



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

WRITTEN STATEMENT

FOR THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ECONOMIC GROWTH, TAX AND CAPITAL ACCESS

PUBLIC HEARING:

PLANNING FOR THE DEATH TAX: CAN SMALL BUSINESSES SURVIVE?

MAY 31, 2012

As Congress considers various issues and alternatives with regard to small businesses and individuals and the estate tax system, the American Institute of CPAs (AICPA), the national professional association of approximately 377,000 CPAs throughout the country, encourages Congress to make permanent changes to the estate tax as soon as possible, and well before the current rules expire on December 31, 2012, in order to provide certainty to taxpayers in planning their affairs.

We are providing below our priority list of suggested reforms of the current estate and gift tax system, which we previously submitted to Congress on November 18, 2011, June 22, 2006 and July 28, 2005. Many of these suggestions were published in 2001 as part of the AICPA's [*Study on Reform of the Estate and Gift Tax System*](#), which we provided to Congress in 2005. In addition, we provide several recommendations for legislation on administrative simplification and relief in this area.

The Economic Growth and Tax Relief Reconciliation Act of 2001 ([EGTRRA](#)) made major revisions to the gift, estate, and generation-skipping transfer (GST) tax regimes. In December 2010, the 2010 Tax Relief Act modified and extended temporarily the gift, estate and GST tax provisions of EGTRRA and created some new provisions. All the provisions of EGTRRA as well as the provisions of the 2010 Tax Relief Act are scheduled to expire on December 31, 2012, and the laws in effect prior to 2001 are scheduled to return.

The uncertainty of the tax law impedes proper estate planning for taxpayers, and the necessity to revise estate planning documents multiple times places an undue burden on taxpayers and their advisors. In addition, if no Congressional action is taken, on January 1, 2013, the 2001 legislation will sunset, which will create turmoil for gifts to multigenerational trusts to which GST exemption was allocated between 2001 and 2012.

We provide below our priority list of suggested reforms of the current estate, gift and GST tax systems.¹ They have been submitted to Congress previously and are based on various [studies and reports](#) over the past decade. In developing these suggestions, we focused on the complexity of the current system, taxpayer planning and compliance burdens, ease of administration and revenue constraints. Our suggestions, in priority order, are:

1. Make permanent the technical modifications to the GST tax rules enacted in EGTRRA and extended temporarily by the 2010 Tax Relief Act, which provide relief from several GST tax “traps” that existed under previous law. See later in this statement and in our [November 18, 2011](#) letter more details on this important, non-controversial technical provision that needs to be made permanent.
2. Maintain from the 2010 Tax Relief Act an applicable exclusion (exemption) amount indexed for inflation for gift and estate tax that eliminates planning, filing, and estate tax payment burdens for all but the largest estates. If the exemption amount is reduced below the current \$5.12 million level, it is important that those who made taxable gifts in 2011 and 2012 to utilize all or a part of the current exemption not be subject to gift or estate tax in the future on the amount that was covered by the exemption in those (2011 and 2012) years. The statutory provision should make clear that the amount of taxable gifts covered by the exemption amount in 2011 and 2012 is not again included in the amount subject to gift or estate tax.
3. Maintain from the 2010 Tax Relief Act a uniform exemption amount for estate, gift, and GST tax purposes. This uniform exemption amount simplifies planning for individuals.
4. Maintain from the 2010 Tax Relief Act portability of the estate tax exemption to a surviving spouse because it simplifies estate planning and estate administration for married couples. Until this provision is made permanent, it is not very useful from a planning prospective. The current portability provision is scheduled to expire on December 31, 2012, so married couples cannot rely on it. Couples still must go through the complicated process of trying to equalize their estates by dividing up jointly owned property and establishing marital trusts. Consider making the GST exemption portable as well.
5. Reinstate the full state estate or death tax credit, or provide another mechanism (such as a surtax) that would allow states to uniformly “piggyback” on the federal estate tax. To avoid diminishing tax revenues, many states have decoupled from the federal estate tax and enacted their own estate tax regimes, resulting in unnecessary complexity and uncertainty in both planning and administration.
6. Provide broad-based liquidity relief, rather than targeted relief provisions. Broad provisions that would apply to all illiquid estates would be both simpler and fairer to all taxpayers. At a minimum, the Internal Revenue Code (IRC) section 6166 installment payment rules and its holding company

¹ Many of our suggested reforms were previously submitted to Congress on November 18, 2011, January 13, 2010, January 21, 2009, March 11, 2008, June 22, 2006, and July 28, 2005, and included in testimony before the Senate Finance Committee on April 3, 2008. Many of these suggestions were published in 2001 as part of the [AICPA’s Study on Reform of the Estate and Gift Tax System](#), which we provided to Congress in 2005, and in [AICPA testimony and letters](#).

provision should be modernized to allow eligibility for all types of business forms, including pass-through entities (i.e., partnerships, LLCs, etc.) in addition to currently-allowed corporations.

7. Provide many tax brackets to avoid cliff taxation. We note that there have been some proposals in the past that have included a rate structure with a very limited number of tax brackets and a large gap between brackets. For example, such a system might provide for only two brackets, say 15 percent and 30 percent, with estates over a certain size paying the higher bracket (30 percent in this example), and estates below that number paying the lower bracket (e.g., 15 percent). In such a proposal, there may be significant uncertainty in the planning process for married couples with significant estates. For example, taxpayers may have to consider if estate tax should be paid at the death of the first spouse at a 15 percent rate compared to an alternative of paying the tax in the future but at a higher rate. In addition, this type of “cliff” taxation leaves too much room for disparity among similarly situated taxpayers, where one receives estate planning advice and pays significantly less tax when compared to the individual who does not receive such advice.

As mentioned above as the first of our priorities, Congress should make permanent the GST tax technical modifications, which are taxpayer favorable, are non-controversial, have minimal revenue effect, and provide relief from several GST tax “traps” that existed under the law prior to enactment of EGTRRA. We note that the Administration’s budget proposals for [fiscal year 2013](#) and 2012 would make permanent the portability provisions enacted in the 2010 Relief Act. In addition, the Administration’s budget proposals for fiscal years 2013 and 2012 would make permanent at the 2009 law levels the provisions enacted in 2001, so these GST tax technical provisions would be made permanent as part of the broader effort to accomplish estate tax reform by making permanent certain estate, gift and GST tax provisions enacted in 2001. We applaud this effort to permanently extend these expiring provisions. Furthermore, the AICPA advocates that the GST tax technical provisions in EGTRRA, as extended by the 2010 Tax Relief Act, should be made permanent, without any interruption in their applicability, due to undue burdens upon taxpayers who relied on these provisions in managing their affairs since 2001 and the need for the simplicity provided by these provisions going forward.

In addition, there are few other related issues and suggestions that we wanted to point out as Congress deals with estate tax. We hope that when Congress makes these provisions permanent (especially the non-controversial GST tax technical modifications), Congress also includes:

1. Technical changes to permit administrative relief (i.e., granting the Internal Revenue Service (IRS) permission to grant section 9100 relief for certain late or defective lifetime (i.e., inter vivos) qualified terminable interest property (QTIP) elections and for late elections by certain qualified revocable trusts (QRTs) to be treated as part of a decedent’s estate). (For more details, see our [November 18, 2011 letter](#).)
2. Proposed amendments to IRC section 67(e) to simplify the law and allow estates and trusts to fully deduct the cost of complying with fiduciary duties in administering estates and trusts. (See our [May 2, 2012 letter](#) for more details.)
3. Proposed legislation to simplify the tax compliance burden of taxpayers by providing consistent treatment of all federal tax payments of trusts and estates, including estimated tax payments, backup withholding, and regular withholding. (See our [January 12, 2012 letter](#) for more details.)

All of these suggestions have been submitted to Congress over the past year and are available in detail on the [estate tax page](#) of our AICPA website and we are happy to discuss them with Members of Congress and their Staff.

We appreciate your efforts in examining the uncertainty taxpayers face in navigating through the temporary rules of the estate tax. As mentioned, the uncertainty of the tax law impedes proper estate planning for taxpayers.

We encourage this Subcommittee and others in Congress to consider these suggestions as Congress decides what to do with the expiring rules for the estate tax before the end of 2012. We look forward to working with Congress to achieve more certainty, simplicity, effectiveness, and efficiency as Congress considers issues related to the current estate and gift tax system.