

# LEBLANC & YOUNG

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Newsletter

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## What's the Buzz?

There has been a lot of buzz recently about gifting plans to prepare for potential changes to the federal transfer tax system (estate, gift, and generation-skipping taxes) which may become effective in 2013. Some articles have erroneously raised concerns that 2012 gift programs should be considered by a large number of people who may have already done some estate tax planning. Although a small number of clients should seriously consider making major gifts, we feel it is not advice that is appropriate for the overwhelming majority of clients. Sweeping advice that encourages widespread gift plans to respond to potential changes in 2013 is simply misplaced. Gift plans need to weigh and balance the financial needs of the donor, the needs and circumstances of the intended beneficiaries, and the tax objectives viewed within the most likely legislative actions we might anticipate. The uncertainty about the future of the federal transfer tax system certainly makes planning difficult, yet it is imprudent to take hasty action that may have broad-reaching negative consequences for the donor and possibly other family members. Unless a donor will have ample resources following implementation of a gift plan to comfortably support himself or herself, a gift plan that takes full advantage of the current \$5,120,000 gift exemption would be imprudent.

Much of the public confusion concerns the amount of the gift necessary to make meaningful use of what many consider to be temporarily large federal estate, generation-skipping and gift tax exemptions of \$5,120,000 that are scheduled to expire at the stroke of midnight, December 31, 2012. If an individual has an estate that is extremely large, a gift of a useful size is viable, and will not compromise a donor's financial health. Most individuals should not make gifts of this magnitude, and gifts of much smaller amounts will likely not be useful for federal purposes, barring significant appreciation or more unusual planning objectives; thus the concern that the exemption will otherwise be "lost" is likely misplaced. The uncertainty surrounding the fate of the federal estate tax exemption does give rise to a level of speculation, and those who truly believe that federal exemptions will be enforced at the \$1 million threshold (or in that vicinity) may consider a lesser gift to be useful. The conclusion that the federal estate and generation-skipping exemptions will be enforced at drastically lower levels is not

consistent with the opinions of most respected professional pundits (or ours) and is not consistent with the mainstream views of either political party. If, for example, a parent gives a single \$2 million gift to his or her children with the goal of saving federal estate taxes, and the federal estate tax exemption is \$3.5 million at the parent's death, the parent would have \$1.5 million of his or her exemption remaining, and the gift would not have taken advantage of any federal exemption that would have otherwise been "lost." Only if the exemption had dropped below the \$2 million mark as of the parent's death (and there was no "clawback" adjustment) would the gift have resulted in using an exemption that would have otherwise been lost. There are potential benefits relating to the Maine estate tax, as well as shifting appreciation out of someone's estate, but the implication that smaller gifts should be widely implemented before the end of 2012 for federal estate tax planning is generally incorrect.

## If Your Estate is Large Enough to Make Taxable Gifts, What Should you Consider?

Despite the misplaced hubbub about the need for widespread large gifts, the substantial increase in the federal exemption to \$5,120,000, and the integration of the federal estate, gift and generation-skipping exemptions at the same historically high levels, have created some potentially remarkable planning opportunities for people of significant wealth. Indeed, this may be a historic, and potentially short-lived, opportunity for individuals to make substantial non-taxable gifts to family members that may not be permitted in the future. Further, because Maine has no gift tax, any amount that is given by an individual who then lives for more than one year after the gift will escape Maine estate taxes – the savings resulting from large gifts thus can be quite substantial.

There are a number of complicated factors that should be considered to determine what should be given, when and how. In addition, there are risks associated with such transfers that must be considered. First, there is uncertainty regarding the tax laws and changes in future calculations. It is theoretically possible that the law could be changed to collect a "make-up tax" upon the death of the donor, to be collected from his or her estate; this has been referred to as a "clawback." An

additional risk is that the donor might die within one year of making the gift and consequently, the gift will be taxable in his or her Maine estate. If the donor is survived by a spouse, this could mean the acceleration of the payment of some Maine estate tax on the donor's death. Another consideration is the impact of a gift of a large magnitude on the recipient. Many donors fear that a recipient may become less independent and productive, or may use the gift imprudently. The gifted assets may be exposed to the hazards of divorce or to creditors' claims. Gifts of this magnitude should prompt consideration of many issues, and the time to reflect at this point is likely short.

Many clients with a significant level of wealth have already made gifts or are discussing implementation of a gift plan with us now. If you feel a gift of substantial magnitude is worth considering for you, planning should be underway very soon if the gift is to be implemented by the end of 2012. At this time it is too late to implement a very complex plan before the end of 2012, but a simple plan may be worth considering if, after a very large gift, you would have ample resources to see to your own financial health. We will need to look at a number of factors, including the cost basis of assets, whether a gift should be in trust, generation-skipping or not, and if there is any particular technique that may improve the leveraging of the gift. Clients who contact us at the last minute will likely not have enough time to have their gift plans implemented. There is a more complete discussion of gift planning posted in the estate planning resources section of our website, <http://www.leblancyoung.com/admin/resources/gifting-opportunities-in-2012.pdf>.

### **Estate Tax Planning in 2013 – Maine and Federal**

As we indicated in last year's newsletter, there will be a significant change in the Maine estate tax for 2013. The amount that is exempt from Maine estate tax will double to \$2 million and the tax calculation is simplified with rates of 8% to 12% depending upon the size of the taxable estate. Further, the reporting for smaller estates (that simply must confirm that no estate tax return is needed and seek to discharge the Maine estate tax lien) will be reduced to an uncomplicated declaration of value that will not require the detailed back-up previously needed even for smaller estates.

Estate planning documents signed anticipating the new law will look different from older documents, but most estate planning documents signed in recent years should continue to be effective. There is a more extensive description of the new Maine estate tax in the estate planning resources section of our website, <http://www.leblancyoung.com/admin/resources/1352409248maineestatetax.pdf>.

What will happen with the federal transfer tax system after 2012 remains unknown. There seems to be scant likelihood that the sunset of the current law will result in the federal estate and generation-skipping exemptions returning to \$1 million for all estates, although it is possible that the legislative correction could be made in the middle of 2013 and date back to January, giving rise to a period of uncertainty and concern. There are several important nuances that changes in the federal law must address, including whether the gift tax exemption will continue to match the estate tax exemption, and whether a second spouse may use the unused exemption of a predeceased spouse. We will endeavor to keep you informed as the new law takes shape.

### **Our New Website**

LeBlanc & Young has a new, greatly improved website! Please visit the website to peruse the resources we post, such as those we reference in this Newsletter. We maintain a blog called "Notes from our Desk," as well as a firm news section, which we update periodically. For example, our current "Firm News" posting notes that Justin D. LeBlanc has been named a Fellow of the American College of Trust and Estate Counsel ("ACTEC"), joining a small number of Fellows in Maine. We congratulate Justin on this well earned recognition! In January you will be able to read about Sian O'Malley Hahn, who will join us as "of counsel." We are thrilled to have Sian join us after a successful start to her career at a premier New York City trusts and estates firm. We know that clients and professionals will share our enthusiasm once they have met her. You can keep up with our news by marking the website, <http://www.leblancyoung.com>, as a favorite on your browser!