Lifetime Giving Creates Impact on Taxes

March 2016

Making monetary gifts to one's family is a normal part of life. However, many people are not aware of the implications of making such gifts during their lifetime. Lifetime gifting can affect your individual income taxes, your individual estate and gift taxes, and the capital gains taxes that are potentially to be paid by the recipient of the gift.

Under current federal law, the estate and gift taxes are a unified regime and, in 2016, you are entitled to a cumulative $5.45 million exemption from estate and gift taxes for the value of assets passing during life and at death. To the extent that the total amount transferred exceeds $5.45 million ($10.9 million if married), the excess is taxed at a rate of 40%.

Current law also permits you to make gifts to an individual up to $14,000 ($28,000 if married) in a single year without those gifts being counted towards your $5.45 million exemption. These are called annual exclusion gifts and are not taxable to the donor nor are they considered taxable income to the donee, although the earnings on a gift, if invested, are. Individuals who believe they have or will have more to transfer than $5.45 million ($10.9 million if married) during their lifetime and/or at their death may use this to their advantage, to bring down the total value of their estate. In the event that you make gifts to an individual exceeding $14,000 in any given year, you will be required to file a gift tax return with the IRS. However, generally no tax will be due as a result of the filing. The purpose of filing the return is to record the amount transferred in excess of $14,000 ($28,000 if married). The excess is counted toward your $5.45 million exemption. You can also make certain transfers directly to educational and medical institutions in unlimited amounts because these transfers are not deemed to be gifts by the Internal Revenue Code.

In the past, an estate planning objective has been to make lifetime transfers of assets with appreciation potential, to remove the potential appreciation from the individual's gross estate for tax purposes. But now, when most individual's estates are not likely to be subject to estate tax, the greater tax benefit to the heirs may be to hold the assets until death. This is because if you make lifetime gifts of appreciated property, the recipient will take your basis for income tax purposes. On the other hand, if you make the gift of the appreciated property at death, the recipient receives a "step-up" in basis to the fair market value of the property at your death. Thus, if you have highly appreciated assets, you should consider whether making the lifetime gift of the property makes sense. If your beneficiary is likely to sell the highly appreciated asset, they will incur a large capital gain and have to pay the capital gains tax. If, on the other hand, you give the highly appreciated asset away at your death, the beneficiary would not likely have a capital gains tax to pay.

You may email your questions to education@wrightabshire.com or visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this

publication should be considered as the rendering of legal advice to any person’s specific case, but should be considered general information.