

June 18, 2019

## Tax Planning with the Annual Gift Tax Exclusion

You may not be aware just how useful the annual gift tax exclusion can be as a tax planning tool and tax saving strategy. It is one of the easiest and most effective ways to transfer property without incurring a transfer tax.

**What is the gift tax?** The gift tax applies to the transfer of property by gift, from a donor to a donee. The property transferred can be real, personal, tangible, or intangible, but does not include donated services. The transferred property or evidence of it needs to be delivered to the donee and the donor has to give up all control over the property in order for the gift to be subject to tax.

**Annual exclusion amount.** The first \$15,000 of gifts made by a donor to each donee during the 2019 tax year is excluded from the total amount of the donor's taxable gifts for that year. The annual exclusion is available to all donors, including non-resident citizens. Also, the donee does not have to be a U.S. citizen or resident for the annual exclusion to apply. Although a lifetime exclusion amount is also available to shelter gifts from current gift tax, gifts given under that provision may reduce the amount that can ultimately pass to your heirs estate-tax free.

**Lifetime exclusion.** Under the Tax Cuts and Jobs Act the basic exclusion amount for purposes of federal estate and gift taxes is doubled 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. Because the doubling of the estate and gift tax exclusion amount will expire for decedents dying and gifts made after December 31, 2025, the next several years present a tremendous opportunity for wealthy individuals and married couples to make large gifts, including those that leverage the amount of the available exclusion, such as those to grantor retained annuity trusts ("GRAT's").

For 2019, that unified lifetime gift and estate tax exclusion is \$11.4 million. Due to "portability" in the estate tax, married couples can effectively protect \$22.8 million from eventual estate and gift tax. Also useful in estate planning is the rule that gifts between spouses are not subject to gift tax at all.

**Only present interests qualify.** Gifts of present, rather than future, interests in property qualify for the annual exclusion. A present interest in property is an unrestricted right to the immediate use, possession, or enjoyment of property or the income from the property (for example, when a father gives cash to each of his children). On the other hand, a future interest involves the postponement of the right to use, possess, or enjoy the transferred property (for example, interests in property that are contingent upon the happening of an event at some future date).

**Gifts of property.** If property is given instead of cash, the value of the gift is the fair market value of the property on the date of transfer. For example, if 100 common shares of XYZ Inc. are trading at \$10,000 on the date the shares are transferred to the donee, \$10,000 is the value of the gift for gift tax purposes and, therefore, is covered by the \$15,000 annual exclusion. The potential downside of any gift of property, however, is that your tax basis in the property (usually equal to what you paid for it) is carried over to your donee. That means when your donee sells the property, he or she must pay tax on any gain computed using your original basis. Nevertheless, if your donee is in a lower tax bracket, the combined donor/donee group will come out ahead overall. If your tax basis is higher than the property's fair market value at the

time of the gift, however, you generally should consider selling the property first so that you can realize a tax deductible loss.

**Spouses splitting gifts.** If spouses consent to split all gifts that are made by either one of them during any year and each spouse is also a U.S. citizen or resident, then the gifts are treated as having been made one half by each spouse. Therefore, spouses who consent to split their gifts can transfer twice the annual per-donee exclusion amount each year, free of gift tax (\$30,000 for 2019).

As indicated above, there are numerous factors to evaluate in determining if gifts you have made or will make qualify for the annual exclusion amount. Please do not hesitate to contact us if you have any questions regarding estate and gift tax planning matters.

**MillerSearles LLC**

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