

## The Estate Tax in 2013

June 30, 2012

The Tax Relief Act of 2010 proscribed the future of the transfer tax system for 2011 and 2012, but what happens in 2013 and beyond is still up in the air. Under current law the estate tax exemption is scheduled to drop significantly from \$5,000,000 in 2012 to \$1,000,000 in 2013, and the estate tax rate is scheduled to jump from 35% to 55%.

So during this presidential election year, when we do not expect much to get done before or even right after the election, what will be the future of the federal estate tax in 2013 and beyond?

### **What Are Congress's Estate Tax Options?**

As in previous years, and particularly since this is a presidential election year, members of Congress will surely continue to drag their feet and then wait until the very last minute to act to head off the expiration of TRUIRJCA, or perhaps not act at all. With that said, there are currently five very different paths for Congress to take during 2012:

- **Do nothing.** The first option is for Congress to do nothing and allow TRUIRJCA to expire as it is scheduled to do on December 31, 2012. If this happens, a \$1,000,000 estate tax exemption and 55% estate tax rate will kick in on January 1, 2013. Many estate planners believe that this option is becoming inevitable since there are other more pressing things for Congress and President Obama to address before the end of the year.
- **Extend TRUIRJCA.** The second option is for Congress to extend TRUIRJCA for 2013 and beyond. This would mean that the \$5,000,000 estate tax exemption would be indexed for inflation for years beyond 2012 and the estate tax rate would remain at 35%.
- **Pass a compromise bill.** The third option is for Congress to pass some form of an estate tax compromise which will lower the estate tax exemption and increase the estate tax rate to something more in line with the 2009 numbers of \$3,500,000 and 45% tax rate. This may also include repeal of portability of the estate tax exemption between spouses which is in effect for the 2011 and 2012 tax years.
- **Repeal the estate tax.** The fourth option is for Congress to completely repeal the federal estate tax. While remote, this is a possibility since Republicans are in control of the House, a number of bills are currently circulating that call for full repeal, and a substantial number of congressional Republicans favor full repeal.
- **Throw in a wild card.** The fifth option is for Congress to do something new and different that is not listed above. We call this wild card option the "your guess is as good as mine" option.