



**MONTGOMERY McCracken**

Practical Advice from the Trusts and Estates Practice

## Estate and Gift Tax: Four Things to Keep in Mind

### **ONE: Estate, Gift and Generation-Skipping Tax Exemption**

In 2013 the maximum federal estate, gift and generation-skipping tax exemption had been \$5,200,000 but in 2014 it is inflation-adjusted to \$5,340,000. For a married couple the exemption is available for each spouse so the total maximum exemption for the couple in 2014 is \$10,680,000. The exemption is likely to increase with inflation in 2015 and in years thereafter.

### **TWO: Federal Gift Tax Annual Exclusion**

The federal gift tax annual exclusion, the amount which one individual can give to another without having to file a gift tax return and without using up any of the gift or estate tax exemption, is also inflation-adjusted. In 2013 the amount of the exclusion was \$14,000 and it remains \$14,000 in 2014. The annual exclusion is in addition to gifts made for education or health care directly to schools or health care providers. For a married couple one spouse can gift up to twice the annual exclusion without consuming any estate or gift tax exemption as long as a gift tax return is filed and the non-donor spouse consents to “split” the donor spouse’s gift.

### **THREE: Portability**

The concept of “portability” between spouses became permanent at the beginning of 2013. This means that whatever estate tax exemption is unconsumed after the death of the first spouse to pass away can, subject to certain limitations, be added to the exemption available to the surviving spouse. To take advantage of portability, the personal representative of the estate of the first spouse to die must file a federal estate tax return even if one is not otherwise required because the value of the estate is less than the amount of the exemption. This means that more federal estate tax returns will likely be filed going forward than were filed prior to the advent of portability.

### **FOUR: Windsor Decision**

Under the June 26, 2013 decision of the United States Supreme Court in *Windsor v. United States*, married same-sex couples are treated the same for federal income, estate and gift tax purposes as opposite-sex couples. That means that same-sex married couples can avail themselves of the benefits of the federal estate and gift tax marital deduction, portability of the exemption and the ability to gift-split, in addition to numerous federal income tax benefits that apply to married couples.



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