

# Re: Estate and Income Tax Planning - Gift Tax Exclusions

Dear Client,

If you're like most people, you don't like to think about planning your estate. But, it's an important part of ensuring the financial security of your loved ones. One of the more common tools used in estate planning — and one to which everyone should at least give careful consideration — is a program of making gifts. A carefully planned gift-giving program can reduce the amount of your estate that is subject to tax while still passing on wealth.

The 2017 Tax Cuts and Jobs Act doubles the basic exclusion amount for purposes of federal estate and gift taxes and the exemption amount for purposes of the generation-skipping transfer (GST) tax from \$5 million to \$10 million, before adjustment for inflation, for the estates of decedents dying and gifts and generation-skipping transfers made after 2017 and before 2026. For the estates of decedents dying and gifts made in 2023, the basic exclusion amount is \$12.92 million, with a corresponding applicable credit amount of \$5,113,800.4. The maximum estate and gift tax rate is 40 percent.

Absent the immediate financial needs of a gift recipient, the main motivation for making large gifts during your lifetime rather than waiting to pass on your wealth at death is to remove the future appreciation from your eventual taxable estate. There is a certain degree of risk in this strategy since your donee receives a tax basis equal to what you paid for the asset while your heirs will receive a stepped-up tax basis equal to the asset's value at your date of death. As a result, the loss of stepped-up basis and higher future tax rates on capital gains may diminish the benefits of current gift giving. Nevertheless, the planning consensus is that getting future appreciation out of a taxable estate still trumps worries about any potential tax issues for your donees if and when they eventually sell the gifted assets.

You can give away up to an "annual exclusion amount" per recipient per year free of gift tax and free of any future offset against any exclusion amount used to lower future gift or estate taxes. For 2023, the annual exclusion amount is \$17,000.

There is a great deal of flexibility in the types of property that can be gifted. Gifts that qualify for the \$17,000 annual exclusion can be made in money, property, such as stocks or bonds, or even a life insurance policy, so long as the recipient has the present right to possess or use the property. The gift may be in trust if the terms of the trust give the recipient the immediate right to the property or income from the property.

You can give up to \$34,000 per recipient per year if you are married and your spouse consents to "split" your gifts. This is useful for spouses who do not own an equal amount of property. The spouse with less property can consent to gifts made by the wealthier spouse, thereby effectively doubling the amount that the wealthier spouse can give away tax free. To take advantage of "gift splitting," both spouses must be U.S. citizens or residents. The consent must be given on a gift tax return, so a return must be filed even if no gift tax is due. Don't underestimate how an annual gift-giving plan using only the \$34,000 split gift exclusion per donee can facilitate the tax-efficient transfer of family wealth.

As noted above in discussing large gifts, but equally applicable to smaller gifts, it is important to remember that when you make a gift, the recipient must take your basis in the property. This means that if the recipient sells the property, any gain on the sale will be measured using what you paid for the property, not what the property was worth when he or she received it. In contrast, if property is transferred to another at your death through your estate (and whether or not estate tax is owed), the recipient can use the value of the property at that time to measure any gain on the sale of the property. Consequently, choosing the right property to achieve your goals is an important aspect of any gift-giving program.

Another way to further the financial security of others without incurring gift tax is by payment of medical and educational expenses. You can pay an unlimited amount for these expenses tax free so long as the payments are made on behalf of the donee and are paid directly to the medical services provider or educational institution. The person you benefit does not need to qualify as a dependent for tax purposes. Any medical expenses, however, must not be reimbursed by insurance, to either you or to the beneficiary.

If used properly, a program of gift giving can benefit everyone involved. If you have any questions about the best way of using gifts as part of your overall financial plan, please call us.

Sincerely,  
*EWK Legal, Tax & Accounting Services*

For high-income clients and prospective clients: considerations for a gift-giving program that takes advantage of the per-donee gift tax exclusion. (05/18/2023)