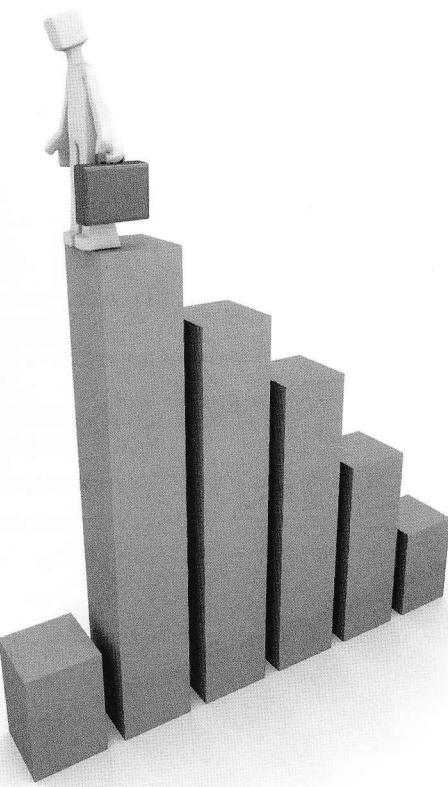


# WAS THE BIG 2012 GIFT I MADE A MISTAKE?



By Patricia C. Marcin, Esq. ©

Many folks hurried to make gifts by midnight December 31, 2012. They feared that Congress would not act and we would go over the “fiscal cliff”, resulting in a reduction of the federal estate and gift tax exemption to \$1 million from \$5,120,000 and an increase in estate and gift tax rates from 35% to 55%. Congress finally did act to avert the fiscal cliff and made “permanent” (which just means until Congress changes it again) the higher estate and gift tax exemption – now \$5,250,000 per person – and increased the top estate and gift tax rate to 40%. As a result of the permanent



higher exemption amount, some who made large gifts at the end of 2012 are wondering whether they made a mistake. Generally, the simple answer is that 2012 gifts were not a mistake.

First, you addressed your estate plan, something many procrastinate over for years. Second, by making a gift in 2012, either outright or in trust (preferably in trust, due to spendthrift and creditor protection), you have removed from your estate any appreciation on the gift from the date of the gift until your death. Third, since New York State imposes an estate tax -- but no gift tax -- on assets over \$1 million passing to someone other than a spouse, you have significantly reduced your New York State estate tax burden.

For example, if you die in 2013 owning \$5 million in assets which pass to your children, there will be no federal estate tax, but there will be a whopping New York State estate tax of about \$390,000. If, however, during your life you had gifted \$4 million to your children and died owning \$1 million in assets, your New York State estate tax would be only \$33,200, a savings of over \$350,000! Of course, this must be balanced against the potential capital gains tax, if assets with a low income tax basis are gifted.

In any event, you can't take back gifts you have made without wasting some or all of your gift and estate tax exemption amount. So, be happy and feel good about the gifting you have done.

## Can your estate plan withstand an unstable climate?

The future of estate tax law is uncertain. What is certain is that the trusts & estates attorneys at Farrell Fritz can help you establish and adapt your estate plan.

### A recognized leader in estate litigation

We are home to one of New York State's largest trusts & estates teams, with extraordinarily experienced estate litigators. Few firms offer as deep an understanding of the many nuances that surround litigating an estate.

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