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Estate Planning Bulletin

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NEW ESTATE AND GIFT TAX LAW

- Joseph J. Viviano

The federal estate, gift, and generation-skipping transfer ("GST") taxes have faced an uncertain future in recent years. As part of the "fiscal cliff," these transfer taxes were scheduled to revert to their 2001 levels. The maximum transfer tax rate would have increased from 35% to 55%, and the federal estate tax exclusion amount would have decreased from $5.12 million to $1 million on January 1, 2013. These changes, however, were avoided following the enactment of the American Taxpayer Relief Act of 2012 ("ATRA") on January 2, 2013.

SUMMARY OF NEW LAW

ATRA includes many important changes to the alternative minimum tax, tax rates on dividends and capital gains, and marginal income tax rates. ATRA also made important changes to the federal estate, gift, and GST taxes.

Under ATRA, the federal estate, gift, and GST tax rates have increased from 35% to 40%. Aside from increasing transfer tax rates, ATRA also made permanent the federal estate, gift, and GST tax law in effect during 2012. This means that the current federal estate, gift, and GST tax law will not automatically expire at some future date. However, Congress is not prevented from changing the existing tax law in the future. For now, at least, the lifetime exclusion amount remains at $5 million ($5.25 million for 2013 after adjusting for inflation from 2011) and the unused portion of a deceased spouse's lifetime exclusion amount remains portable. The relevant federal transfer tax provisions for 2013 and prior years are summarized as follows:

	2013	2012	2011	2010
Lifetime Gift Tax Exclusion	**$5,250,000**	$5,120, 000	$5,000,000	$5,000,000
Gift Tax Rate	**40%**	35%	35%	35%
Lifetime Estate Tax Exclusion	**$5,250,000**	$5,120,000	$5,000,000	$5,000,000
Estate Tax Rate	**40%**	35%	35%	35% or 0%
GST Exemption	**$5,250,000**	$5,120,000	$5,000,000	$5,000,000
GST Tax Rate	**40%**	35%	35%	35%
Annual Gift Tax Exclusion	**$14,000**	$13,000	$13,000	$13,000

SIGNIFICANT NON-TRANSFER TAX REASONS REMAIN TO REVIEW OR UPDATE YOUR ESTATE PLAN

Many clients last updated their estate plans when the federal estate tax exclusion amount was significantly lower. Some of these clients may no longer need the more complex estate tax saving techniques utilized at that time, such as the creation and funding of a "family trust" (also known as a "credit shelter trust") following the death of the first spouse to die. For example, a married couple with a combined estate of $2 million needed a more complex estate plan to reduce estate taxes in 2003 (when the exclusion amount was $1 million) than today (when the exclusion amount is $5.25 million). These clients may benefit from revisions to their estate plan to simplify their overall plan and reduce future administrative expenses.

In addition, there remain many other reasons to regularly review and update your estate plan. Although this list is not exhaustive, answering the following questions can help you determine whether it is time to have your estate plan reviewed.

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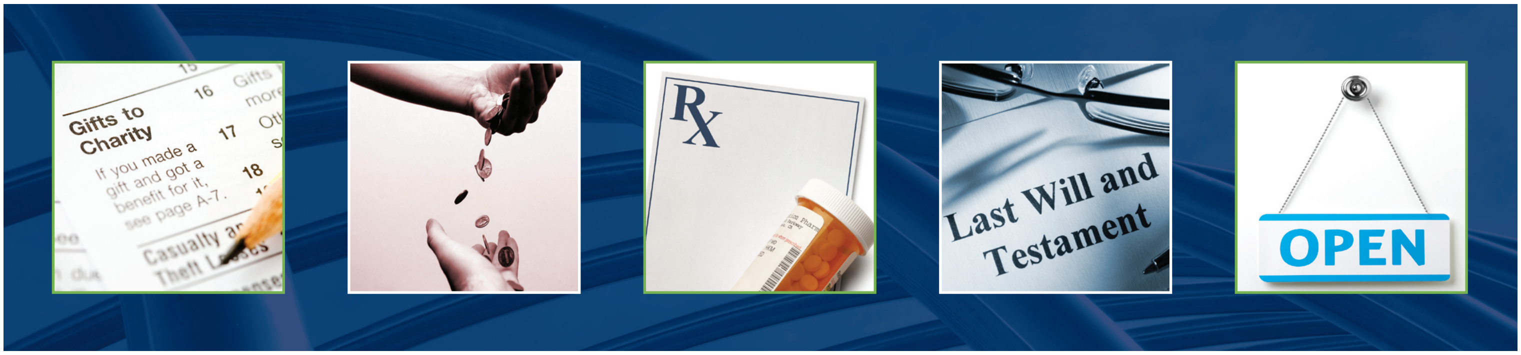

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- Have your assets significantly changed (in nature or value) since you last updated your estate plan?
- Has the addition of a child or grandchild since the last change to your estate plan created the need for an update? Do you want to make any gifts directly to or for the benefit of your grandchildren?
- If you are in a second marriage, does your estate plan properly reflect your intentions with respect to the division of your assets between your surviving spouse and children?
- Has one of your children become financially irresponsible or insolvent, thereby making it advisable to hold the child's share of your estate in trust for an extended period of time rather than the earlier distribution timeframe previously provided in your estate plan?
- Is there conflict among your children that would increase following your death and lead to costly disputes regarding the administration of your estate?
- Does one of your children suffer from a physical or mental condition that would prevent or inhibit the child from properly managing his or her inheritance?
- Have you properly planned for your long-term care, including who will decide where you will live and how you will be cared for when you are unable to make those decisions for yourself?

The attorneys at Foster Swift are available to review your estate plan to ensure that it will accomplish your tax and non-tax objectives. If you have any questions regarding the American Taxpayer Relief Act of 2012 or any other planning matters, please contact us. We look forward to working with you.

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