

Gift Tax Reporting

There are a number of important issues that should be considered when giving gifts. While significant time may be spent planning the transfer of a gift, important reporting considerations may be overlooked. Whether you give gifts annually or periodically, you may be required to file a gift tax return. Although filing is not always required, consideration should be given to filing a gift tax return as a precautionary measure for estate tax purposes.

WHO SHOULD FILE

Gift tax is imposed on donors, who are citizens or residents of the United States, for the transfer of property for less than full and adequate consideration. A gift tax return (Form 709) is required to be filed for the gift of any future interest, any present interest that exceeds the annual exclusion amount and any gift that spouses consent to split. Additionally, gifts to Section 529 Educational Plans which exceed the annual exclusion, may be “spread” over 5 years. The election must be indicated on page 2 of the return, even if resulting in no “tangible” gift for each of the 5 years. The donor is primarily responsible for filing a gift tax return and paying any gift tax due. Gift tax is calculated on total cumulative gifts made during the calendar year less exclusions provided by the Internal Revenue Code.

EXCLUSIONS

Annual Exclusion

Internal Revenue Code (IRC) Section 2503(b) allows individuals to exclude certain amounts from gift tax. An exclusion is the amount of a present interest gift that is not subject to gift tax, i.e., “excluded” in determining the total amount of gifts for the calendar year. The current annual gift tax exclusion amount is \$13,000 per donor. The current annual exclusion is adjusted for inflation.

Marital Gift-Splitting

In addition to the annual exclusion, the IRC allows gift splitting by married couples. Per IRC Section 2513(a) a gift of cash or property made by one spouse to any third party is considered to be made one-half by each spouse. Spouses who elect to split gifts are able to utilize each person’s annual exclusion and gift tax credit provided for in IRC Section 2505(a). As a result, a married couple electing gift splitting, can gift up to \$26,000 to one donee without owing any gift tax. For example, if husband Jack gifts \$22,000 to his sister Cathy, \$11,000 will be considered a gift from Jack, and \$11,000 a gift from his wife, Jill. Neither owes gift tax. Jack and Jill have used a combined exclusion of \$22,000. From their combined \$26,000 exclusion, the remaining \$4,000 is irretrievably lost, if no additional gifts are made to Cathy during the current year. Carry forward to the following year of the remaining gift tax exclusion is not allowed.

Each spouse must consent to gift splitting. Once both spouses have given consent, each is then jointly and severally liable for any gift tax due. The gift-splitting election is effective for all gifts made by either spouse to third persons during the year. The election may not be made on a gift-by-gift basis. If the split gift(s) is/are non-taxable, only the donor spouse is required to file a gift tax return. Both spouses must indicate consent on the return. However, if the split gift(s) is/are taxable, each spouse must file a gift tax return. Consent to gift splitting may be indicated on either return or both. A joint gift tax return is not allowed. The donor's return will report the total amount of gifts made, reduced by the one-half reported by the consenting spouse. For each spouse, gift tax will be computed only on one-half of the total gifts.

Tuition and Medical Payments

The Internal Revenue Code has provided taxpayers additional relief from the payment of gift tax by providing an exclusion for qualified transfers. A qualified transfer is defined in IRC Section 2503(e) as payments made on behalf of an individual for 1) tuition expense to an educational organization and 2) medical care rendered to an individual. These types of payments or gifts must be made directly to the school/college or medical care provider in order to qualify for the exclusion from gift tax. The donor is not required to file a gift tax return for the year the payments are made.

Government Entities and Charitable Organizations

In computing the amount of taxable gifts for the calendar year, deductions are allowed for contributions to certain government entities and charitable organizations. Gifts made to the United States or any state to be used exclusively for public purposes, are excluded from gift tax. In addition, an individual is allowed to make unlimited gifts to charitable organizations organized for religious, charitable, scientific, literary or educational purposes. A donor who makes gifts exceeding the annual exclusion, to qualified charitable organizations, is not required to file a gift tax return for those gifts.

GIFT TAX RETURNS

Due Date

A gift tax return is due by April 15 of the year following the calendar year of the gift. For example, if a gift were made on May 18, 2009, the gift tax return would be due by April 15, 2010. A six-month extension (Form 4868) may be requested. An extension of time to file an individual income tax return is also deemed an extension for filing the donor's gift tax return. If no F.4868 is filed, the gift tax return extension is filed via a request letter. However, if the donor dies during the calendar year in which the gift is made, the gift tax return will be due on the earlier of the due date for the estate tax return (including extensions) or the due date for the gift tax return.

Valuation of Gifts

The value of a completed gift is determined as the date of the gift. The standard of valuation of property for gift tax purposes is fair market value. In some circumstances, the value of the gifted property is not easily determinable. For example, the gift of a minority interest in a family limited partnership that is non-transferable and lacks voting

rights would need an outside independent appraiser to determine the correct discounted value. For any valuation discount(s) taken, disclose the discount(s) on page two of the gift tax return and attach the appraisal or other statement explaining the basis for the discount(s) taken.

OTHER CONSIDERATIONS

Although a gift tax return is generally not required for non-taxable gifts, you may want to file a gift tax return for other purposes. If, for example, you gift annual premiums to an irrevocable life insurance trust, you may want to document the gift. You may also want to document the value of gifts to prevent potential revaluing of the gifts in the donor's estate. Gifts may not be revalued for estate purposes after the statute of limitations has expired (three years after the gift tax return is filed) so long as the gift and valuation has been adequately disclosed.

GSTT

Additionally, if you are reporting gifts made to grandchildren or other generation-skipping persons, it is important that you make any applicable disclosures and/or elections on the gift tax return. You should address all pertinent generation-skipping transfer tax GSTT issues (valuation, GSTT Exemption allocations, etc.) with the assistance of your tax advisor, prior to making gifts.