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Estate tax implications uncertain given upcoming changes

ESTATE TAX | AUGUST 30, 2012 | BY: BONNIE BOWLES |

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Estate tax (http://www.examiner.com/topic/estate-tax/articles) is a moving target. The estate tax liability your heirs may owe changes from one year to the next as the tax laws change. But at a maximum tax rate of 55 percent, keeping up with changes in the law is well worth the effort.

In 2012 the exemption amount - meaning the amount of your gross estate not subject to estate tax - is $5 million. In 2013, by stark contrast, the exemption amount is scheduled to decrease to $1 million. This marks the first time since 1935 that the exemption amount is set to decrease.

Given that life insurance proceeds are includable in your gross estate as well as the value of everything you own or have control over, many people unknowingly have an estate tax problem, bringing heartburn and headache to their families.

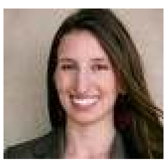
Estate tax savings is possible, if you plan right. A common plan is a gifting program through which you pass your assets to your heirs during your lifetime rather than through your will. Gift tax (http://www.examiner.com/topic/gift-tax/articles) applies to gratuitous transfers during your lifetime, and your estate tax return is best described as your "final" gift tax return on your assets passing as inheritance.

The good news is that each year you are permitted to give a certain amount to your loved ones without having to report the gift to the IRS or pay tax on the gift. In 2012 the excludable gift amount is $13,000, which increases each year with inflation.

The bad news is that if you have regularly made gifts to your loved ones year after year in anticipation the estate tax exclusion will only increase, this could present a problem if you have given away over $1 million in non-taxable gifts.

The question is whether the IRS will "claw back" the (higher) exclusion amount applicable at the various times gifts were made, or apply the (lower) exclusion amount applicable the year your pass away. The implications of the decrease in the estate tax exclusion amount are uncertain.

Steven M. Weiser (http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7717) of Foster Graham Milstein & Calisher LLP in Denver posits that there will not be an estate tax clawback for those individuals who made lifetime gifts in anticipation of an ever-increasing exclusion amount. But until Congress clarifies the tax code or the IRS challenges a test case, you should keep a close eye on the moving target that is estate tax.



Bonnie Bowles, Denver Estate Planning Examiner

Bonnie Bowles, a new mom and estate planning attorney, regularly educates growing families about the importance of naming a guardian for your children and protecting your loved ones from the hassle and uncertainy of probate. Passionate about estate planning, Bonnie helps families understand it in...