

Alpern Rosenthal Offers Insight on How the 2012 Taxpayer Relief Act affects Estate and Gift Taxes

/EINPresswire.com/ Congress has come together at the thirteenth hour, to reach a deal that prevents the country from going over the fiscal cliff and crashing to the bottom. While there are many facets of the agreement, the outcome of the tax surrounding estates and gifts is notable.

Where were they?

As a recap, the exclusion amount (amount that is excluded from federal estate tax at death) was \$5,120,000 for an individual in 2012. The amount over the \$5.12 million threshold was taxed at an [estate tax rate](#) of 35 percent. Likewise, an individual had a \$5.12 million gift tax exemption. In 2012, a person had the ability to gift up to \$5.12 million without having to pay gift tax of 35 percent.

As a supplement, portability was available to married couples. To review, conceptually, one spouse had the ability (via an election by the executor) to leave an unused portion of his/her unused exemption to the surviving spouse. Portability was also applicable to gifting, as well.

Where were they headed?

On January 1, 2013, the exclusion amount for both estates and gifts was set to drop to \$1,000,000 per person, with the tax rates rising to 55 percent. Portability was no longer going to exist. There was also talk of other options, for example the numbers that were introduced in President Obama's budget proposal. Set forth was an exemption amount of \$3.5 million and an estate and gift tax rate of 45 percent.

Given the drastic change that was scheduled in the exemption amounts and tax rates, a flock of individuals scurried at the last minute to attempt to transfer assets out of their estates and take advantage of the \$5.12 million gifting opportunity. As it turns out, it was not absolutely necessary. However, gifting in 2012 was the only certain option and if the plan made sense, it was the best thing to do. In addition, those who did gift the maximum amount in 2012 are now positioned to gift another \$130,000 (over and above the annual exclusion gifts of \$14,000 per beneficiary) this year.

What is the deal?

On January 2, 2013, we finally received an answer. As a surprise to many, both the exclusion amount of \$5.12 million (adjusted for inflation to \$5.25 million for 2013) and portability remain.

The federal estate and gift tax rate was raised to 40 percent.

The outcome of the deal as it relates to estate and gift tax presents a great opportunity for those who did not act in 2012.

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Media Contact:

Tricia Egry

Alpern Rosenthal

412-281-2501

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