



— TRUSTS & ESTATES NEWSLETTER —

You may recall that in December, we were all a bit concerned about falling off the “fiscal cliff,” fearing that several major fiscal events might occur at the end of 2012 that could push our economy into further recession in 2013. One of the major forces behind this fear was the expiration of prior-enacted tax cuts and tax-relief provisions. This caused many of us to engage in last-minute, late-year estate planning in order to lock in tax advantages whose time was nearing an end.

On New Year’s Day, however, we learned that Congress had come to terms on many heavily debated tax provisions, and President Obama signed the American Taxpayer Relief Act of 2012 (ATRA) into law on January 2, 2013. ATRA, unlike many of its recent predecessor tax acts, brought some certainty to taxpayers.

Some highlights of ATRA as they apply to estate planning are as follows:

- **Reunification of the Estate and Gift Tax Law**
Finally, the rules and rates governing the estate tax and the gift tax are permanently unified. Separated for most years since 2001, the disparate treatment of the two types of transfer tax often made estate planning inconsistent and created traps for the unwary.
- **\$5 million Federal Estate and Gift Tax Exemption**
The \$5 million federal exemption level of 2012 remains, and is now indexed for inflation. Accordingly, in 2013, an individual can pass \$5.25 million of wealth to the next generation

through lifetime gifts or transfers at death without the imposition of a federal estate or gift tax.

- **Permanent Portability** In 2010, legislation was passed on a temporary basis that allowed a surviving spouse to use the deceased spouse’s unused estate tax exemption. ATRA made this temporary benefit permanent and brought some clarification to the law. Now, if properly elected on an estate tax return, a deceased spouse’s unused exemption is available for future use by the surviving spouse. The permanence of spousal portability weakens the concept of “use it or lose it”.
- **Maximum Estate and Gift Tax Rate** Gone are the days of both the confiscatory 55% maximum estate and gift tax rate and the lesser maximum rate of 35% in effect during more recent years. ATRA brought compromise, setting a maximum rate of 40%.
- **Tax Free IRA Distributions to Charities** One of the only non-permanent features of ATRA, the ability of a taxpayer (aged at least 70½ years) to make a tax-free rollover from an IRA to a charity up to \$100,000 annually has been extended for another year.

It is worth noting that New York State has eliminated its gift tax, but continues to impose an estate tax for estates over \$1 million per person. The interplay of state laws with the changes effected by ATRA provides ample reason for you to review your estate planning. We are happy to meet with you to discuss whether revisions should be made to your plan.

Should you require legal advice or additional information about these changes and your estate plan, please contact Cora A. Alsante, Esq., Chair of our Trusts and Estates Practice, or any of the attorneys in the Practice: Michael L. Corp, Esq., Marion Hancock Fish, Esq., Karin Sloan DeLaney, Esq., Martin L. Fried, Esq., Mary C. King, Esq., Richard E. Scrimale, Esq., Jaime J. Hunsicker, Esq. and Luke A. Beata, Esq.