



## TAX ALERT

### Changes to Estate, Gift, and GST Taxes

On February 13, 2012, President Obama released his proposed fiscal year 2013 budget. The budget includes major changes to the estate, gift, and generation-skipping transfer (GST) tax laws, which are significantly less favorable to taxpayers than the laws in effect this year.

If you are considering significant gift-giving, you may want to make those gifts before the new proposals become law or before year-end if Congress takes no action. A gift of \$5,120,000 can be made tax-free now, but under the budget proposals or if Congress takes no action, a Federal gift tax of \$2,111,000 would be due.

	2012 Law	Proposed 2013 Law
Gift Tax Exemption (the amount that may be transferred during life free of Federal gift tax)	\$5,120,000	\$1,000,000
Top Gift Tax Rate	35%	45%
Estate Tax Exemption (the amount that may be transferred at death free of Federal estate tax)	\$5,120,000	\$3,500,000
Top Estate Tax Rate	35%	45%
Generation-Skipping Transfer Tax Exemption	\$5,120,000	\$3,500,000
Top GST Tax Rate	35%	45%

### Other Proposed Changes

**GRATs.** A Grantor Retained Annuity Trust ("GRAT") is an irrevocable trust to which you gift assets, while retaining the right to an annuity for a specified term of years. At the end of the term, the remaining assets pass to beneficiaries (usually children), free of gift taxes. Under the proposed 2013 budget, GRATs would have to continue for at least 10 years. This new requirement would increase the odds of you, as grantor, dying within the term, thereby eliminating the tax benefits of the GRAT.

**Valuation Discounts.** Currently, valuation discounts are available for transfers of interests in closely-held partnerships, corporations, and limited liability companies. Under the proposed 2013 budget, valuation discounts would be eliminated.

**Irrevocable Grantor Trusts.** Currently, you can use irrevocable "grantor" trusts to make a large tax-free transfer to a trust. The trust assets are not taxable in your estate for estate tax purposes, but you are treated as the owner of the trust assets for income tax purposes. Consequently, you can sell assets to the trust without triggering capital gains tax on the sale. You also pay income tax on the trust assets, thereby maximizing the amount transferred to your beneficiaries, free of gift tax. Under the proposed 2013 budget, the benefits of such irrevocable grantor trusts would be eliminated, because the trust assets would be taxable in your estate at death, and any distribution out of the trust would be a taxable gift.

**GST Trusts.** In Illinois, you can create a GST exempt trust that can continue in perpetuity for the benefit of your children and other descendants, free of estate or other transfer taxes. Under the proposed 2013 budget, all assets in GST trusts would be subject to transfer taxes after 90 years.

### *Window of Opportunity*

These proposed changes would be effective only for transfers after the effective date of new legislation. It is very difficult to predict what Congress may ultimately enact. However, if Congress takes no action this year, then effective January 1, 2013, the gift and estate tax exemptions will revert to only \$1 million, and the GST tax exemption will revert to only \$1 million increased for inflation. The top gift, estate, and GST tax rates will revert to 55% (with a 5% surtax in certain cases). Under both President Obama's budget and current law, the gift tax exemption will drop to only \$1 million per taxpayer (or \$2 million for a married couple) on January 1, 2013.

Until January 1, 2013, or the date on which Congress takes action, you can take advantage of current law, including the ability for a married couple to transfer up to \$10,240,000 in assets, gift tax free. If you would like to discuss the opportunities still available this year, please contact me at 312-840-7009.

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**Karen K. MacKay**

Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash, 22nd Floor | Chicago, IL 60611  
Phone 312.840.7009 | Fax 312.840.7900  
kmackay@burkelaw.com | www.burkelaw.com