

If You Can't Take It With You, GIVE IT AWAY!

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That's right...a new Tennessee law eliminates the Tennessee gift tax so you give more away tax free! On May 21, 2012, two bills were signed into law that significantly change Tennessee gift and inheritance taxes.

One major change in the new legislation is that the Tennessee gift tax has been eliminated. The elimination of the gift tax is retroactive to January 1, 2012, which means that gifts made during 2012 will not be subject to Tennessee gift tax.

Under prior Tennessee law, gifts exceeding \$13,000 per person per year (and some smaller gifts depending on the recipient) were taxable. Any gifts exceeding the annual exclusion amount (currently \$13,000) were taxable at rates ranging from 5.5% to 16%. Unlike the federal gift tax, Tennessee did not have a lifetime exemption for gifts exceeding the annual exclusion amount and was one of only a few states that imposed a state gift tax in addition to the federal gift tax.

The new law completely eliminates the Tennessee

gift tax. The federal gift tax remains in place, and any gifts over the exclusion amount are applied against the lifetime exclusion amount (currently \$5,120,000).

Additionally, gifts made prior to January 1, 2012, are still potentially taxable and should be reported on a gift tax return.

The second major change is the phasing out of the Tennessee inheritance tax over the next four years.

For the past several years, the federal estate tax exemption amount has changed several times. However, the Tennessee inheritance tax exemption has remained at \$1,000,000. Thus, Tennessee residents with estates less than \$1,000,000 have not been subject to inheritance tax, but Tennessee residents with estates over \$1,000,000 have been subject to Tennessee inheritance tax at 5.5%-9.5% rates.

Under the new law, the Tennessee inheritance tax will be phased out over the next four years. For the remainder of 2012, the inheritance tax exemption will remain \$1,000,000. Beginning January 1, 2013, the ex-

emption will increase each year as follows:

- \$1,250,000—2013
- \$2,000,000—2014
- \$5,000,000—2015
- Repealed—2016

As of January 1, 2016, the Tennessee inheritance tax will be eliminated.

Please bear in mind that the exemption amounts are per person, not per couple. Additionally, the unlimited marital deduction remains in place between spouses, which means that an unlimited amount can pass to your spouse at your death regardless of the exemption amount in effect at the death of the first spouse.

Please also know that this legislation only impacts the Tennessee inheritance tax and does not have any effect on the federal estate tax. Under federal law, the exemption amount for the remainder of 2012 is \$5,120,000, and there is a portability feature among spouses, which means that unused exemption may be carried over to the second spouse in certain circumstances.

If Congress does not act prior to the end of this year, the federal estate

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tax exemption drops down to \$1,000,000 with a maximum rate of 55% at the beginning of 2013. We do not know at this point whether Congress will enact additional legislation related to the federal estate tax prior to the end of 2012. If Congress does not act, the exemption automatically reverts to \$1,000,000.

The next logical question is, "How does that impact me and my family?" Of course, it depends. Certainly, the climate for gifting is excellent. People with potentially taxable estates can make large gifts before the end of the year to take advantage of the high federal exemption amount without paying Tennessee gift tax. Thus, the combination of a high federal exemption and no Tennessee tax can yield extremely favorable tax

and other results for your family.

The potential advantages of the Tennessee inheritance tax repeal over the next four years are not quite as immediate. We need to continue to plan for the inheritance tax for estates between \$1 million and \$5 million until the Tennessee inheritance tax is completely phased out. Additionally, until we know whether the federal estate tax exemption will remain high or drop back down, we cannot completely disregard estate taxes. If the federal exemption returns to \$1,000,000, estates of Tennessee residents may not be taxable for Tennessee inheritance tax purposes but could be taxable for federal estate tax purposes.

The uncertainty in the federal estate and gift tax

system provides a greater incentive to go ahead and make larger gifts during the remainder of 2012. Although much is uncertain with the federal estate tax, we know that the federal lifetime gift exclusion is \$5,120,000 until the end of 2012, and we know that Tennessee does not have a gift tax retroactive to January 1, 2012. Thus, gifts made during 2012 can get assets out of your estate and lower the value of your estate for estate tax purposes in the event that the federal exemption drops back down without incurring any Tennessee gift tax.

We would love the opportunity to talk with you about how these changes impact your estate plan. Please contact our office to learn more about potential opportunities for you and your family with this new legislation.

GET INTO THE HEET

This time of year, most people want to get out of the heat. However, the HEET we are talking about has nothing to do with the temperature outside. A HEET is a Health and Education Exemption Trust. As discussed in the previous article, most gifts are limited to the annual exclusion amount (\$13,000) or applied to the lifetime exclusion (currently \$5,120,000). The elimination of Tennessee gift

tax allows for larger gifts without tax, but the federal lifetime exemption is still in place and may change in the future. Gifts for the health or education needs of one or more younger beneficiaries are not subject to the annual exclusion amount if they are paid directly to the provider of services or to the educational institution directly. HEETs are less complex and avoid the restrictions common in

other gifting strategies, such as 529s. HEETs can be a powerful alternative for parents or grandparents looking to provide for younger beneficiaries' health and education without the hassles and complexities of other strategies.

Please contact our office to learn more about how HEETs can work for you.



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