

Understanding Gift and Estate Taxes

Q.: How much money can I give away each year, and to how many people?

A.: There is no limit to how much you can give away or to the number of people to whom you can give it. But if you give more than \$12,000 in money or property to any one person (other than your spouse) in any one calendar year, you will be required to file a federal gift tax return and you will use up part of your "applicable exclusions" from federal gift and estate taxation.

Q.: What, exactly, are the "applicable exclusions"?

A.: The applicable exclusions are features of federal law that allow each person to give a certain amount of money away at life or death, completely free of federal gift or estate taxation.

Q.: What is the GIFT tax exclusion amount?

A.: For gift tax purposes, the legislation passed by Congress in 2001 sets the exclusion amount at \$1 million. Thus, each person can give away to anyone he or she chooses, during life, up to a total of \$1 million in cash or other assets, completely free of federal gift tax.

Q.: And what about the applicable exclusion for federal ESTATE tax purposes?

A.: The exclusion from the federal estate tax was also increased under the 2001 legislation. For decedents dying in 2006, 2007 and 2008, the exclusion amount for estate tax purposes is \$2.0 million. This estate tax exclusion amount is, under current law, scheduled to increase to \$3.5 million for individuals who die in 2009. For persons dying in 2010, the federal estate tax is, under the 2001 legislation, to disappear entirely - but only for those who die that year. For the estates of persons dying in 2011 and thereafter, the federal estate tax is to return, with the applicable exclusion amount reduced to \$1 million. All of this is, of course, subject to change as Congress and the President see fit.

Q.: How do the applicable exclusion amounts affect my decision whether to make gifts now or to leave them in my estate?

A.: The exclusions can be used partially or completely by gifts made during your life, if you make gifts that exceed \$12,000 per recipient in any calendar year.

Any portion of any gift that exceeds that limit will use part of your gift tax exclusion. Moreover, any such excess will effectively result in a reduction of the ESTATE tax exclusion that would otherwise be available to your estate after your death. Many people prefer to keep their gifts to no more than \$12,000 per recipient per year, in order to avoid being required to file a gift tax return and so that they do not use either of their exclusions.

Q.: What if I am married--does that mean that I can give away more or less than as a single person?

A.: Each spouse can give away up to \$12,000 per calendar year to each of as many different people as he or she wishes, without filing a gift tax return or using any of his or her gift and estate tax exclusions. This means, for example, that a couple can give a total of \$48,000 per calendar year to their two children--\$12,000 from each parent to each child.

Q.: What if all the money that we have to give away is in my spouse's name?

A.: Using a technique called "gift splitting," your spouse could still give away up to \$24,000 per calendar year to each child. Gift splitting, however, does require the filing of two gift tax returns, one for you and one for your spouse. It also requires the written consent of both spouses.

Q.: What exactly is the gift tax?

A.: The gift tax is imposed by the federal government on all "taxable gifts" made during your lifetime. Essentially, a "taxable gift" is a gift of more than \$12,000 in money or property made to any one person in any one calendar year.

Q.: If gift tax is due, who owes it?

A.: The tax is paid by the person who makes the gift, not the recipient.

Q.: What about income tax on the gift?

A.: A gift is not a taxable event for income tax purposes. So the recipient should never have to pay federal tax of any kind on the gift.

Q.: Does the State of Ohio have a gift tax?

A.: No. The only gift tax that Ohio residents need be concerned with is the federal gift tax.

Q.: I'm a little confused about the federal estate tax. What is it and how does it work?

A.: The federal estate tax is a "death tax"--a tax imposed on money or property

that is transferred following someone's death. The tax is usually paid by the deceased person's estate or by those who receive property as a result of the person's death.

Q.: I have heard that the federal gift and estate tax rates are pretty high. Is this true?

A.: Yes. Once one of the exclusions is fully used, the tax rates kick in at 41 percent to 46 percent, depending upon whether the transfer is made during lifetime or at death. These beginning rates are high, but for larger gifts, the rates can go higher. The steep estate and gift tax rates mean that if you and/or your estate have used up the applicable federal exclusion, every \$10,000 of taxable gifts will produce a minimum of \$4,100 in tax. This is a hefty cut and can come as a shock to family members at a loved one's death.

Q.: Does the State of Ohio have an estate tax?

A.: Yes. The rates under the Ohio estate tax are considerably lower than under the federal tax, but the Ohio tax applies to many more estates, since the Ohio exclusion is only \$338,333 as opposed to the \$2.0 million federal estate tax exclusion.

Q.: Suppose I am thinking about making some gifts to my children and grandchildren. What should I do first?

A.: Consult with an experienced estate planning attorney. He or she can give you the pros and cons of gifting now and can handle all documentation related to the making and (if required) reporting of the gift.

Q.: And suppose I want to evaluate my options to avoid unnecessarily paying estate tax?

A.: Again, it is best to deal with an experienced estate planning attorney who regularly helps develop and implement lawful strategies for reducing clients' exposure to estate taxes.

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by Daniel E. Ramer, an attorney with the Piqua, Ohio firm of McCulloch, Felger, Fite & Gutmann Co., L.P.A.

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