Estate Planning in 2013: The Clouds Have Lifted

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After years of a cloudy outlook, the forecast for estate planning has finally improved, thanks to the new American Taxpayer Relief Act of 2012 (ATRA). But you will still face challenges as you plan ahead.

Estate planning has been shrouded in uncertainty ever since the monumental Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created, for the most part, estate- and gift-tax breaks that were gradually bolstered over a decade. After the EGTRRA changes culminated in a one-year repeal of the federal estate tax in 2010, other generous provisions lasted for two years under the Tax Relief Act of 2010. But just like EGTRRA, these favorable estate- and gift-tax provisions were supposed to "sunset" after 2012.

Now ATRA has averted the worst of the crisis. Beginning in 2013, the new law generally extends some of the tax breaks that were established by the Tax Relief Act of 2010—on a permanent basis. Here is a brief summary of several significant provisions.

- The top estate-tax rate, which had been reduced from 55% to 45% by EGTRRA and then lowered to 35% by the Tax Relief Act of 2010, is set at 40%.

- The effective estate-tax exemption, which had increased from $1 million to $3.5 million under EGTRRA, and then was raised to $5 million (with inflation indexing) by the Tax Relief Act of 2010, remains at $5 million (with inflation indexing). For 2013, the exemption is $5.25 million.

- The Tax Relief Act of 2010 allowed "portability" of exemptions between spouses. In other words, after one spouse died, the other could still use the remaining portion of the deceased spouse's exemption. ATRA retains this special estate-tax break.

- After EGTRRA severed the estate- and gift-tax systems, they were reunified by the Tax Relief Act of 2010. Under ATRA, the systems remain reunified.

- The exemption from the generation-skipping tax (GST), which applies to most transfers that go from grandparents to their grandchildren, is coordinated with the estate-tax exemption. Thus, the

GST exemption for 2013 is $5.25 million (see above). But, note that there is no portability of this exemption (unlike the estate-tax exemption).

Of course, this is just a bird's-eye view of several ATRA changes affecting estate planning. Due to the latest developments, you might revisit your will and any trusts you have established or consider implementing new trusts based on the permanent provisions in the law. In any event, consult your Henry & Horne, LLP estate-planning adviser before making any changes.

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