



Planning Pieces

A Lesson in Gifting

Some clients are well-aware of the availability of gifting as an important estate planning tool. Others are vaguely aware that there may be some rules concerning gifts over a certain amount. Still others have never even heard of the concept. So, what is it and how does it work?

For 2009, the IRS has ruled that the annual exclusion amount is \$13,000 per person (think of this as a “freebie”). For quite some time now, the lifetime gift exemption amount has been \$1,000,000 (think of this as the “pot” from which you must borrow if your gift exceeds \$13,000 in any given year). What this means is that I could give \$13,000 apiece to as many individuals as I want in 2009 without any consequence or need to report such gifts to the IRS (because it’s a freebie). However, any amount in excess of \$13,000 given to any one person triggers the need to file a gift tax return (IRS Form 709) with the IRS and report the use of some of my lifetime gift tax exemption amount (that I used up some of the money in my pot).

So, for example, during 2009, I could give \$13,000 to my son, \$13,000 to my daughter, \$13,000 to a friend, and \$13,000 to the guy who holds the door open for me, all without any repercussion. However, in the event that I give my son \$20,000 instead of \$13,000, I need to report the gift to the IRS. Thirteen thousand dollars of it will be the “freebie” and \$7,000 of it will come off of the \$1,000,000 in my lifetime pot, leaving me only \$999,993 left to use in my lifetime. I will need to report this on IRS Form 709, due on or before April 15, 2010.

Although it is important to understand the rules implicated in making such gifts, it is also important for clients who may have an estate tax problem to consider gifting as a mechanism for reducing the sizes of their estates before death. Clients who own large amounts of investment real estate, shares in a closely-held corporation, or substantial family farming operations may choose to gift away small percentages of those assets over the course of years, using the annual exclusion amount (the freebie), and consequently reducing the amount of assets in their estates at their deaths. Those clients need to keep in mind, however, that the lifetime gift exemption (\$1,000,000) is currently still part of the estate tax exemption (\$3,500,000), which means that if I use my entire \$1,000,000 lifetime gift exemption, I will only have an estate tax exemption of \$2,500,000 left to apply to my assets at death. It is possible that any new estate tax legislation could change this dichotomy, but it is essential to keep the current rules in mind when discussing a gifting strategy.

Good To Know

The U.S. Centers for Medicare and Medicaid Services maintains a website that, among other things, includes a rating system for ranking nursing home care. The rankings range from one star for “much below average” to five stars for “much above average.” Homes are rated on three specific areas: Health Inspections, Nursing Home Staffing, and Quality Measures, and are also given an overall star rating. The site allows a user to search by state, county, or proximity to a certain area. It lists all nursing homes located within the search range and allows the user to select up to three different homes for side-by-side comparison purposes. It also includes information regarding the number of beds, the acceptance of the Medicare and/or Medicaid plans, and the ownership of the facility. The system can be accessed at: www.medicare.gov. Midway down the page, under “Search Tools,” click on “Compare Nursing Homes in Your Area.”

Inside this issue:

A Lesson in Gifting	1
Good to Know	1
Economic Stimulus	2
Death and Taxes	2
Back to Basics	2

Time for Review

- Change in *marital circumstances* - death, divorce, or remarriage
- Change in *family circumstances* - addition or loss of a child, child reaching adulthood, or child’s financial woes
- Change in *financial circumstances* - inheritance, unexpected loss of assets, assets in another state (or country), or formation of a business
- Change in *health circumstances* - age, disability, or need to pay for health care

Economic Stimulus—What Does It Do?

Much to the dismay of many estate planning attorneys, one thing that the American Recovery and Reinvestment Act, commonly known as the “Stimulus Plan,” did *not* do was answer the question of the future of the estate tax. However, the Act did do several other things, among them some of the following highlights that may affect you or someone you know:

Exclusion of unemployment benefits on 2009 income taxes. People who receives unemployment benefits during 2009 is eligible to exclude the first \$2,400 of these benefits when they file their tax return next year. For a married couple, the exclusion applies to each spouse, separately (a total of \$4,800).

Increase of carryback of net operating losses for eligible small businesses. Allows a taxpayer that is an eligible small business (ESB) to elect a 3, 4, or 5-year net operating loss (NOL) carryback (instead of the normal 2-year carryback) for tax years ending after 2007.

Availability of subsidized COBRA insurance payments for terminated employees. Workers who have lost their jobs may qualify for a 65 percent subsidy for COBRA continuation premiums for themselves and their families for up to nine months. Eligible workers will have to pay 35 percent of the premium to their former employers. To qualify, a worker must have been involuntarily separated between September 1, 2008, and December 31, 2009. Workers who lost their jobs between Sept. 1, 2008, and enactment, but failed to initially elect COBRA because it was unaffordable, get an additional 60 days to elect COBRA and receive the subsidy.

Increase in first-time homebuyer credit – and no payback! The IRS announced February 25 that for first-time homebuyers who purchase in 2009, the maximum credit is \$8,000 and can be claimed on a buyer's 2008 federal tax return. The credit does not have to be paid back. For first-time homebuyers who bought in 2008, the credit was \$7,500 and had to be paid back over a period of 15 years.

Death and Taxes

So, what’s up with that estate tax? Under the current estate tax legislation, the estate tax exemption amount for 2009 is \$3.5 million per person. In 2010, there is no estate tax imposed, and in 2011, the estate tax exemption amount is scheduled to return to \$1 million per person. Although as practitioners we thought we would have had an answer long ago, the wheels of Congress turn slowly. There is, however, a bill (H.R. 436) introduced into the House on January 9, 2009, which proposes to fix the estate tax exemption at \$3.5 million per person and freeze the top estate tax rate at 45%. It has been assigned to the House Ways and Means Committee where it currently still sits.



Back to Basics

The two most common forms of ownership of personal property in multiple names are property titled jointly with a right of survivorship and property titled as tenants in common. The difference often hinges on whether the names are linked by an “or” or an “and”.

For personal property (i.e. *not* real estate), two or more names linked by “OR” typically indicate that ownership is joint tenancy, with an expressed intent that either of the owners has full authority to transfer ownership, exhaust the account, or change information. It is likely that the signature of either party will be accepted to transact business. The

other party need not be informed. On the other hand, two or more names linked by “AND” indicate ownership as tenants in common, which means that each party owns a percentage interest (usually 50%) which passes upon death pursuant to the decedent’s will (and not necessarily to the other owner). Signatures of both parties will be required to transact business. In the event of the death of either party, the interest of the deceased party must be handled by probate action, or by completing a small estate affidavit. For banking transactions, it is important to check the signature card which

contains a designation of the type of account intended.

With regard to real estate, two or more names on the title, absent additional qualifying language, creates a tenancy in common, meaning that each named party owns a percentage interest in the property that will pass according to that person’s will upon that person’s death (and not by default to the other surviving owners).

The bottom line: carrying out your intent may rest on the use of a two or three-letter word.

“Effective estate planning relies on equal doses of compassion and knowledge of the law”