

Senior Law Quarterly

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Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

The American Taxpayer Relief Act of 2012

The law passed to deal with the so-called "fiscal cliff" included revisions to estate, gift and generation-skipping transfer ("GST") tax laws and income tax laws that will affect estate planning for the foreseeable future. In this addition of "Senior Law Quarterly" we will review these changes.

Changes to the Federal Estate Tax Law

- The federal gift, estate and GST tax provisions that had been put in place as temporary measures in December 2010 were made permanent as of December 31, 2012. This is great news because, for more than ten years, we have had uncertainty due to the fact that the estate, gift, and GST exemptions and rates and basic income tax provisions and rates all had expiration dates. And while "permanent" in Washington only means this is the law until Congress decides to change it, at least we now have some certainty with which to plan.
- The federal estate and gift tax exemption will remain at \$5 million per person, adjusted annually for inflation after January 1, 2011. In 2012, the exemption (with the adjustment) was \$5,120,000. The amount for 2013 is \$5,250,000. This means that the opportunity to transfer large amounts free of tax during lifetime or at death remains.
- The Generation-Skipping Transfer (GST) tax exemption also remains at

the same level as the gift and estate tax exemption (\$5 million, adjusted for inflation). The GST tax, which is in addition to the federal estate tax, is imposed on amounts that are transferred (by gift or at your death) and "skip" a generation; for example, a gift to a living child's descendant.

- The "portability" provision was also made permanent. This allows the unused exemption of the first spouse to die to transfer to the surviving spouse, without having to set up trust planning.

- Married couples can take advantage of these higher exemptions and, with proper planning, transfer up to \$10+ million through lifetime gifting and at death.

- The top tax rate on estates larger than the exempt amounts was increased from 35% in 2012 to 40% in 2013 and beyond.

- While the "portability" provision may at first appear to be an easy way to use both spouses' estate tax exemptions, there are still many benefits to using trusts. This is especially true for those who want to provide for a surviving spouse yet be sure the rest of their estate will eventually go to their children (for example, those from a previous marriage). Plus, there is additional cost to using the "portability" provision because it requires filing an estate tax return.

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The American Taxpayer Relief Act of 2012

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- Separate from the new tax law, the amount for annual tax-free gifts has increased from \$13,000 in 2012 to \$14,000 in 2013 as a result of an inflation adjustment. This means you can now give up to \$14,000 to as many individuals as you wish each year and not have to report the gifts or pay a gift tax.
- Long term capital gains rates will remain at 15% for most taxpayers, increasing to 20% only for taxpayers in the top income tax bracket.

Changes to the Federal Income Tax Law

- There is a new Medicare 0.09% surtax on ordinary income and a new 3.8% surtax on investment income. Both are applicable to income over \$200,000 for singles (\$250,000 for married couples) and were part of the 2010 health care bill. This medicare surtax also applies to trusts with taxable income of \$11,950 or higher.
- The top capital gains and dividend rate increased to 20% for those earning more than \$400,000 a year (\$450,000 for married couples).
- The direct IRA to charity transfer for those over 70.5 years of age was reinstated, retroactive to 2010.

The Need for Proper Planning Remains

This tax legislation has removed the emphasis on estate tax planning and put the emphasis back on the real reasons we need to do estate planning: taking care of ourselves and our families. Proper estate planning is

essential if you want to:

- Avoid probate, which can be quite expensive and time consuming;
- Ensure your assets are distributed the way you want;
- Protect an inheritance from irresponsible spending, a child's creditors, and from being part of a child's divorce proceedings;
- Provide for a loved one with special needs without losing valuable government benefits;
- See that control of your assets remains in the hands of the person you trust most;
- Provide responsibility for minor children or grandchildren;
- Protect you, your family and your assets in the event of your incapacity;
- Establish business succession planning at retirement, incapacity and/or death; or
- Help you create meaningful charitable gifts.

Conclusion

If you have been sitting on the sidelines, waiting to see what Congress would do, the wait is over. Now that we have some certainty with "permanent" laws, there is no excuse to postpone your planning any longer. In fact, delaying your planning could cause you to lose out on strategies that could have significant impact on your family.

VA Eliminates Annual Eligibility Verification Reports

The Department of Veterans Affairs announced in December of 2012 that it had eliminated its requirements that recipients of VA non-service connected disability pension complete annual Eligibility Verification Reports (EVR). In the past, these reports had to be completed and submitted to VA by March of each year, or VA would eliminate benefits.

In making the change, VA estimated that it eliminated completion of approximately 150,000 EVRs which would have otherwise gone out to veterans and their

families in January of 2013. In making this change, VA announced that it will rely on information provided VA directly from the Social Security Administration and the IRS.

Even with the elimination of the EVR, it is still important that VA pension recipients continue to submit their unreimbursed medical expenses to VA each year to avoid interruption of benefits.

Updating your Estate Plan

A question we often hear is, "How often should I have my documents reviewed by my attorney?" There is no magic answer here – it depends on your circumstances.

You should personally undertake a self-review of your estate plan and circumstances about once a year, which would include consideration of the following:

- Asset titling – Review your assets and confirm how they are titled. It is important that your assets, including real estate, bank and investment accounts, life insurance policies, vehicles, and retirement accounts reflect the proper ownership or include the correct beneficiary designations. Your financial advisor should be helpful in assisting you with this analysis.
- Fiduciaries – Are the persons you have appointed as your successor trustee(s), personal representative(s), and financial and healthcare attorneys in fact are still an appropriate choice?
- Financial situation – Have your assets increased or decreased to an extent that makes your present distribution plan upon your death impractical? Should you adjust the amounts or percentages you have allocated to your beneficiaries?
- Beneficiaries – Have any of your beneficiaries passed away, or are any beneficiaries under a disability which would warrant a change in the distribution scheme to that beneficiary?
- Changes in your own health or personal circumstances – Have there been any changes in your condition (such as a diagnosis of Alzheimer's, dementia, Parkinson's) or have you developed any other physical conditions which could necessitate changes to your estate plan?

After you have completed this self-review, you should contact your attorney to discuss any changes or concerns you have identified as a result.

New Addition at South County Senior Law

Our paralegal, Ashley Duda, and her husband, Tim Duda, are proud to announce the birth of their daughter, Clarabelle Rose Duda. She was born on March 2, 2013, at St. Luke's Hospital in Chesterfield.

Mother and baby are doing well and attorney Mavis Kennedy is delighted with her role as a new grandmother.

We look forward to Ashley's return to the firm in May.



Clarabelle Rose Duda — Born March 2, 2013

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South County Senior Law & Estate Planning Center, LLC

South County Senior Law & Estate Planning Center, LLC, has been serving the needs of our senior clients for over twenty years. The firm attorneys are members of NAELA, Inc. (National Academy of Elder Law Attorneys), and are dedicated to meeting the legal needs of persons of all ages, including seniors and the disabled.

We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid and VA planning, tax advice, Special Needs Trusts and trust administration, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule a no-cost initial consultation to discuss any of your legal questions.

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*Mavis Kennedy is a Certified Elder Law Attorney by the National Elder Law Foundation, the only elder law certification program accredited by the American Bar Association. Certified Elder Law Attorneys offer the specialized knowledge, skills and experience to resolve legal issues that affect older people and the disabled. Neither the Missouri Bar nor the Missouri Supreme Court reviews or approves specialist designations or certifying organizations.