

# CLIENT FOCUS

## California Franchise Tax Board

Several of our clients have in the past created Nevada limited liability companies (LLC's), Nevada Corporations or Nevada limited partnerships (LP's) with the intent of holding investment or vacation properties located in California. Prior to 2011, the idea of a Nevada entity merely holding non-income-producing investment property in California would not have triggered any California taxes because the entity would not have been classified as "doing business" in California. However, the Franchise Tax Board, which is California's taxing authority, has imposed new rules on the taxation of entities holding property in California.

As of January 1, 2011, California changed the definition of "doing business" to include, among other things, any business entity who has real or tangible property in California where the value of that

property exceeds the lesser of \$50,000 or 25% of the taxpayer's total real and tangible property. This change will impact clients with LLC's, corporations or LP's that were formed merely to hold investments in California where the value of the assets in California now exceeds \$50,000. The business entity will now be subject to an annual \$800 tax imposed by the Franchise Tax Board.

Please contact us or your tax preparer if you have questions about whether the fee will apply to you and to take steps to begin paying the fee. Please call our office and set an appointment with an attorney to discuss the possibility of restructuring your entity to avoid the tax in the future. **J**

NV LLC

LP's

CA TAX

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# Estate and Gift Tax Changes Scheduled for 2013

Late in 2010, President Obama signed into law The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Tax Act") providing significant changes to the tax laws. This Act contained significant new transfer tax (estate and gift tax) provisions and also extended the so-called Bush tax cuts both of which are set to sunset at the end of 2012.

## Estate Tax

For 2012, the 2010 Tax Act provides for an estate tax exemption of \$5.12 million (increased from the 2011 exemption of \$5 million due to a cost of living adjustment) and a top tax rate of 35%. Portability of the estate tax exemption will continue for 2012. Portability allows for the unused estate tax exemption of a deceased spouse to be transferred to and used by the surviving spouse. In 2013, the estate tax is scheduled to revert to an exemption of \$1 million with a top marginal rate of 55% (with an additional surtax of 5% for estates between \$10 million and approximately \$17 million), and portability will expire.

## Gift Tax

For 2012, the gift tax exemption and top rate are unified with the estate tax. Accordingly, the exemption is \$5.12 million and the top rate is 35%. The gift tax annual exclusion remains at \$13,000. For 2013, the gift tax, like the estate tax, is scheduled to revert to an exemption of \$1 million and a top rate of 55% (and a similar 5% surtax on certain gifts).

## Generation-Skipping Transfer Tax

For 2012, the GST exemption is the same as the estate exemption, which is \$5.12 million. The GST tax rate, which is the maximum estate tax rate, is 35%. For 2013, the GST exemption is scheduled to revert to approximately \$1.39 million, adjusted for inflation, with a rate of 55%.





# Plan Now?

With the understanding that the estate, gift, and generation-skipping tax is ever changing, many clients inquire as to what we anticipate the exemption and tax rate will be in future years. The answer to that question is very difficult to speculate upon. For example, many estate planners never would have guessed that they would see the favorable estate and gift tax laws of 2011 and 2012. President Obama's proposed budget supports a \$3.5 million exemption and a tax rate of 45%. Republican presidential candidates are in favor of fully repealing the estate tax altogether. There are those in Congress that see the current tax laws as effective as currently enacted and thus advocating no future changes.

With all this uncertainty for the future in consideration, what we do know is that the current tax laws afford the wise and prudent client a generous exemption that may be carefully implemented in various planning techniques to meet the needs and goals of said client. We at Jeffrey Burr are experienced in implementing various planning techniques to optimize a person's gift and estate tax exemption. We strongly urge our clients who have concerns regarding the status of the estate and gift tax to immediately schedule an appointment with our firm to explore the options available to them. *JB*

	2012	2013 and beyond
Top Estate Tax Rate	35%	55%
Estate Tax Exemption	\$5,120,000	\$1,000,000
Portability of Estate Tax Exemption	Yes	No
Top Gift Tax Rate	35%	55%
Gift Tax Exemption	\$5,120,000	\$1,000,000
Gift Tax Annual Exclusion	\$13,000	\$13,000, subject to inflation adjustment
GST Tax Rate	35%	55%
GST Tax Exemption	\$5,120,000	\$1.4 million (approximately)

# Funding a Credit Shelter Trust

Many of our clients who are married have joint revocable trusts that include instructions for the possible division of the trust upon the first spouse's death. The purpose of the division of the trust into two separate trusts upon the first spouse's death is primarily estate tax reduction. Sometimes these types of trusts are called "A-B trusts," "2 trusts," "credit shelter trusts," and "exemption trusts." More recent clients may have trusts known as "disclaimer A-B" or "disclaimer 2 trust" and these trusts would also fit within the topic of this article.

Most planners feel that we currently have a disappearing opportunity to engage in lifetime gifting in excess of \$1 million. In 2011, the lifetime Gift Tax exclusion amount for each person was increased to \$5 million. For 2012, this amount was adjusted for inflation and is now \$5,120,000. This amount will change back to \$1 million in 2013 unless Congress enacts a change prior to December 31 of this year.

One strategy for utilizing this higher gift tax exemption that people have been receptive to is to utilize the

"exemption" or "credit shelter" that already exists in one of the trust types described in the first paragraph, and to make a completed gift into this type of trust for the benefit of a spouse. Both spouses can accomplish this, but careful attention will be required to be sure that these credit shelter trusts funded with gifts are not treated as reciprocal trusts by the IRS.

Some clients find the idea of making large gifts difficult since they are usually gifting these funds to children or grandchildren and the client essentially loses the ability to control or enjoy the property that has been gifted. Gifting to a spouse, however, might be more easily tolerated than a substantial gift to children or grandchildren. Aside from the dynamics of whether it is easier to gift to a spouse or successive generations, gifting is a powerful estate tax reduction technique. The funding of a credit shelter trust is just one of many ideas that our firm can assist you with. Please call your attorney to discuss gifting techniques or for more information on funding a credit shelter trust for your spouse. **B**

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