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Strategic Integrated Planning

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 transferred property 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. Annual exclusion amount. The first $13,000 of gifts made by a donor to each donee during the 2010 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 nonresident citizens. Also, the donee does not have to be a U.S. citizen or resident for the annual exclusion to apply. However, one note of caution is that the annual exclusion is lost for each year if it is not used by the end of that year. Another important factor is that each U.S. citizen or resident is allowed a lifetime credit against the gift tax equivalent to a $1 million in taxable gifts. For many donors, that means that any amount not covered by the $13,000 annual exclusion is covered by the lifetime exemption. The only difference is that a gift tax return must be filed to claim the exemption.

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 (e.g., 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 (e.g., 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. 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 $13,000 annual exclusion.

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 can be deemed 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 ($26,000 for 2010).

As seen from the above discussion, there several 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 this office if you have any questions regarding such exclusions. We would be happy to analyze your tax situation and advise you appropriately. 1-866-657-0246 or jwaage@strategiclawgrouppc.com