RYNKAR VAIL & BARRETT LLP

CERTIFIED PUBLIC ACCOUNTANTS | TAX & ADVISORY SERVICES

GIFT AND ESTATE TAX PLANNING GUIDE

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I. Tax Free Annual Exclusion Gifts - No Reporting Required, Per Donee Per Donor

A. See Reference Chart below which illustrates amounts that can be gifted tax free annually:

		Number of Grandparents/Parents ("Donors")			
		1	**2**	**3**	**4**
Number of Children/ Grandchildren ("Donees")	**1**	$15,000	$30,000	$45,000	$60,000
	2	$30,000	$60,000	$90,000	$120,000
	3	$45,000	$90,000	$135,000	$180,000
	4	$60,000	$120,000	$180,000	$240,000
	5	$75,000	$150,000	$225,000	$300,000
	6	$90,000	$180,000	$270,000	$360,000
	7	$105,000	$210,000	$315,000	$420,000
	8	$120,000	$240,000	$360,000	$480,000
	9	$135,000	$270,000	$405,000	$540,000
	10	$150,000	$300,000	$450,000	$600,000
	11	$165,000	$330,000	$495,000	$660,000
	12	$180,000	$360,000	$540,000	$720,000

For example, if 2 grandparents have a total of 8 donees (Children and Grandchildren or other persons), they could make $240,000 in tax free gifts every year that do not reduce their $11,400,000 per person lifetime Federal exemption. Note: Although New York State does not assess a current gift tax most lifetime gifts (other than Annual Exclusion Gifts) made within three years of death are added back to a New York State resident's estate for estate tax calculation.

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B. **In addition to the Annual Tax Free Gifts, all Income and/or Appreciation on assets gifted are also completely free of gift and estate tax.**

Refer to the chart below (which is based on $200,000 of annual tax free gifts) to see how much would avoid estate taxation based on various rates of return and number of years. These amounts might otherwise be subject to the 40% Federal Estate Tax and, if a NYS resident, a 50% combined Estate Tax rate.

		Rate of Return		
		6%	8%	10%
Number of Years	1	$212,000	$216,000	$220,000
	2	$436,720	$449,280	$462,000
	3	$674,923	$701,222	$728,200
	4	$927,419	$973,320	$1,021,020
	5	$1,195,064	$1,267,186	$1,343,122
	6	$1,478,768	$1,584,561	$1,697,434
	7	$1,779,494	$1,927,326	$2,087,178
	8	$2,098,263	$2,297,512	$2,515,895
	9	$2,436,159	$2,697,312	$2,987,485
	10	$2,794,329	$3,129,097	$3,506,233

For example, if 2 grandparents made $200,000 in tax free gifts each year for 10 years and the assets produced income or appreciated at an 8% net annualized rate of return, $3,129,097 could avoid estate taxation which at a 50% combined tax rate could save the family $1,564,549 in Estate Taxes.

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II. Parents and/or Grandparents (or other relatives) can give unlimited Tax Free Gifts if directly paid to educational institutions and/or medical providers.

(By any Donor on behalf of any Donee)

III. Any donor who gifts over $15,000 per donee still does not have to pay any Federal Gift Tax as long as the donor's total lifetime taxable gifts are not in excess of $11,400,000 (for 2019), but a Gift Tax Return is required to be filed.

IV. "Annual" is defined as within any calendar year, making late year and early next year gifting possible.

For example, if no gifts have been made throughout the year, donor can make maximum annual gifts in December, and then again in January.

V. If Grandparent/Parent is concerned about the preservation of the assets gifted, it is highly advisable to consult with an experienced attorney who specializes in Trusts and Estates.

Note that to qualify gifts to a trust as "Tax Free Annual Exclusion Gifts" the trust agreement must contain "Crummey Powers" to ensure that the gift is considered a "present interest" as required under tax law, and when gifts are made to the trust each year, the beneficiary or their guardian must be notified in writing of their legal right to withdraw the assets.

VI. If the amount of annual tax free gifts is relatively modest it is advisable to gift easily valued assets such as cash and marketable securities. It is always advisable to file a Gift Tax Return if the donor makes gifts of assets that are not easily valued and/or substantial annual tax free gifts are made.

Note that with any significant estate and gift tax planning involving ownership interests in closely held family businesses and/or real estate entities, it is essential to obtain Qualified Appraisals and Valuation Reports as required by law to disclose to the IRS how the value was determined and reported on the required gift tax returns. Proper and complete disclosure will ensure that the 3-year Statute of Limitations begins to run.
<u>BE VERY CAREFUL TO CONSIDER TAX COST BASIS WHEN CONTEMPLATING GIFTS OF HIGHLY APPRECIATED ASSETS. THIS IS VERY IMPORTANT AND AN EXPERIENCED CPA AND/OR TRUSTS AND ESTATES ATTORNEY SHOULD BE CONSULTED BEFORE PROCEEDING.</u>

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VII. IRC Section 529 Educational Saving Plans

Note that these gifts are subject to the same gifting rules set forth in section I and III, with the added ability under the tax law to pre-fund 5 years of annual exclusion gifts. The main advantage of 529 plans is that any earnings and appreciation will be completely income tax free if the funds are ultimately used to pay certain educational expenses of the named beneficiary. Earnings and appreciation in a regular account or trust would be subject to annual income tax. Note that careful consideration should be given as to whether the gift together with the anticipated accumulated income and appreciation is likely to be used for the named beneficiaries for educational purposes and how the donor feels about the legal restrictions on what type of investments are permitted by the 529 Plan.

VIII. It should be noted that the above referenced tax free gifting strategies are particularly valuable to individuals with assets approaching or exceeding the $11,400,000 per person Federal Gift and Estate Tax Exemption. For individuals with unused Federal Exemption, it might be advisable to utilize some or all of this unused amount with lifetime gifts, since there would be no Federal gift tax payable and New York State has no gift tax.

In such circumstances the Federal and NYS Estate Tax (at the combined effective rate of 50%) can be mitigated or even eliminated by gifting amounts over the tax free gifting amounts described above. Although such gifts utlize some or all of the Federal Exclusion Amount available to the estate, appreciation on these gifts escape Federal estate taxation and, unless made wthin three years of death, the full amount of the gift and appreciation escape New York State estate taxation.

Please refer to our "ESTATE TAX ESTIMATOR REFERENCE CHART" to easily estimate an individaul's or married couple's estate tax exposure based on the size of his or her estate.

IX. If individuals/couples have assets significantly above the Federal and/or New York State exemptions, consideration should be given to making more significant taxable gifts that would not result in having to pay gift tax currently by utilizing some or all of their lifetime exemption(s). This is particularly valuable because all future income and/or appreciation from the date of the gift(s) will be excluded from the donor's estate.

SEE CHART ON NEXT PAGE.

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See Chart below that shows the effect of a $1,000,000 or $10,000,000 "taxable" gift with a 5% or 10% growth rate:

		Amounts			
Number of years		$1,000,000		$10,000,000	
		5%	10%	5%	10%
	1	$1,050,000	$1,100,000	$10,500,000	$11,000,000
	2	$1,102,500	$1,210,000	$11,025,000	$12,100,000
	3	$1,157,625	$1,331,000	$11,576,250	$13,310,000
	4	$1,215,506	$1,464,100	$12,155,063	$14,641,000
	5	$1,276,282	$1,610,510	$12,762,816	$16,105,100
	6	$1,340,096	$1,771,561	$13,400,956	$17,715,610
	7	$1,407,100	$1,948,717	$14,071,004	$19,487,171
	8	$1,477,455	$2,143,589	$14,774,554	$21,435,888
	9	$1,551,328	$2,357,948	$15,513,282	$23,579,477
	10	$1,628,895	$2,593,742	$16,288,946	$25,937,425

For example, if a donor made a taxable gift of $1,000,000 utilizing part of his/her lifetime exemption in year one and if the gifted assets grew at 10% for 10 years, $1,593,742 would avoid estate taxes ($2,593,742 minus the $1,000,000 lifetime exemption used). For a gift of $10,000,000 at 10% growth rate for 10 years, $15,937,425 would avoid estate taxes ($25,937,425 minus the $10,000,000 lifetime exemption used). (Note that the value of the initial gift is ultimately subject to Federal Esate Tax, but any future income and/or appreciation is not).

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X. Advanced Estate Tax Planning, Generational Planning and Charitable Planning

As with all tax matters, each individual or family has its own unique sets of facts and circumstances that may require more advanced estate planning strategies. Some of the more common strategies are:

1. **Gifting ownership of Family Businesses or Real Estate set up as Limited Partnerships, LLCs or Corporations to facilitate business succession** which may result in substantial estate tax savings due to Lack of Marketability and/or Minority Interest Discounts in determining the fair market value for gift and estate tax purposes.

2. **Generation Skipping Transfer Trusts (GSTT), including Dynasty Trusts**

3. **Qualified Personal Residence Trusts (QPRT)**

4. **Grantor Retained Annuity Trusts (GRAT)**

5. **Private Annuities**

6. **Irrevocable Life Insurance Trusts**

7. **Transfers to Intentionally Defective Grantor Trusts**

8. **For Charitably Inclined Individuals:**
   Charitable Remainder Trusts, Chartable Lead Trusts (CRT & CLT), or Private Foundations

9. **Change of Residency from New York State for Estate Tax and Income Tax Purposes**

10. **Planning with Fractional Interest Discounts**

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