

2014 Changes to Estate Tax, Gift Tax, and Generation-Skipping Transfer Tax Laws

1. **New and more favorable estate tax, gift tax and generation-skipping transfer tax exemptions and less favorable tax rates have gone into effect.**

Under the provisions of ATRA, the federal estate tax exemption has been indexed for inflation and therefore increased to \$5.12 million in 2012, \$5.25 million in 2013, and **\$5.34 million in 2014**, but the estate tax rate for estates valued over this amount was increased from 35% in 2012 to **40%** in 2013 and future years. In addition, the lifetime gift tax exemption has also been indexed for inflation and therefore increased to \$5.12 million in 2012, \$5.25 million in 2013, and **\$5.34 million in 2014**, and the maximum gift tax rate was increased from 35% in 2012 to **40%** in 2013 and future years. Finally, the generation skipping transfer tax exemption has also been indexed for inflation and therefore increased to \$5.12 million in 2012, \$5.25 million in 2013, and **\$5.34 million in 2014**, and the maximum generation skipping transfer tax rate was increased from 35% in 2012 to **40%** in 2013 and future years. These unified exemptions will continue to be indexed for inflation in 2015 and later years but the tax rate will remain at 40%. In addition, the annual exclusion from gift taxes will remain at **\$14,000** for 2014.

2. **"Portability" of the federal estate tax exemption between married couples has become permanent:**

In 2009 and prior years, married couples could pass on up to two times the federal estate tax exemption by including "AB Trusts" in their estate plan. TRA 2010 eliminated the need for AB Trust planning for federal estate taxes in 2011 and 2012 by allowing married couples to add any unused portion of the estate tax exemption of the first spouse to die to the surviving spouse's estate tax exemption, which is commonly referred to as "portability of the estate tax exemption." ATRA makes portability of the estate tax exemption between married couples permanent for 2013 and beyond, which means that **in 2014 a married couple can pass on \$10.68 million to their heirs free from federal estate taxes** with absolutely no planning at all. Note, however, that even if the deceased spouse's estate will not be taxable (in other words, is valued less than \$5.34 million in 2014), the surviving spouse will nonetheless be required to file IRS Form 706, *United States United States Estate (and Generation-Skipping Transfer) Tax Return*, in order to take advantage of the deceased spouse's unused estate tax exemption, otherwise the deceased spouse's exemption will be lost.

3. **The "pick up tax" was not resurrected.**

In 2005 the "pick up tax" was phased out under federal law. The pick up tax was a state estate tax that was equal to a portion of the federal estate tax bill and was collected by state taxing authorities. If the estate tax laws were allowed to revert back to the laws that were in effect in 2001, then the pick up tax would have suddenly reappeared in 2013, which would have meant that states such as California, Florida and Texas would have once again collected a state estate tax in the form of a pick up tax. Unfortunately for states without a freestanding estate tax, ATRA did not resurrect the pick up tax, so it continues to remain dormant and will not reappear any time soon. Refer to the State Estate Tax and Exemption Chart for the list of states which currently have a freestanding estate tax.

4. **Special planning will be required for state estate taxes in some states.**

To date, only one state, Hawaii, has made the state estate tax exemption portable between married couples. This means that in states where there is a difference between the state estate tax exemption and federal estate tax exemption (such as in Maine, where the 2014 estate tax exemption is only \$2 million, which leaves a \$3.34 million gap between the state and federal exemptions), married couples will need to include special planning in their estate planning documents in order to take advantage of both spouses' state estate tax exemptions. Refer to the State Estate Tax and Exemption Chart for the list of states which currently have a freestanding estate tax.

5. **Special planning will be required for generation skipping trusts.**

While as mentioned above the estate tax exemption has been made portable between married couples, the generation skipping transfer tax exemption has not. This means that in order for married couples to take advantage of both spouses' generation skipping transfer tax exemptions, special planning will be required in married couples' estate planning documents.