# New Obama Administration Estate, Capital Gains and Gifting Rules

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With a little forethought and estate planning, the new tax laws signed by President Obama in late December, 2010 may be used to your family's financial benefit. Here is some of what you need to think about in order to take advantage of these new laws:

A. The lower estate tax rates set by President Bush have been extended for all taxpayers for another 2 years.

B. During 2011 and 2012 only, the Federal estate, gift and generation-skipping transfer tax exemptions and rates are unified again. The estate tax exemption amounts increased to $5,000,000.00 per testator, indexed for inflation beginning in 2012. The tax rate was set at 35%.

C. The estate tax exemption, to the extent it is not utilized, is now portable to one's spouse. This means that the executor of an estate of someone who passes in 2011 or 2012 may transfer any unused estate tax exemption to the surviving spouse. To accomplish this, a timely estate tax return must be filed. This also means that prior wills utilizing a credit shelter trust may no longer be appropriate.

D. The gift tax exemption has increased from $1,000,000 in 2010 to $5,000,000 in 2011 and 2012. Now is the best time to consider making gifts as a part of your estate planning. Your tax savings can be significant if this is done correctly during these two years. In 2013, it reverts to its prior level (unless extended or modified).

E. You can still gift $13,000 per recipient, per donor, per year. For example, Mom and Dad can give $26,000 to each of their three children in 2011, for a total of $78,000.

F. The generation skipping transfer tax (for transfers to grandchildren) increased to $5,000,000 for 2011 and 2012, with a top rate of 35%. It was previously $1,000,000. This presents unprecedented opportunities to shift wealth twice.

G. The step-up in basis upon death rules will continue in 2011 and 2012. There was limited step up in basis in 2010 prior to the new rules. Now there is an option.

H. Executors for those who pass in 2010 have the option of electing no estate tax with a modified carryover basis (the lesser of the decedent's basis in the property or its fair market value with a limited step-up of $1,300,000, plus $3,000,000 for assets passed to a spouse). Each estate is unique, and must be evaluated on its own to determine the most financially advantageous course to follow based upon many factors. Executors have 9 months from December 17, 2010 to make their election, file the estate tax return, pay the taxes and make disclaimers.

I. The estate tax rate is now set at 35% for amounts over the exemption amount.

J. These new rules are only effective for the next two years. The changes will sunset or revert to the pre-Act $1,000,000 limits in 2013, with a top tax rate of 55%, unless further extended or modified by Congress, so now is the time to determine if these generous tax allowances can be utilized while still available. For example, those with estates that may be taxable in 2013 may wish to consider using their $5,000,000 gift and generation skipping transfer tax exemptions in 2011 and 2012, while the tax rate is lower.