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2013 U.S. MASTER™ ESTATE AND GIFT TAX GUIDE

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2013

U.S. Master™ Estate and Gift Tax Guide

CCH Editorial Staff Publication

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Preface

The *2013 U.S. Master™ Estate and Gift Tax Guide* is designed as a reference for tax advisors, estate representatives, and estate owners involved in federal estate and gift tax return preparation and tax payment. The explanations and filled-in forms (compiled in the Appendix for easy use) reflect major federal estate, gift, and generation-skipping transfer (GST) tax developments occurring up to the date of publication. Generally, the law applicable to decedents dying, and gifts made, in 2012 is discussed.

This book reproduces filled-in samples of Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) for decedents dying in 2012 (Rev. August 2012). This book includes filled-in samples of the IRS's *draft* of Form 709 (2012), the federal gift tax return for reporting gifts made in 2012. The book also includes filled-in samples of Form 706-NA (Rev. July 2011), the federal estate and GST tax return for nonresidents not U.S. citizens and the following GST forms: Form 706-GS(D) (Rev. November 2011), Form 706-GS(D-1) (Rev. October 2008), and Form 706-GS(T) (Rev. November 2011).

Filled-in samples of Form 706-A (Rev. December 2008), the return for reporting the additional tax owing on recapture of the benefits of a special use valuation election; Form 706-D (Rev. December 2008), to be used by qualified heirs to report and pay the additional estate tax due under Code Sec. 2057 when certain taxable events occur with respect to qualified family-owned business interests; and Form 706-QDT (November 2009), the estate tax return for qualified domestic trusts, are also reproduced herein.

Transfer Tax Rules Uncertain After December 31, 2012

The Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) (2001 Act) repealed the estate and GST taxes, effective for estates of decedents dying and transfers made after December 31, 2009. However, because of a "sunset" provision of the 2001 Act, the repeal was effective for only one year (2010). The Tax Relief, Unemployment Insurance Reauthorization, and Jobs Creation Act of 2010 (P.L. 111-312) (Tax Relief Act of 2010) retroactively reinstated the estate and GST taxes for estates of decedents dying, and GSTs made, after December 31, 2009. The Act also reinstated numerous other important estate, gift, and GST tax provisions, including those relating to transfer tax rates and the unified credit. However, the changes made by the Tax Relief Act of 2010 are scheduled to expire on January 1, 2013, if Congress does not act before then.

Specifically, barring Congressional action to the contrary, the following changes will apply to transfers from decedents dying, and lifetime transfers made, after December 31, 2012:

— The maximum estate tax rate of 35 percent and an applicable exclusion of $5,120,000 (indexed) will expire after 2012; thereafter, the maximum estate tax rate generally will be 55 percent and an applicable exclusion amount of $1,000,000 will apply.

— The GST tax rate of 35-percent and the $5,120,000 exemption (indexed) will expire; after 2012, the GST tax rate will rise to 55 percent and a $1,000,000 exemption (indexed for inflation) will apply.

— The gift tax rate of 35 percent, and the $5,120,000 (indexed) exclusion amount will expire after 2012; thereafter, the maximum gift tax rate will be 55 percent, and an applicable exclusion amount of $1,000,000 will apply.

— After 2012, the estate of a surviving spouse will no longer be able to utilize the unused portion of the estate tax exclusion amount of his or her last predeceased spouse.

— Various pro-taxpayer GST provisions will expire after December 31, 2012. Among these are provisions relating to deemed and retroactive allocations of GST exemptions, severing trusts, late GST elections, and substantial compliance with GST rules.

For latest legislative updates and changes to the Guide, see www.CCHGroup.com/Tax Updates.

November 2012

Table of Contents

Paragraph

UNIFIED ESTATE AND GIFT TRANSFER TAX

Chapter 1—Overview; Rates and Credits . . . 3
Chapter 2—Filing Requirements . . . 22

ESTATE TAX

Chapter 3—Nature of Tax . . . 28
Chapter 4—Returns—Forms Required . . . 50
Chapter 5—Valuation—Date and Methods . . . 100

GROSS ESTATE

Chapter 6—Property Interest at Time of Death . . . 150
Chapter 7—Real Estate . . . 250
Chapter 8—Farms and Closely Held Businesses . . . 280
Chapter 9—Stocks and Bonds . . . 310
Chapter 10—Mortgages, Notes, Contracts to Sell Land, and Cash . . . 350
Chapter 11—Life Insurance . . . 400
Chapter 12—Jointly Owned Property . . . 500
Chapter 13—Miscellaneous Property . . . 525
Chapter 14—Transfers During Lifetime . . . 550
Chapter 15—Powers of Appointment . . . 650
Chapter 16—Annuities . . . 700
Chapter 17—QTIP Property From Prior Estate . . . 773

DEDUCTIONS

Chapter 18—Funeral and Administration Expenses . . . 780
Chapter 19—Debts of Decedents . . . 800
Chapter 20—Mortgages, Losses, and Property Not Subject to Claims . . . 850
Chapter 21—Marital Deduction . . . 1000
Chapter 22—Charitable, Public, and Similar Transfers . . . 1100
Chapter 23—State Death Taxes . . . 1144
Chapter 24—Qualified Family-Owned Business Interest Deduction . . . 1150

DETERMINATION AND PAYMENT OF TAX

Chapter 25—Executor Elections, Determination of Taxable Estate . . . 1190
Chapter 26—Credits for Tax on Prior Transfers and Federal Gift Taxes . . . 1300
Chapter 27—Credit for Foreign Death Taxes . . . 1400
Chapter 28—Computation of Tax . . . 1425
Chapter 29—Special Taxpayers: Members of Armed Forces, Terrorist Victims, and Astronauts; Nonresidents Not Citizens . . . 1550
Chapter 30—Payment of the Tax . . . 1650

Paragraph

GIFT TAX

Chapter 31—Nature of the Tax 2000
Chapter 32—Forms Required 2050
Chapter 33—Valuation 2100
Chapter 34—Taxable Gifts 2150
Chapter 35—Gift-Splitting 2200
Chapter 36—Annual Exclusions 2250
Chapter 37—Deductions and Exemptions 2300
Chapter 38—Computation and Payment of Tax 2350

GENERATION-SKIPPING TRANSFER TAX

Chapter 39—General Rules 2430
Chapter 40—Computation of Tax 2450
Chapter 41—Return Requirements 2470

SPECIAL VALUATION RULES

Chapter 42—Estate Freezes 2500

EXPATRIATE TRANSFERS

Chapter 43—Gifts and Bequests from Expatriates 2593

APPENDIX

Transfer Tax Timeline 2597
Unified Rates and Credit 2600
Applicable Federal Rates 2800
Filled-In Forms 2900
Code Finding List 4000
Index . . . . Page 625

UNIFIED ESTATE AND GIFT TRANSFER TAX

Chapter 1

OVERVIEW; RATES AND CREDITS

Transfer tax rules for 2010—2012 . . . . ¶ 3
The ever-changing estate and gift taxes . . . . ¶ 5
Unified transfer tax rate schedule and unified credit . . . ¶ 10
Unified rate schedule . . . . ¶ 11
Application of unified rate schedule . . . . ¶ 12
Unified credit . . . . ¶ 15
Deceased spousal unused exclusion (DSUE) amount portable . . . . ¶ 16
Benefits of graduated rates and unified credit phased out . . . . ¶ 18
Unified rates and credit for nonresidents not citizens ¶ 20

Caution: Transfer Tax Rules Uncertain After December 31, 2012. Absent further legislation, the changes made by the Tax Relief, Unemployment Insurance Reauthorization, and Jobs Creation Act of 2010 (P.L. 111-312) (Tax Relief Act of 2010) to extend the provisions of the Economic Growth and Tax Relief Act of 2001 (P.L. 107-16)(2001 Act) will expire on January 1, 2013. Should sunset occur, the estate, gift, and generation-skipping transfer taxes (including applicable tax rates and credit amounts) will reflect the law as if the 2001 and 2010 Acts had never been enacted.

As we go to press, legislation has not been enacted to avoid sunset. Accordingly, the discussions throughout the U.S. Master™ Estate and Gift Tax Guide *are focused on the law that is effective through December 31, 2012. As legislative changes warrant, these discussions will be updated.*

¶ 3 Transfer Tax Rules for 2010—2012

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) (Tax Relief Act of 2010). In so doing, the President ended the uncertainty that has swirled around the estate and gift taxes since passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). When enacted in 2001, EGTRRA provided a wide range of changes to the estate, gift, and generation-skipping transfer (GST) taxes. Most of these provisions were favorable to donors and estates, including, most notably, phased-in reductions in tax rates and increases in exclusion amounts, culminating in 2009 with a maximum estate and GST tax rate of 45 percent and an applicable exclusion amount of $3,500,000. In 2010, the estate and GST taxes were to be repealed. However, because of the deep division in Congress at the time (and application of a Senate procedural rule), the repeal would only be effective for 2010; thereafter, a "sunset" provision would apply, and estate, gift, and GST rules that were applicable before EGTRRA would be reinstated, including a 55-percent maximum rate for most estates, and an exclusion amount of $1 million.

At the time EGTRRA was enacted in 2001, it is safe to say that neither the proponents of a permanent repeal of the estate and GST taxes, nor those supporting continuation of the estate and GST taxes, thought that the one-year repeal would actually take effect in 2010: most thought that the forces advocating permanent repeal, or permanent reinstatement, would reach ascendancy before that time. But 2010 arrived, and so did the estate and GST repeal, as well as the one-year replacement of the stepped-up basis at death rules with the carryover basis rules.

Although there were several efforts in Congress after passage of the 2001 Act to deal with the impending repeal (in 2010), and reinstatement (in 2011), nothing happened until the impasse was finally broken on December 17, 2010 with passage of the Tax Relief Act of 2010.

Some of the major provisions of the 2010 Act related to the federal transfer taxes are listed below. For the most part, the 2010 Act extended changes made by the 2001 Act for an additional two years. Thus, unless noted to the contrary, these changes apply to transfers from decedents dying, and lifetime transfers made, after December 31, 2009, and before January 1, 2013:

- Estate tax restored, at a maximum tax rate of 35 percent and an applicable exclusion amount of $5 million, for 2010 through 2012 (¶10).

- GST tax restored, but at a tax rate of zero for 2010, a 35-percent rate for 2011 and 2012, and a $5 million exemption for 2010 through 2012 (see ¶2455 and ¶2459).

- Gift tax rate will remain at 35 percent for 2010 through 2012, but the applicable exclusion amount is $1 million in 2010, and $5 million in 2011 and 2012 (¶2005 and ¶2007).

- Stepped-up basis Code Sec. 1014 restored for 2010 and beyond, except that the estates of decedents dying in 2010 can elect out of the estate tax and apply the carryover basis rules (see ¶121).

- Carryover basis (Code Sec. 1022) repealed for 2010 (see ¶121), unless the estate executor makes a special election for decedents dying in 2010 to apply pre-2010 Act law (carryover basis rules, but no estate tax liability).

- Beginning in 2011, the estate of a surviving spouse may qualify to utilize the unused portion of the estate tax applicable exclusion amount of his or her last predeceased spouse. An election on the part of the estate of the first spouse to die is required (see ¶16).

Changes that originated with the 2001 Act that will continue to apply under the new law include the following items.

- The estate tax deduction for state death taxes paid (Code Sec. 2058) will continue to apply through 2012, but will expire for estates of decedents dying after December 31, 2012 (see ¶1144). For decedents dying after that date, the state death tax credit (Code Sec. 2011) will apply (see ¶1145).

- The repeal of the distance requirements for the exclusion of a qualified conservation easement (Code Sec. 2031(c)) will remain in effect through December 31, 2012 (see ¶253).

- Lifetime indirect skips under the GST tax rules qualify for a deemed (automatic) allocation of the GST exemption (Code Sec. 2632(c)(1)), through December 31, 2012 (see ¶2455).

- Retroactive allocations of unused GST tax exemptions in situations involving unnatural orders of deaths will continue to be available through December 31, 2012 (Code Sec. 2632(d)(1))(see ¶2455).

- Qualified severance of trusts under the GST rules of Code Sec. 2642(a)(3) will be available through December 31, 2012 (see ¶2455).

• GST relief provisions that allowed executors to file for extensions of time: (1) to correct an inadvertent failure to claim the transferor's GST exemption, or (2) to correct an allocation where the transferor did not fully comply with (but had substantially complied with) all GST allocations rules, will remain in effect through December 31, 2012 (Code Sec. 2642(g)) (see ¶2455).

• For purposes of qualifying an estate for the installment payment of estate tax, the maximum number of partners or shareholders in a closely held business owned by a decedent at time of death is 45 for estates of decedents dying before January 1, 2013 (Code Sec. 6166(b)) (see ¶1672).

EGTRRA Sunset Provision

The sunset provision of EGTRRA (Act Sec. 901) states that, for estates of decedents dying, gifts made, or generation-skipping transfers, after December 31, 2010, all changes made by EGTRRA ". . . shall be applied and administered to years, estates, gifts, and transfers . . . as if the provisions and amendments [of EGTRRA] had never been enacted." Thus, the estate, gift and generation-skipping transfer tax provisions were slated to revert to what they were before enactment of EGTRRA. While the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) (Tax Relief Act of 2010) made a myriad of changes to the transfer tax (noted above), these changes—like those made by EGTRRA—are temporary. Unless Congress acts to the contrary, the Tax Relief Act of 2010 amendments will not apply after December 31, 2012. More specifically, the Tax Relief Act of 2010 amended the sunset provision of EGTRRA to apply transfers after December 31, 2012, and made this provision applicable to the changes made by the Tax Relief Act.

States Pass Beneficiary Protection Provisions

Until the matter was resolved by the Tax Relief Act of 2010 (P.L. 111-312), the year 2010, during which the estate and GST taxes did not apply, presented great uncertainty for estate planners and drafters of estate planning documents. While the uncertainty has been settled by the 2010 tax act, difficulty may remain with respect to formula bequests. Prior to passage of P.L. 111-312, the estate of a wealthy decedent dying in 2010 would have the advantage of not having an estate tax or a GST tax at death. However, this might have been at the expense of unexpectedly excluding loved ones from receiving property under will and trust documents. Traditional estate planning has often employed mathematical formulas to determine the amount of marital and charitable bequests. These formulas often determined a bequest by reference to the amount of property that could be passed from the decedent without incurring an estate tax liability. Because no estate tax liability was to apply with respect to decedents dying in 2010, depending on the type of formula bequests and how they are used, a spousal or credit shelter bequest (in a marital bequest situation) or a bequest to charitable or noncharitable beneficiaries (in a charitable bequest situation) could unexpectedly be computed as zero, completely "cutting out" persons or organizations that the decedent wanted to support.

Currently, the District of Columbia and the following 19 states have enacted legislation to avoid unintended disinheritances as noted above:

- Delaware
- District of Columbia
- Florida
- Georgia

- Idaho
- Indiana
- Maryland
- Michigan
- Minnesota
- Nebraska
- New York
- North Carolina
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- Wisconsin

The majority of these state law provisions interpret certain formula clauses in testamentary documents for decedents dying in 2010 as though they refer to the federal estate tax law applicable in 2009. Personal representatives, trustees, and/or affected beneficiaries are given the right to have a determination made as to whether the decedent intended for the formula clause to be construed under the laws in effect after December 31, 2009. These laws do not apply to wills or trust documents amended after December 31, 2009, or wills or trusts that contain language as to what should occur if the decedent dies when there is no estate or GST tax in effect. These laws apply to decedents dying from January 1, 2010, through December 31, 2010.

Florida and South Carolina passed laws that differ from those passed in other states. Instead of automatically interpreting certain formula clauses in testamentary documents as though they refer to the federal estate tax laws effective in 2009, the Florida and South Carolina laws permit the trustees or beneficiaries of irrevocable trusts, or the personal representative or beneficiaries of wills, to go to court to request that certain formula clauses be interpreted according to the trustor's or decedent's likely intent.

Effect of state law "fix" provisions in light of the Tax Relief Act of 2010.—The state courts of each of the states listed above will ultimately decide the application of their state's beneficiary protection statutes, including the effect of the passage of the Tax Relief Act of 2010 on December 17, 2010, with retroactive application to estates of decedents dying after December 31, 2009. However, in light of this retroactive reinstatement, it would appear that most, if not all, of the state provisions listed above could be interpreted to mean that formula clauses would be deemed to reference the federal estate tax law as retroactively reinstated to the estates of decedents dying after December 31, 2009. If such an interpretation is made in a particular state, that state's beneficiary protection law seemingly would become moot.

States amend beneficiary protection laws.—Several states have taken further action intended to protect beneficiaries for unintended consequences of the federal estate tax repeal for 2010.

Idaho, **Virginia**, and **Washington** responded to the passage of the Tax Relief Act of 2010 by providing that a personal representative, trustee, or affected beneficiary may commence proceedings to determine whether the decedent intended that certain formula clauses in testamentary documents to be interpreted with respect to federal law after December 31, 2009, including the 2010 Act. These states (joined by **South Dakota**, which passed similar legislation), also enacted provisions whereby will and trust arrangements referencing or measuring a share of an estate or trust based on the amount that can pass free of federal estate and generation-skipping transfer (GST) taxes will be construed to refer to the federal and GST tax laws as they applied with respect to the estates of decedents dying and transfers made in 2010, unless the instrument indicates an intent that a contrary rule apply.

Under a change made by **New York**, a beneficiary designation, will, or trust of a decedent dying after December 31, 2009, and before January 1, 2011, which measures a share of an estate or trust based on an amount that can pass free of federal estate and generation-skipping transfer (GST) taxes is deemed to refer to the federal estate and GST tax laws as they applied with respect to the estates of decedents dying in 2010. This is done regardless of whether an election was made not to have the federal estate tax apply to a particular estate. Such construction would not apply if the beneficiary designation, will, or trust manifests a contrary intent. Any proceeding to determine the decedent's intent must be commenced within 24 months after the date or death, or by March 23, 2012, whichever is later. Similarly, the **Michigan** statutory provision concerning the construction and effect of wills and trusts has been amended to reflect the Tax Relief Act of 2010. Will and trust formulas referencing or measuring a share of an estate or trust based on the amount that can pass free of federal estate and GST taxes will be construed to refer to the federal estate and GST laws as they applied with respect to the estates of decedents dying and transfers made in 2010, regardless of whether the estate elects not to have the estate tax apply. Previously, the statute provided that such clauses be construed to refer to the federal transfer tax laws as they applied to the estates of decedents dying on December 31, 2009.

Florida also amended its probate law to permit courts to reform a decedent's will to achieve the decedent's tax objectives.

For more information regarding state beneficiary protection provisions, see CCH's STATE INHERITANCE, ESTATE AND GIFT TAX REPORTER.

¶ 5 The Ever-Changing Estate and Gift Taxes

An estate tax is an excise tax levied on the right to pass property at death. Estate taxes, such as the federal estate tax and the estate taxes used by several states, generally do not alter tax rates, exemptions, or deductions based on familial relationship. (The federal marital deduction is a notable exception to this general rule.) Aside from its utility as a revenue raiser, the estate tax has been championed by some as a mechanism to avoid undue accumulation of wealth in the hands of a relatively few families.

An estate tax is fundamentally different from an inheritance tax, which is the type of death tax that is used by several states. An inheritance tax is levied on the right to receive property from a deceased person (the decedent). Because of this, an inheritance tax usually provides different tax rates, exemptions, or deductions based on the relationship between the decedent and the recipient of the decedent's property (such as husband/wife, parent/child, brother/sister).

A gift tax is a tax levied on the giver (donor) of property to the recipient (donee), where the property has been transferred for less than adequate consideration. Unlike a gift determined under old English common law, or the rules applicable in many states, a gift for federal gift tax purposes does not have to be traceable to a "donative intent" (see ¶2155). The gift tax was enacted to stop an otherwise easy way to avoid the estate tax: without the gift tax, a wealthy individual could make "death bed" gifts of property to his heirs that would escape the federal estate tax.

If a federal gift tax liability is created, it is generally payable by the donor. Although the tax rates that applied to the gift tax previously were less than those that applied to the estate tax, the rates for both of these taxes were unified into one rate schedule in 1976. Changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (P.L. 107-16) "de-coupled" these two taxes, providing separate exemption equivalents—and, therefore, separate effective tax rates—for each. The Tax Relief Act of 2010 generally "re-coupled" the estate and gift taxes for 2011 and 2012.

The generation-skipping transfer (GST) tax is another federal tax that exists primarily to keep extremely wealthy individuals from avoiding the estate tax by using "generation-skipping transfers," that is, passing their property at death (or during lifetime) to their grandchildren (or great-grandchildren), rather than to their children. How this strategy worked, and the method used by Congress to combat it, are illustrated in the following examples.

> ***Example 1:*** At his death, Alex Able bequeaths $20,000,000 to his son, Baker. At his later death, Baker bequeaths his $20,000,000 estate to his son, Charlie.

> ***Example 2:*** At his death, Alex Able bequeaths $5,000,000 to his son, Baker, and $15,000,000 to his grandson, Charlie.

In Example 1, Alex Able's estate will have estate tax liability on the $20,000,000 transferred to his son, Baker, at Able's death. Likewise, Baker's estate will have an estate tax liability on the $20,000,000 transferred to his son, Charlie, at Baker's death. This is how Congress envisioned that the estate tax would work. Each generation was expected to pass its property to the next generation (parent to child, child to grandchild, and so on). In this way, property would be taxed once per generation.

However, the situation in Example 2 demonstrates how extremely wealthy individuals could avoid property being taxed once per generation. Because Able concluded that Baker did not need more than a $5,000,000 bequest (he may have had other sources of wealth), Able could bequeath $15,000,000 to his grandson, Charlie. Although Able's estate will pay federal estate tax on $20,000,000 under the facts of either Example 1 or Example 2, this is not the case for Baker's estate. Under Example 1, Baker's estate will be taxed on the full $20,000,000, while under Example 2, his estate will be taxed only on $5,000,000. Under this scenario, $15,000,000 has "skipped" taxation in Baker's generation. To combat this, Congress enacted the generation-skipping transfer tax, which in broad terms attempts to approximate the tax result of property being taxed at each generation (see the discussion at ¶2430, and following).

Change has been the norm. For a variety of reasons, the federal transfer taxes have been changed frequently. First, as the economy and federal spending change from year to year, the government's need for the tax monies that the transfer tax generates becomes relatively more, or less, acute. This affects the feasibility of making changes to the transfer tax law. Second, changes to the transfer tax structure sometimes need to be made to close or rein in perceived tax "loopholes," like generation-skipping transfers (discussed above), or "estate freezes" (which resulted in enactment of Chapter 14 of the Internal Revenue Code—see ¶2500, and following). Finally, there are ideological differences (usually falling along political party lines) regarding the nature and utility of the transfer taxes—particularly the estate tax. Proponents of the estate tax see it as a valuable revenue raiser, and, most importantly, as a tool to avoid the concentration of great wealth in the hands of a very few people. Opponents of the estate tax see it as unfair: a person's wealth was taxed once when earned (as income), and will be taxed a second time at that person's death (as part of his or her taxable estate). Opponents also argue that the estate tax operates to cause the break up or sale of family owned businesses. (See ¶3 for a discussion of changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act of 2010)).

Dealing with the changes. Change may be the lifeblood of tax preparers and tax planners, but it certainly is not easy to deal with. Not only does Congress periodically make both dramatic and mundane changes to the law of estate, gift, and GST taxes, but the IRS and courts hand down rulings and decisions on an almost daily basis. Preparers and planners will need to devote time, effort, and resources to keep abreast of all these new developments in the tax law.

Tax Preparers. Congressional amendment of estate, gift, and GST tax provisions require the IRS to make changes to its tax forms. Important court decisions, and IRS regulations and rulings can also lead to such changes. Even minor nonsubstantive changes (such as requiring information formerly included on one line of a form to be listed on two lines, instead) can lead to preparation errors. Accordingly, the *2013 U.S. Master™ Estate and Gift Tax Guide* reproduces the most currently available estate, gift and generation-skipping transfer tax forms, and gives helpful line-by-line guidance and filled-in form examples. The *2013 Guide* is generally geared to decedents dying, and gifts made, in 2012. Accordingly, this edition of the *Guide* includes (at ¶2910 of the Appendix) a filled-in Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return (Rev. Aug. 2012) to be filed for the estates of decedents dying in 2012. A filled-in *draft* Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return (2012), is reproduced in the *2013 Guide* at ¶3280.

Tax and Estate Planners. Although planners generally will be less concerned with changes to the IRS Forms than will tax preparers, planners have other challenges. Because tax and estate planning requires a forward-looking analysis of *future* conditions that may affect a client's financial well-being, the planner is put in the dubious position of having to be something of a seer. Some changes are known, but are being "phased-in" or "phased-out" by way of a schedule of changes made by Congress (such as the phased-in increases in the estate tax applicable exclusion amount enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001). Other changes are currently scheduled to expire beyond a stated date (such as those slated to expire after 2012 pursuant to provisions in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010). Still other changes seemingly arise without warning, and are passed by Congress in response to political pressure or changed situations.

Regardless of how changes to federal tax law come about, planners will need to deal with them. This will mean not only keeping abreast of changes that have occurred, but also of those that are likely to occur. The *2013 Guide*, in either print or electronic version, can help with those changes that have occurred, but tracking impending changes will require a more planning-oriented product, such as CCH's *Financial and Estate Planning* (available in print and electronic versions), and the complete offering of CCH tax and estate planning products offered on-line on CCH's Tax Research Network.

If the planner is also the drafter of documents implementing the tax or estate plan, existing documents (such as a will or trust) may be impacted by tax law changes. Assuming that these documents are not by their terms irrevocable (or made so because of the death of the grantor), the planner/drafter will want to consider amending the documents. Likewise, when drafting current documents, the drafter will want to consider the use of appropriate provisions that may give the executor or trustee the authority to exercise discretion when dealing with future law changes or other changed circumstances. Drafting document provisions that allow future fiduciary discretion, while not running afoul of state law or IRS attack is difficult and highly technical. CCH's IntelliConnect®, which contains such on-line products as *Drafting the Estate Plan: Law and Forms* by D.A. Handler and D.V. Dunn, and CCH *Financial and Estate Planning*, can be a valuable resource for the planner/drafter.

¶ 10 Unified Transfer Tax Rate Schedule and Unified Credit

The unified transfer tax that applies to estate and gift taxes is progressive and is based on cumulative lifetime and at-death transfers. The cumulated transfers to which the tentative tax applies are the sum of: (1) the amount of the taxable estate, and (2) the amount of taxable gifts made by the decedent after 1976, other than gifts includible in the gross estate. The tentative tax is then reduced by gift taxes payable on gifts made after December 31, 1976. For this purpose, the amount of the gift taxes paid by a decedent after 1976 is determined as if the rate schedule in effect in the year of death was in effect in the year of the gift. The result is the estate tax before credits.

The basic estate and gift tax rates with respect to which the tentative tax is computed are based on a rate schedule that consists of 15 graduated rates, beginning with an 18-percent tax rate for amounts not over $10,000 and increasing to a 35-percent tax rate for decedents dying in 2010 through 2012 for amounts in excess of $5.0 million. Despite there being 15 graduated rates, only the 35 percent rate applies with respect to the estate tax of decedents dying in 2010 through 2012. This is because the operation of the applicable credit amount (unified credit; see ¶ 15).

The 2001 Act. The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) (EGTRRA) brought significant change to the transfer tax system, the most notable being the repeal of the estate and generation-skipping transfer (GST) taxes in 2010. Prior to repeal of the estate and the GST taxes, a number of modifications are made to the maximum estate tax rate and applicable exclusion amount (see below).

Under EGTRRA, the top marginal rate for estate, gift, and GST taxes was reduced to 45 percent for decedents dying, and gifts made, in 2007 through 2009. In 2009, when the applicable credit amount was $3,500,000 (¶ 15), the effective minimum tax rate for the estate and GST taxes is also 45 percent.

Sunset provision. In order to comply with the Congressional Budget Act of 1974, EGTRRA provided that all provisions of, and amendments made by, the

2001 Act will not apply (that is, they *sunset*) to estates of decedents dying, gifts made, or generation-skipping transfers, after December 31, 2010.

The 2010 Act. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) (the Tax Relief Act of 2010) reinstated the estate and GST tax for estates of decedents dying and GSTs made after December 31, 2009. The 2010 Act also made other substantial changes to the transfer tax system, including reducing the maximum unified rate to 35 percent effective for the estates of decedents dying and taxable transfers made after December 31, 2010 (see ¶11).

Election for decedents dying in 2010. The executors for estates of decedents dying after December 31, 2009, and before January 1, 2011, may elect to have the 2001 Act rules apply, with the result that such estates will be exempt from the estate tax, and the heirs will receive a carryover basis (rather than a stepped-up basis) in property received from the decedent (see ¶121).

Sunset extended. The sunset of the transfer tax provisions pursuant to the EGTRRA, scheduled to apply to the estates of decedents dying, gifts made, or generation-skipping transfers made after December 31, 2010, is extended to apply to estates of decedents dying, gifts made, or generation-skipping transfers made after December 31, 2012 (Act Sec. 101(a)(1) of the 2010 Act). As a result, the amendments made EGTRRA and the new rules of the 2010 Act will not apply to estates of decedents dying, gifts made, or generation-skipping transfers made after December 31, 2012.

Transfer Tax Schedule: 1984–2001

Column A	**Column B**	**Column C**	**Column D**
Taxable amount over	*Taxable amount not over*	*Tax on amount in column A*	*Rate of tax on excess over amount in column A Percent*
$0	$10,000	$0	18
10,000	20,000	1,800	20
20,000	40,000	3,800	22
40,000	60,000	8,200	24
60,000	80,000	13,000	26
80,000	100,000	18,200	28
100,000	150,000	23,800	30
150,000	250,000	38,800	32
250,000	500,000	70,800	34
500,000	750,000	155,800	37
750,000	1,000,000	248,300	39
1,000,000	1,250,000	345,800	41
1,250,000	1,500,000	448,300	43
1,500,000	2,000,000	555,800	45
2,000,000	2,500,000	780,800	49
2,500,000	3,000,000	1,025,800	53
3,000,000	. . . . .	1,290,800	55*

* The U.S. Court of Appeals for the Federal Circuit has upheld a provision of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) that on August 10, 1993, retroactively reinstated the 55-percent maximum transfer tax rate to transfers made after December 31, 1992. Prior to this change, the maximum transfer tax rate for post-December 31, 1992 transfers was 50 percent. *NationsBank of Texas, N.A.*, CA-FC, 2001-2 USTC ¶60,423, cert denied, Oct. 7, 2002.

• ***Rate Schedule for 2002–2009***

The estate and gift tax rate schedule applicable to the estates of decedents dying and gifts made in 2002 through 2009 is as follows:

Transfer Tax Rate Schedule: 2002–2009*

(A) Amount subject to tax more than—	(B) Amount subject to tax equal to or less than—	(C) Tax on amount in column (A)	(D) Rate of tax on excess over amount in column (A) Percent
. . .	$10,000	. . .	18
$10,000	20,000	$1,800	20
20,000	40,000	3,800	22
40,000	60,000	8,200	24
60,000	80,000	13,000	26
80,000	100,000	18,200	28
100,000	150,000	23,800	30
150,000	250,000	38,800	32
250,000	500,000	70,800	34
500,000	750,000	155,800	37
750,000	1,000,000	248,300	39
1,000,000	1,250,000	345,800	41
1,250,000	1,500,000	448,300	43
1,500,000	2,000,000	555,800	45
2,000,000	2,500,000	780,800	49
2,500,000	. . . .	1,025,800	50*

* For years 2003 through 2009, the tentative tax is to be determined by using a table prescribed by the IRS, which will be the same as the rate schedule shown above except for the adjustments necessary to reflect the reductions in the maximum rate.

The 2001 Act reduces the top marginal rate for years after 2002, according to the following schedule:

- 49 percent for decedents dying, and gifts made, in 2003;
- 48 percent in 2004;
- 47 percent in 2005;
- 46 percent in 2006;
- 45 percent in 2007, 2008, and 2009.

For the gift tax rates for gifts made after December 31, 2009, see ¶2005.

• ***Rate Schedule for 2010 - 2012***

A new rate structure will apply to the estates of decedents dying after December 31, 2009, and before January 1, 2013, under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) (the 2010 Act). Under that structure, the maximum estate tax rate will be 35 percent (Code Sec. 2001(c)). Gifts will continue to be taxed at a maximum rate of 35 percent, as they were in 2010. However, the related gift tax section of the Code will no longer contain a separate rate structure, but will instead refer to the corresponding estate tax provision as it did prior to passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) (EGTRRA) (Code Sec. 2502(a)). Thus, the estate and gift taxes are again "unified."

The estate and gift tax rate schedule applicable to the estates of decedents dying and gifts made in 2010 through 2012 is as follows: