

Careful Estate Planning and Gifting Can Save Millions in Estate Taxes

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1. When we talk about estate planning, what does that generally involve?
 - a) At its most basic level, estate planning involves planning for disability and death. Planning for disability or incapacity will generally involve Powers of Attorney for finances and Health Care Powers of Attorney and Living Wills. Planning for death will usually involve Wills and Trusts. With Wills and Trusts, the client is usually focused on making sure that assets or property will be distributed according to the client's wishes and that the persons or entities who are selected will have certain jobs or responsibilities. For example, a client may want assets held in trust for a minor child and may name a family member or bank to serve as Trustee of that trust.
 - b) Almost everyone needs at least a basic estate plan, otherwise there may be unintended consequences and greater probate court supervision and expense, and a critical part of estate planning for some clients is minimizing estate tax liability.
2. Can you give us a summary of the current Federal and SC estate tax laws?
 - a) Under current Federal estate tax laws, the estate tax exemption is \$3.5 million for an individual. The top Federal estate tax rate is 45%. South Carolina currently has no separate estate or inheritance tax.
 - b) The good news is that an individual can reduce, and in many cases eliminate, estate taxes with advance planning. With the correct legal documents and proper asset ownership, a married couple can frequently use both exemptions and shelter up to \$7 million from estate taxes.

3. What about Federal and South Carolina gift taxes?
 - a) Under current Federal gift tax laws, the gift tax exemption is \$1 million. This exemption is interrelated to the estate tax exemption so if someone uses the gift exemption during their lifetime, it reduces the available estate tax exemption at death. The top Federal gift tax rate is 45%. South Carolina currently has no separate gift tax.
 - b) In the current economic climate many clients are worried about their own personal finances and future needs and rightly so, but for some clients this environment can be a good time for some clients to make gifts to remove future appreciation from their estates and to minimize potential future estate taxes.
4. Is there a de-minimis amount of gifts that a person can make in a year?
 - a) Annual exclusion gifts are considered de-minimis gifts and are gift tax "freebies". For many years the amount was \$10,000 per donee but the amount currently is \$13,000. In other words, a donor can give an unlimited number of individuals \$13,000 in assets each year with no gift tax consequence. For a married couple, this means that a couple can give each child, grandchild or other donee \$26,000 in annual exclusion gifts this year. One spouse may also use another spouse's annual exclusion, and this is called "gift splitting".
5. How are these gifts typically made?
 - a) Annual exclusion gifts can be made outright to a donee, to 529 college tuition plans (and for these gifts, a donor can give 5 years of these gifts in advance to front load the account), custodial accounts or certain types of trusts.
 - b) Donors can give almost any kind of assets, including cash, securities, life insurance, land, interests in closely held businesses, etc. Donors will want to give assets that they believe will appreciate in value.
6. Are there other types of gifts a person can make?
 - a) Donors can also pay tuition or medical expenses for an individual, and if those payments are made directly to the provider of the services, they are not taxable gifts (and not part of the annual exclusion gift limits).
 - b) Some donors may want to make even larger gifts, and these are called taxable gifts. For example, a parent could make a taxable gift of assets to a child of up to \$1 million to remove that asset from their estate. That asset may have

appreciation potential (and possibly a current value that is depressed). The portion of the \$1 million exemption that is used for the taxable gift reduces the estate tax exemption available for the parent at death, but the parent may be removing an asset from the estate at a much lower value than if the asset had been kept until the parent's death. (Having described that example, I would point out that there can be income tax issues that need to be considered with gifts of some types of assets.)

7. We've been talking about gifts to family members or other individuals, but I assume a person can make gifts to charities?
 - a) Yes, and those gifts, if properly structured, are not subject to gift tax and will frequently offer some income tax benefits as well. There are different rules for gifts to charities as well as some other techniques available for charitable gifts, and anyone interested in making charitable gifts should consult tax and legal professionals.

8. So, estate planning can involve estate tax, gift tax and income tax, correct?
 - a) Yes, and in addition to those taxes, there is another tax that can be imposed on transfers that skip a generation. The simplest example is a gift from a grandparent to a grandchild. Gifts to grandchildren or more remote descendants may require some additional planning to avoid another transfer tax, which is called the generation-skipping transfer tax, but most gifts can be structured to fall within the exemption or exclusions from that tax.

9. When someone makes a gift to a family member or another individual are there tax returns that have to be filed?
 - a) For some of the above-described gifts, Federal gift tax returns must be filed, but unless a taxable gift exceeds the donor's available gift tax exemption, no gift tax has to be paid. Persons should always advise their accountant about all gifts, so required returns can be filed. In many cases, those returns will be informational returns only.

10. Are there changes expected to current estate and gift tax laws?
 - a) Almost certainly. In fact, under current law, estate taxes are scheduled to be repealed entirely in 2010, but then if Congress does not extend the estate tax repeal after 2010, estate tax laws are reinstated in 2011 and with a much lower estate tax exemption of \$1 million. There has been much discussion about the future of Federal estate and gift tax laws in the past couple of years, and the

conventional wisdom is that Congress will address these laws in 2009 before the scheduled repeal on January 1, 2010. As an example of what Congress might do, in January of 2009 a new Bill was introduced that eliminates the repeal of estate taxes, sets the estate tax exemption at \$3.5 million and establishes a top estate tax rate of 45% with a 5% surcharge on estates over \$10 million. This Bill would not make material changes to the gift tax laws.

- b) As a result of the expected changes in the estate tax laws, some clients are holding off updating their plans for tax purposes, but for many clients their estate planning may need to proceed irrespective of the changes in the tax laws. And some clients may consider this a good time to make gifts.

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