

# The 2012 opportunity

When the modern estate tax began in 1916, the top tax rate was 10%, and the exemption was \$50,000—inflation adjusted, that would be about \$1 million today. The low rate didn't last long, however. One year later a 25% bracket was added for amounts over \$10 million. The top federal estate tax rate rose inexorably over the years, to 60% in 1934, 70% in 1935, and 77% in 1941. There the rate remained until 1976, when it was dropped to a slightly less punitive 70%.

The Economic Recovery Tax Act of 1981 reduced top income tax rates quickly and estate tax rates more slowly. From 1984 to 2001, the top estate tax rate was fixed at 55%. Then began a period of increasing estate tax exemptions and decreasing estate tax rates, reaching 45% on amounts over \$3.5 million in 2009.

Today the maximum estate and gift tax rate is 35% on amounts over \$5.12 million. Is this the logical culmination of a long-running trend, or just a momentary anomaly? The answer would seem to depend upon one's politics. There are advocates for abolishing the estate tax entirely and some for extending the 2012 rules. President Obama has called for a return to the 2009 estate tax regime.

However, if Congress does not act in 2012, the country will return to the law as it was in 2000 for taxing gifts and transfers at death. That would mean that when lifetime transfers exceed \$1 million, a federal gift or estate tax potentially will be due. Tax rates will go up to 55% again (with a marginal rate of 60% applying in some circumstances).

Will that happen? Few observers expect that development, and even fewer advocate for it. But if Congress should be deadlocked on the issue (sound familiar?), that will be the result.

The possibility of a return to higher tax rates has caused some wealthy families to take a careful look at the options they may have for "locking in" the higher exemptions and lower tax rates of 2012. Among the possibilities:

- Outright gifts to heirs;
- Transfers to irrevocable trusts for heirs;
- Creation and funding of "dynasty trusts" for long-term financial security; or
- Grantor-retained annuity trusts.

Meeting with your estate planning advisors in 2012 could be one of the most important steps you could take in protecting family wealth.

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