

Estate Planning

Why It's Still Important



How Have Tax Law Changes Affected Estate Planning?

In recent years, the law concerning estate planning has changed many times.

- In 2009, the estate tax was in effect. An estate of someone who died that year could exempt up to \$3.5 million in assets, and the taxable estate over that amount would be taxed at a 45% rate.
- In 2010, the estate tax was repealed.

- In 2011 and 2012, the estate tax is back in effect. This time, the estate tax exemption is \$5 million, and the estate tax rate is 35%.
- In 2013, the estate tax law will change again (unless Congress acts) to lower the exemption and raise the tax rate.

This is only a bare-bones illustration of how the estate tax works, but it shows how hard it can be to make plans for what happens to your estate when you are gone.



There are many steps one can take to avoid the bite of the estate tax. Even more important are the steps one takes to assure loved ones and favorite charities are remembered.

Six Good Reasons Why Estate Planning Remains Important

It is unfortunate that some individuals postponed creating a will and designing estate plans because there was no estate tax in 2010. Despite the uncertainty about the tax law, there are many reasons to make plans or revise plans to fit what is needed right now.

1. The Federal Estate Tax is Back

In 2010, the estate tax was repealed for one year. But, in 2011, the estate tax is back. The top marginal tax rate for federal estate taxes is 35%. The exemption amount (the amount protected from taxes) is currently \$5 million. The rate is lower than it has been in decades, and the exemption is higher than it has ever been. Effective planning can be done to be sure your estate is protected from the estate tax.

2. The Gift and Estate Tax Exemption are Linked Together

The exemption amount for 2011 and 2012 is the same for lifetime gifts and for estates (\$5 million). This means the taxable gifts that you make during your lifetime count against the total \$5 million. Giving away assets during life rather than through a will can be preferable. For one, you have the benefit of a \$13,000 annual exclusion – meaning you can give up to \$13,000 to an individual every year (\$26,000 if you split the gift with a spouse) without any tax consequence. And, when you make gifts during your life you have a chance to see how your gifts benefit loved ones.

3. Married Couples Have More to Think About

A new twist to the estate tax law gives a surviving spouse the benefit of any unused exclusion amount not used by the deceased spouse's estate. For instance, a husband who leaves everything to his wife uses no part of the exclusion amount. Thus, he leaves his wife \$5 million worth of unused exclusion amount that she can add to her own exemption for estate planning purposes.

In past years, people made sure to use every last dollar of an exemption so the tax protection would not go to waste. At first glance, this new advantage for married couples seems to require less planning by spouses. But, there are more important reasons for estate planning than simple tax avoidance. In 2010, there were still reasons to have a will even though there was not an estate tax. And, in 2011, there are still reasons to have a will even though the exemption amount is not lost.

4. State Estate and Inheritance Taxes Can Pose a Problem

It used to be that an estate received a credit on its federal return for estate taxes paid to a state. However, the law changed, and now an estate can only deduct state estate taxes. In response, many states have passed laws to impose an estate and/or inheritance tax on residents. So, state taxes could be an important planning consideration for your estate.

5. The Federal Estate Tax Is Scheduled to Change in 2013

After 2012, the current law will revert to what the law was back in 2001. That's right – the federal estate tax law has an expiration date of December 31, 2012. Back in 2001, the exemption amount was just \$1 million and the top tax rate was 55%.

Politicians and pundits alike expect that Congress will pass some sort of estate tax legislation before the “sunset” of the current law. However, it should be noted, many politicians and pundits expected Congress to pass some sort of estate tax legislation in 2009 before the one-year repeal... and nothing was done.

6. Estate Planning is More Than Just Taxes

Regardless of tax consequences, you always want to be assured that your assets go to your intended beneficiaries — this includes the opportunity to benefit your favorite causes through planned gifts such as charitable bequests and other testamentary arrangements. By including us in your estate planning, you are leaving a lasting legacy and ensuring that the causes you valued during life will be continued.

Note: Donor surveys find that tax benefits are seldom the primary motivation for testamentary charitable giving. A survey by the *Partnership for Philanthropic Planning* found that only about one-third of the survey's respondents indicated that tax savings were a prime factor in their philanthropic decision. About three-fourths indicated that their commitment to the organization and its mission was paramount.

Charitable Giving and Estate Planning

With all of the uncertainty surrounding the future of the federal estate tax, you may question the old adage, “Nothing is as certain as death and taxes.” But, estate taxes appear likely to remain with us. By actively engaging in estate planning now, you increase the odds that a sizable portion of your estate will not be inadvertently lost to taxation or go to unintended beneficiaries. You also have the opportunity to designate how your “social capital” will be used rather than leave that decision to federal and state governments.

By incorporating charitable giving into your estate plan, you accomplish two goals. First, your estate will receive favorable tax consequences. Unlike the income tax rules, estate tax charitable deductions are not limited to a percentage of your tax base, nor subject to complicated valuation rules. Rather, the estate tax charitable deduction is based on the full fair market value of the donation.

More importantly, by including charitable bequests in your estate plan you are furthering the mission of your favorite charitable organizations. It's nice to know that the steps you take today will have a lasting impact on our future and that you can leave a lasting legacy.

Example: John Barker has a \$7 million estate, and wants to accomplish two goals in his planning process. John wants to make a major contribution to our organization, but he also would like to reduce his estate tax liability. John decides to leave a \$500,000 bequest in his will to us. The result? The full \$500,000 will qualify for the estate tax charitable deduction. This means he will reduce his potential estate tax liability by \$175,000. Equally important, John knows that the money which would have gone to the federal government will now go to our organization and help make a difference in our programs for generations to come. Both John's estate and our organization benefit from this bequest.

Why It Pays to Act Now

With many unanswered questions and lingering confusion over the federal estate tax law due to its “sunset” in 2013, you may be tempted to hold off making changes in your estate plan until the commotion subsides. But failure to act may do more harm than good. After all, who can predict when death or disability may strike? Why not explore the opportunities you have to make certain more of your hard-earned assets go to your intended beneficiaries.

The smart thing to do right now is to review your existing plan. Check with your attorney to make sure that the latest tax changes have not undermined your plan and that you take advantage of any new tax-saving avenues, which may include planned gifts to charitable institutions. You may be surprised to discover that your

existing plan no longer carries out all your intentions. Don't let that happen to you. By incorporating more flexibility into your plan, you may prevent unintended consequences and do more for both your surviving heirs and favorite charitable organizations.

We would be happy to talk with you about how you might want to include a planned gift in your estate plan to enjoy maximum benefits under the new tax changes.

JOHN'S ESTATE TAX RESULTS

Estate tax base before charitable bequest	\$ 7,000,000
Amount of charitable bequest	\$ 500,000
Estate tax* without charitable bequest	\$ 700,000
Estate tax* with charitable bequest	\$ 525,000
Reduction in estate tax due to bequest	\$ 175,000
After-tax cost of \$300,000 bequest to charity	\$ 325,000

** Assumes death occurs in the year 2011. Applicable Exclusion Amount is taken into account. The amount of tax savings will vary with the exemption amount and tax rate in the year of death.*