

**NJ AMERICAN COLLEGE OF TAX AND  
ESTATE COUNSEL WORKSHOP**

**“RECENT ESTATE AND GIFT TAX RETURN  
FILING STATISTICS”**

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Woodbridge, New Jersey**

**Presented by:**

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**“RECENT ESTATE AND GIFT TAX FILING STATISTICS”**

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- A. Edward Pennfield, BNY Mellon, notes of presentation at January 28, 2013  
Institute of Continuing Legal Education program. See Exhibit A
- B. Late 2012 ACTEC listserv posting, See Exhibit B

ACCORDING TO INFORMATION PRESENTED AT THE 2013 MIAMI UNIVERSITY HECKERLING INSTITUTE, FOR 2008 THERE WERE 38,000 ESTATE TAX RETURNS AND 32,000 GIFT TAX RETURNS FILED FOR THAT YEAR. IN 2011, 220,000 GIFT TAX RETURNS WERE FILED, OF WHICH ALMOST 11,000 WERE TAXABLE. IN 2012 ABOUT 6,000 ESTATE TAX RETURNS WERE FILED, BUT ONLY ABOUT 3,200 WERE SUBJECT TO THE PAYMENT OF ESTATE TAX.

THE IRS HAS ESTIMATED THAT UNDER ATRA THERE WILL PROBABLY BE ONLY 3,000 TO 4,000 FEDERAL ESTATE TAX RETURNS FILED PER YEAR. BUT IT IS NOT CLEAR IF THIS ESTIMATE INCLUDES RETURNS FILED TO CAPTURE THE PORTABILITY AMOUNTS FOR FUTURE USE.

A STUDY PROVIDED BY ACTEC SHOW THAT BETWEEN 2007 AND 2011 APPROXIMATELY 10,000 GIFT TAX RETURNS WHICH WERE SUBJECT TO TAX WERE FILED PER YEAR. GIFT TAX REVENUE ROSE FROM 2.1 BILLION IN 2007 TO \$6.1 BILLION IN 2011.

SEVERAL PANELISTS AT HECKERLING SUGGESTED THAT PERHAPS OVER 500,000 GIFT TAX RETURNS WILL BE FILED FOR 2012 GIFTS. KEEP IN MIND THAT THERE ARE ONLY 350 IRS EXAMINERS. BECAUSE OF THIS 2 OF THE PANELISTS ON THE PROGRAM "RECENT DEVELOPMENTS" SUGGESTED THAT IT MIGHT BE A GOOD IDEA NOT TO REQUEST AN EXTENSION OF TIME TO FILE GIFT TAX RETURNS TO REDUCE THE CHANCE OF AN AUDIT.

I was speaking with a reporter last week about the scheduled decline in the estate/gift tax exemption and provided him with some data I was able to piece together from the following sources:

Statistics published by the IRS at <http://www.irs.gov/uac/SOI-Tax-Stats---Estate-Tax-Statistics>

and data on deaths from the Centers for Disease Control <http://www.cdc.gov/nchs/fastats/deaths.htm>

#### Estate Tax Data:

Some interesting figures, I culled from looking at the various spreadsheets posted under the IRS link above:

Estate Tax  
Returns filed

in:	# taxable returns	Total Estate Tax Paid (Billions of \$)
2011	1,480	\$3.08
2010	6,711	13.2
2009	14,713	20.6
2008	17,144	24.8
2007	17,408	22.5
2006	22,798	24.6
2005	20,250	21.7
2004	31,329	21.6
2003	33,302	20.8
2002	45,018	21.4
2001	51,736	23.5
2000	52,000	24.4
1999	49,863	22.9
1998	47,475	20.3
1997	42,901	16.6
1996	37,711	14.4
1995	31,563	11.8

#### Number of U.S. Deaths:

From the Centers for Disease Control and Prevention website at:

<http://www.cdc.gov/nchs/fastats/deaths.htm>

Total U.S. deaths:

In 2009: 2,437,163

In 2010 (preliminary data): 2,465,936

So, the percentages of estates in the U.S. that paid estate tax as a percentage of total U.S. deaths were:

In 2009:  $14,713/2,437,163 = 0.6\%$

In 2010:  $6,711/2,465,936 = 0.27\%$

Data are not yet available from the CDC for the number of 2011 deaths in the U.S., but if the number is assumed to be roughly the same as for 2009 and 2010, (i.e., 2.4 million), the percentage of estates that paid tax in 2011 as a percentage of deaths in 2011 would decline dramatically to:

In 2011 1,480/2.4 million = 0.06% (less than 1/10<sup>th</sup> of 1%) – So, the estate tax currently does not impact 99.94% of the population.

It should be noted that some of the returns filed in 2011 would have related to 2009 deaths since an estate tax return is due 9 months after the date of death and a 6 month extension of time to file is routinely granted in order to allow the estate time to gather information, obtain appraisals, etc. Some of the returns filed in 2011 would have related to 2010 deaths, a year in which the estate tax was repealed and then retroactively reinstated in December of 2010 on an optional basis for estates that chose to elect the estate tax regime (to get a stepped up basis on assets) versus a no estate tax regime with no stepped up basis on estate assets. Clearly, the increase in 2009 to an exemption of \$3.5 million (from a \$2 million exemption in 2006-2008) and no estate tax in 2010 had a significant impact on the number of estate tax returns filed in 2011 and the sharp decline in the amount estate taxes paid with respect to returns filed in 2011 versus previous years.

It will be interesting to analyze 2012 filing data, when available, that would reflect deaths occurring in 2011, the year when the exemption was raised to \$5 million to see the impact on the number of estates paying tax and the impact on total estate tax revenues.

#### Gift Tax Data:

Here are some data culled from spreadsheets posted at:

<http://www.irs.gov/uac/SOI-Tax-Stats---Gift-Tax-Statistics>

relating to gift tax statistics.

Gift Tax Returns filed in:	# taxable returns	Total Gift Tax Paid (Billions of \$)
2011	10,982	\$ 6.184
2010	9,645	2.453
2009	10,727	2.741
2008	9,667	2.881
2007	8,629	2.122
2006	7,790	1.653
2005	7,026	1.621
2004	4,416	0.793
2003	6,033	1.113

The interesting thing that jumps out at me from the table above is the dramatic increase in gift taxes paid for gift tax returns filed in 2011 (for gifts made in calendar year 2010.) In 2010, the GST (generation-skipping transfer) tax was repealed for one year (along with the estate tax) and it appears that many wealthy individuals took advantage of the ability to transfer wealth to grandchildren by only paying a gift tax and not two taxes (gift tax and GST tax) that had previously applied and which would also apply again starting for gifts made in calendar year 2011 and beyond. This is an interesting study in human behavior due to tax incentives.