

WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

Gifts and the \$5 Million Federal Exemption Amount: *What's All the Hype About?*

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Many estate planning experts are suggesting that people with significant assets consider making big gifts before the end of 2012. The reason is the likely expiration at the end of this year of the very favorable \$5.12 million combined Federal estate and gift tax exemption amount and the uncertainty about legislation after December 31, 2012.

Until the end of 2012, the IRS does not impose a gift or estate tax on lifetime gifts or transfers at death totaling up to \$5.12 million to your children and other descendants and the top tax rate on transfers over that amount is 35%. (Note that New York State does not have a gift tax but does impose estate tax

on taxable estates over \$1 million). If Congress takes no action, on January 1, 2013 the combined Federal exemption for estate and gift taxes will return to \$1 million, and the top tax rate will return to 55%. No one can predict whether, and in what manner, Congress will act. In view of this uncertainty, you should consider making gifts that will take advantage of the current \$5.12 million exemption. Even if you don't feel comfortable making a gift of the full \$5.12 million (\$10.24 million for married couples), it still may be worth making a gift of a portion of it.

One benefit of using part or all of the \$5.12 exemption this year is, at the very least, any appreciation on the property gifted is removed from your taxable estate. For example, if you make a lifetime gift of \$3 million to your children or to a trust for your children in 2012 and that property grows to \$10 million by the time of your death, the \$7 million of appreciation will have passed to your children free of gift and estate tax.

There are considerations to think about, however, in determining whether or not to make a large gift this year. First and foremost, you must be absolutely comfortable giving away a large gift, since you cannot keep any benefit from the property you give away. Your age, health, your other assets, your psychological comfort with making a gift all must be considered. In addition, the recipient of the gift takes a "carry over basis" from you, which means that the recipient takes your basis (that is, "steps into your shoes") for capital gains income tax purposes.

Reducing estate and gift taxes is a good thing, of course, but your comfort in making a large gift must be your primary consideration. If you are comfortable with the idea of making a large gift, it is certainly advantageous to make this gift before the end of 2012.

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