

Annual Gift Exclusion Amplified by Depressed Financial Markets

The increase in the annual exclusion amount for gifts this year from \$12,000 to \$13,000 is peanuts compared to the increase in the estate tax exclusion. But the annual exclusion is still an important tool, and a well thought out gifting program can make a huge difference, particularly in today's depressed financial markets.

Even though the estate tax exclusion level has soared to \$3.5 million, and is scheduled to rise to infinity in 2010, under current law the level comes back down to an earthly \$1 million per person in 2011. This roller-coaster schedule could very well change in the next few months, but until legislation is signed by the President, it's always prudent to plan based on current law, not what the law might be this summer. Congress is known for achieving less rather than more; so most of us plan based on what we know the law is today, not what we would like to see happen.

Which gets us to what we know for certain. The \$13,000 the annual exclusion for gifts is not subject to legislative sunset and resuscitation as is the estate tax exclusion, and thus will not rise and fall according to the whims of Congress. It's indexed for inflation and thus rises slowly but steadily. Gifting is a widely used estate planning tool because it is simple and effective. And, with the fall in asset values, such as stocks, it has become even far more valuable.

The annual exclusion for gifts allows you to give \$13,000 to any number of people. Couples can "gift split," meaning that together they can give \$26,000 to as many individuals as they wish. Normally the annual exclusion for gifts is thought of as \$13,000 cash, but in reality it is \$13,000 worth of any asset priced at fair market value. Thus 1,000 shares of a stock, which might have been selling for \$40 a share a year ago, but which now trade at \$13 a share, could be given to an individual entirely tax free with no questions asked, no tax forms necessary. If you expect that the stock will recover when the overall economy improves, you are effectively transferring upwards of \$40,000 tax free per recipient, double that if you and your spouse act together. This period of depressed stock prices, as well as other depressed assets, presents a rare opportunity to pass along to the next generation some of your assets entirely tax free.

Be aware that stocks and other assets transferred as a gift retain their original cost basis, whereas assets that are inherited typically receive a step up in cost basis equal to the value of the asset on the date of the death of the owner. The difference in cost basis and eventual sale price is where the capital gains tax enters the picture. However, one only needs to read in the papers that January 2009 was the worst January in the history of the stock markets, even worse than the many January's included in the Great Depression, and it is apparent that the steep reductions in asset values may far exceed any subsequent capital gains tax liability. Choosing whether gifting makes sense for you requires running the numbers based on the specific assets you hold, their cost basis, and other considerations.

Giving assets away is never an easy decision when economic circumstances have us wondering if we're in the midst of a recession or a second depression. But one perspective worth considering is that the stock market has *always* bounced back, even after market bubbles and world wars. For those who are optimistic that the economy will turn around, this period of reduced asset values offers a rare opportunity to pass significant assets out of their estate in the easiest possible manner. Of course, talking to your estate

planning attorney and certified public accountant is a good idea before taking any significant financial move.

Adam Bartsch, *Annual Gift Exclusion Amplified by Depressed Financial Markets*, The Shelburne News, February 5, 2009.

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