ESTATE PLANNING CLE

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FEDERAL ESTATE TAX RATES

For 2012, the Internal Revenue Code published a table providing for the amount of estate tax to be levied. The table showed increasing rates for larger estates, ending with a \$500,000 estate to be taxed at a 35% tax rate. However, the "taxable estate" is the gross estate, not the estate net of exclusion. Therefore, since the exclusion amount is \$5,120,000 for 2012, any amount subject to the federal estate tax will be taxed at a rate of 35%.

For 2013, the rates increase significantly and the exclusion amount decreases to 2002 levels. The exclusion amount is set at \$1,000,000.

Estate Tax Rates for 2013 and Beyond

Estate Amount Exceeding:	Up to:	Is taxed at a rate of:
\$1,000,000	\$1,250,000	41%
\$1,250,000	\$1,500,000	43%
\$1,500,000	\$2,000,000	45%
\$2,000,000	\$2,500,000	49%
\$2,500,000	\$3,000,000	50%
\$3,000,000	\$10,000,000	55%
\$10,000,000	\$17,184,000	60%
\$17,184,000+		55%

FEDERAL ESTATE EXCLUSION AMOUNTS

Under the EGTRRA, the Estate Tax exclusion amount steadily increased until it was repealed in 2010. The Tax Relief Act of 2010 prolonged the EGTRRA, but the Act will sunset on December 31, 2012 and the Federal Estate Tax will return to 2002 levels

Year	Exclusion Amount
2001	\$675,000
2002	\$1,000,000
2003	\$1,000,000
2004	\$1,500,000
2005	\$1,500,000
2006	\$2,000,000
2007	\$2,000,000
2008	\$2,000,000
2009	\$3,500,000
2010	Repealed
2011	\$5,000,000
2012	\$5,120,000
2013*	\$1,000,000

^{*} subject to change



STATE DEATH TAX CREDIT

Beginning in 2013, the State Death Tax **Deduction** will no longer exist as the provision sunsets on December 31, 2012. Barring action from the U.S. Legislature, the State Death Tax **Credit** will be resurrected at the pre-2005 levels. Louisiana provides for a 'pick-up' tax, which taxes an estate up to the amount of **credit** allowable under the U.S. Internal Revenue Code. The applicable statute is as follows:

R.S. 47 §2432. Amount of tax and time of payment

- A. Amount of tax. Wherever there is a credit allowable under the United States Internal Revenue Code as to the amount of the federal estate tax for amount of state death taxes, the maximum amount of the credit for the state death taxes shall be paid to the state of Louisiana.
- B. Time of payment. The tax due under this part shall be due and payable prior to the filing of the United States Estate Tax Return or nine months after the death of decedent whichever comes first.
- C. Changes or amendments in the United States Estate Tax Return. Any change or amendment in the United States Estate Tax Return which would result in additional taxes due the state of Louisiana under this part shall be paid thirty days after final approval of the United States Estate Tax Return.

Internal Revenue Code Section 2011 will again provide for the maximum credit allowed. Since Louisiana's pick-up tax is synced with the maximum credit allowable in the IRC, this provision also serves as a determination of the amount of estate tax owed to the State of Louisiana.

A provision in Section 2011 provides that "adjusted taxable estate" is the taxable estate less \$60,000. The "taxable estate" is the amount of the gross estate minus the exclusion amount.

Taxable Estate before exclusion as						
<u>\$60,000 adjustment*</u>		Adjusted Taxa	Adjusted Taxable Estate		Maximum Credit	
		Dagia	Dut not Orea	Credit for basis	Plus % of	
		Basis	But not Over	amount	excess	
\$1,100,000	=	\$40,000	\$90,000	\$0	0.8%	
\$1,150,000	=	\$90,000	\$140,000	\$400	1.6%	
\$1,200,000	=	\$140,000	\$240,000	\$1,200	2.4%	
\$1,300,000	=	\$240,000	\$440,000	\$3,600	3.2%	
\$1,500,000	=	\$440,000	\$640,000	\$10,000	4.0%	
\$1,700,000	=	\$640,000	\$840,000	\$18,000	4.8%	
\$1,900,000	=	\$840,000	\$1,040,000	\$27,600	5.6%	
\$2,100,000	=	\$1,040,000	\$1,540,000	\$38,800	6.4%	
\$2,600,000	=	\$1,540,000	\$2,040,000	\$70,800	7.2%	
\$3,100,000	=	\$2,040,000	\$2,540,000	\$106,800	8.0%	
\$3,600,000	=	\$2,540,000	\$3,040,000	\$146,800	8.8%	
\$4,100,000	=	\$3,040,000	\$3,540,000	\$190,800	9.6%	
\$4,600,000	=	\$3,540,000	\$4,040,000	\$238,800	10.4%	
\$5,100,000	=	\$4,040,000	\$5,040,000	\$290,800	11.2%	
\$6,100,000	=	\$5,040,000	\$6,040,000	\$402,800	12.0%	
\$7,100,000	=	\$6,040,000	\$7,040,000	\$522,800	12.8%	
\$8,100,000	=	\$7,040,000	\$8,040,000	\$650,800	13.6%	
\$9,100,000	=	\$8,040,000	\$9,040,000	\$786,800	14.4%	
\$10,100,000	=	\$9,040,000	\$10,040,000	\$930,800	15.2%	
\$11,100,000	=	\$10,040,000		\$1,082,800	16.0%	

^{*}Assuming \$1,000,000 exclusion applies

A problem arises when a decedent dies with property in multiple states. In this case, Revenue Ruling 56-230 governs and the allowable credit is reduced in relation to the amount of property located within the state.



• DSUEA—Deceased Spouse Unused Exemption Amount

This is a new concept of "portability" of the Estate Tax exemption amount which recently came into the law and will sunset December 31, 2012. It provides a carryover of the unused amount of Estate Tax exemption from the estate of the first spouse to die to the estate of the surviving spouse.

- QTIP—Qualified Terminal Interest Property. Allows property to be included in either the estate of the first spouse to die or deferred to the estate of the surviving spouse.
- I.R.C. Section 2056(b)(7)(ii)—A Louisiana usufruct for life qualifies as QTIP property.

LOUISIANA CASES

Succession of Bernat, 2011-368 (La. App. 3rd Cir. 11/2/11), 76 So.3d 1287, writ denied, 2012-0263 (La. 3/30/12), 85 So.3d 122.

• Validity of testament and interpretation of testament.

Succession of Barattini, 11-752 (La. App. 5th Cir. 3/27/12), 2012 WL 1020685.

Uncalled witness rule.

Succession of Dileo, 2011-1256 (La. App. 4th Cir. 3/21/12), 90 So.3d 488, writ denied, 2012-1025 (La. 6/22/12), 2012 WL 2478410.

• Court saves super-usufructuary rights of usufructuary in sloppy Judgment of Possession.

Cannatella v. Cannatella, 11-618 (La. App. 5th Cir. 3/13/12), 2012 WL833301.

 Although death may abate divorce action it does not stop action to divide the former community, allocate debts and the reimbursement of claims.

Succession of Smith, 47,023 (La. App. 2nd Cir. 6/13/12), 2012 WL 2123217.

• Second Circuit rules for substance over form in looking to intent of testator.



FEDERAL CASES

Wandry v. Commissioner, T.C. Memo 2012-88 (3/23/2012).

 Court approved a Defined Value clause where the Donee is entitled to the number of L.L.C. membership units equal to a specific value.

Estate of Wimmer v. Commissioner, T.C. Memo. 2012-157.

• FLP gift of present interest.

Windsor v. United States of America, 833 F.Supp.2d 394 (2012).

Held DOMA unconstitutional in giving a same-sex spouse the marital deduction.

Battley v. Mortensen, 2011 WL 5025249 (BR. D. Alaska 2011); Adv. D.Alaska, No. A09-90036-DMD (2011).

• Conveyance to Alaskan trust held to be a fraudulent conveyance and ten (10) year bankruptcy statute of limitations for voiding transfers held to apply rather than the four (4) year Alaskan statute of limitations.

Keller v. United States of America, 2012-2 U.S.T.C. P 60,579 (5th Cir. Sept. 25, 2012)

 Based on Texas case law, "Donor's intent" determines whether property is owned by the FLP or still owned individually, resulting in \$40.5 million refund to taxpayer.