-skipping tax which can be summarized as follows:

- The rate for federal estate tax, gift tax and generation-skipping tax purposes, which was 35% last year, has been increased to 40%.
- The \$5,000,000 exemption, subject to inflation adjustment, which was \$5,120,000 in 2012 will be approximately \$5,250,000 in 2013 (or \$10,500,000 for a husband and wife).
- The "annual exclusion" for gift tax purposes which was \$13,000 per donee (\$26,000 in the case of gifts split between a husband and wife) has been increased to \$14,000 (or \$28,000 for a couple) as a result of automatic inflation adjustments.

From a planning standpoint, the best news, of course, is that these changes are "permanent", meaning that there is no "sunset provision" or specific date at which time these provisions will change. Obviously, Congress is always free to enact modifying legislation, but given the long history of the estate and gift tax and the difficulty of enacting significant change, it is reasonable to assume that what we now have will be with us for the foreseeable future.

For those many clients who engaged in significant planning during 2011 and 2012 in order to take advantage of the exemptions that were available at that time, the good news is that the assets transferred during the past two years will, hopefully, appreciate in value outside of their taxable estates and that the growth in the value of those assets as well as the income generated by those assets will benefit their children, grandchildren and others.

For those few clients, bold in their approach, who opted to make large enough gifts to pay gift tax at the rate of 35%, there will be an obvious benefit attributable to the fact that the tax paid was at the rate of 35% instead of the new "permanent" rate of 40% and, as another significant benefit, those clients who survive for three years after having made such gifts will effect further reductions in their estate tax attributable to the removal of the gift tax they paid from their taxable estates.

And for those who decided against making significant gifts in the past two years, if your net worth is sufficiently large to permit you to engage in planning now and if your comfort zone will allow you to part with substantial assets, Congress has provided a "second chance".

Needless to say, there are technical provisions which affect each individual in a somewhat different manner, depending upon size of estate, age, state of residency and other variables, but the above summary applies to everyone and, all things considered, is very favorable for those whose estates are large enough to make this topic of importance.

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