

JANUARY 2013 NEWSLETTER

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NEWS ALERT:

**THE FEDERAL ESTATE TAX PROVISIONS
OF
THE AMERICAN
TAX PAYER RELIEF ACT OF 2012**

In the wee hours of the morning on January 2nd while most Americans were winding down their new year's celebrations, the Senate was tying up loose ends of the all impending fiscal cliff. Through the process, they have finally solved the riddle of the

	2013Default	2013
Estate/GST Tax	Yes	Yes
Estate/GST Exemption	\$1 M	\$5.12 M
Gift Tax Exemption	\$1 M	\$5.12 M
Exemption Spousal	No	Yes
Maximum Marginal Tax	55%	40%

Federal Estate Taxes for 2013 and onward. Essentially, the enacted bill extends the 2012 estate tax scheme indefinitely with the exception of a 40% maximum marginal tax rate instead of a 35% maximum marginal tax rate as provided in years 2010 through 2012. This averted the 2013 default rules where the exemption drops from \$5.12 million to \$1 million and the maximum marginal tax rate increase to 55%.

The New 2013 vs. The 2013 Default Rules (See Charts Above):

The highlights of the new 2013 rules compared to the 2013 default rules are an exclusion of \$5.12 million as opposed to \$1 million, a marital portability of the exclusions, and a maximum estate tax rate of 40% as opposed to 55%.

First, the \$5.12 million exemption amount allows a person to transfer such amount tax free during life or at death. Using a tax rate of 55%, this would save greater than \$2 million in wealth transfer taxes compared to the \$1 million exemption amount. Second, the new 2013 law maintains spousal portability of this exemption amount. Spousal portability allows a surviving spouse to use any unused exemption of a predeceased spouse if the predeceasing spouse's executor makes the proper election on the federal estate tax return. This is important if one spouse owns the majority of the marital assets and the less wealthy spouse dies first. The less wealthy spouse does not have the assets to use the entire exemption and thus the exemption would be lost forever. Under marital portability the surviving spouse may now use the unused exemption to receive a total exemption of \$10,240,000. Finally, while the default maximum tax rate was to be 55%, the new maximum tax rate is 40%. This saves \$150,000 in tax per million of taxable assets or \$2.2 million on the increased exemption.

Conclusion:

Compared to the rumored alternatives of the 2013 default tax rules the recent 2013 legislation is a late blessing. The new rule provides the favorable tax rules of 2011 and 2012 with the only negative of a 40% maximum marginal tax rate instead of 35%. Additionally, there has been much uncertainty in the estate planning field since 2009 as estate planning practitioners were first anticipating the 2010 rules and more recently the 2013 default rules. The new estate tax act provides stability for high net worth individuals who do not have to feel uneasy that their estate plans are not up to date with a

complex set of rules that change or sunset after a few years.

If you have any questions or concerns about the estate tax provisions of the new “Fiscal Cliff Tax Act”, please contact Joseph R. Pozzuolo, Jeffrey S. Pozzuolo or Stephen P. Taylor.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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