

ALERT

May 2012

THE FEDERAL LIFETIME GIFT TAX EXEMPTION AMOUNT OF \$5,120,000: USE IT DURING CALENDAR YEAR 2012 OR LOSE IT

- The Federal Lifetime Gift Tax Exemption (hereinafter the “Lifetime Gift Exemption”) is that amount which (cumulatively), under federal tax law, may be transferred free of federal gift tax by an individual during his/her lifetime. (This is in addition to the annual gift tax exclusion amount of \$13,000 which can be given to any person gift tax free during calendar year 2012 and, in addition to the gift tax exclusions, available for payments made for medical expenses or tuition for the benefit of any individual.)
- Any amount of the Lifetime Gift Exemption used during lifetime will reduce the amount of the federal estate exemption amount available to that individual’s estate upon his or her death.
- The current amount (for calendar year 2012) of the Lifetime Gift Exemption is \$5,120,000.
- By using the current \$5,120,000 Lifetime Gift Exemption, a husband and wife together can make tax free gifts in the total amount of \$10,240,000 during calendar year 2012.
- Beginning January 1, 2013, the Lifetime Gift Exemption amount will decrease to the amount of \$1 million dollars (under current law). Therefore, a husband and wife will only then be able to give a total of \$2 million dollars gift tax free (a large decrease from the \$10,240,000 which can be given gift tax free during calendar year 2012).
- If the \$5,120,000 Lifetime Gift Exemption is NOT utilized by an individual during calendar year 2012, then unless Congress changes the law, the amount of the Lifetime Gift Exemption which exceeds \$1,000,000 (ie: \$4,120,000 for such individual) will be wasted.
- Strategies for using the \$5,120,000 Lifetime Gift Exemption:
 - Outright gifts (or gifts made in trust) to or for the benefit of children, grandchildren, family members and others.
 - Transfer of cash or other assets to existing trusts, for various reasons including the payment of life insurance premiums for insurance policies held inside the trust or using fractional discounts to move larger amounts of non-liquid assets.



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This Alert was written by our Trusts & Estates practice group.

Any questions concerning the matters raised in this Alert should be addressed to members of our Trusts & Estates practice group.

Henry E. Klosowski
(516) 880-7237
hklosowski@moritthock.com

David N. Wechsler
(516) 880-7293
dwechsler@moritthock.com

Damianos Markou
(516) 880-7292
dmarkou@moritthock.com

Dennis Kucica
(516) 880-7291
dkucica@moritthock.com

Michelle E. Espey
(516) 880-7259
mespey@moritthock.com

Christopher J. Clarke
(516) 880-7224
cclarke@moritthock.com

- Forgiveness of unpaid loans to children and others.
- Gifts and Sales to Grantor Trusts (trusts which for income tax purposes are considered owned by the creator of the Trust).
- Consider moving primary residences or vacation homes into specialized trusts called Qualified Personal Residence Trusts.
- Can be used by same-sex couples to transfer assets to each other without gift tax consequences.
- Assets can be transferred to a Lifetime Credit Shelter Trust for the benefit of a spouse.

- Note: The Lifetime Gift Exemption amount is reduced by any taxable gifts made by an individual prior to 2012.
- Note: Using the Lifetime Gift Exemption amount can save significant NYS Estate tax (upon a donor's death) by removing assets from a donor's estate for NYS Estate Tax purposes.

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