

## Federal estate tax changes impact many USVI residents

On Jan. 1 the Federal estate tax exclusion increased from \$2 million to \$3.5 million, which means that fewer estates will be subject to tax in 2009.

Similarly, the annual gift tax exclusion increased by \$1,000 on Jan. 1 — to \$13,000.

### Marjorie Roberts and Sean Foster

This increase enables individuals to transfer by gift the amount of \$13,000 to as many individuals as they desire in 2009 without incurring any Federal gift tax liability. Estate plans that fail to take into account the exclusion increase may need revising, and persons seeking to reduce their taxable estates by making gifts subject to the exclusion may want to ensure that they give the maximum amount possible to each recipient.

The lifetime cumulative gift tax exclusion, which is imposed on gifts that exceed the annual gift tax exclusion, remains unchanged at \$1 million. That means that if in 2009 a person gives a gift of \$20,000 to someone, then \$7,000 of that amount is counted against the lifetime exclusion, reducing the balance of the exclusion to \$993,000. The \$7,000 would also reduce the federal estate tax exclusion to \$3,493,000. Also, the top marginal gift and estate tax rates remain at 45 percent.

Federal estate and gift taxes are not collected by the V.I. Bureau of Internal Revenue, so U.S. Virgin Islands taxpayers who owe them must pay the taxes to the Internal Revenue Service in Cincinnati, Ohio 45999. IRS Form 706 is used for estate taxes and for Form 709 for gift taxes. Generally the estate tax return is due nine months after the date of death — with a possible six month extension — and the gift tax return is due on April 15 following the year in which the gift is made. (Gifts are not taxed to the recipient, only the payor.)

Transfers between spouses by gift or death typically remain estate and gift tax free and aren't subject to the limitations. Also, gifts for tuition and certain medical expenses are not subject to the \$13,000 exclusion limit so a grandparent can both give a grandchild \$13,000 in 2009 and pay private school tuition directly to the school.

In the event that Congress fails to enact additional legislation by the end of this year, the federal estate tax is repealed in 2010 and, in 2011, reverts to a \$1 million exclusion amount. However, current indications are that the Obama administration favors retention of the \$3.5 million exclusion and the 45 percent top marginal estate tax rate.

Individuals who are born or naturalized in the U.S. Virgin Islands are exempt from federal estate and gift tax except on their assets that are in the 50 states and the District of Columbia. However, on such assets, individuals have a much lower exclusion — a maximum of \$175,000. Such persons need to ensure that their investment in U.S.-based assets (such as real estate in the United States and, for estate but not gift tax purposes, stock in U.S. companies) is lower than this amount or consider restructuring their estate plan to include the use of a U.S. Virgin Islands entity to reduce or eliminate estate tax liability on such assets.

The U.S. Virgin Islands has "local" inheritance and gift taxes on the books, but each has a broad exemption clause that effectively exempts all inheritances and gifts from taxation.

— *This article is not intended to provide legal advice and persons should contact their professionals regarding application of the federal estate and gift taxes to their particular circumstances.*