Client Advisory Bulletin

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KISTLER TIFFANY ADVISORS

SPLITTING GIFTS WITH SPOUSE

Under current federal tax law, an individual may make certain gifts that would be free from gift taxes. These gifts would fall under the annual gift exclusion; the lifetime gift and estate exemption, and the generation-skipping transfer tax exemption.

- For the calendar year 2022, the annual gift exclusion has increased to $16,000 per person/per donee.
- The 2022 lifetime credit exemption for **gift transfers is $12,060,000 per individual.** Any amount not used would be available as an estate exemption for transfers made at death.
  - **Note:** This exemption amount is scheduled to sunset at the end of 2025, resulting in the reduction of the exemption back to the exemption that was in existence in 2017 of $5,490,000 (adjusted for inflation). You may remember that last year there was serious discussion in Washington about the reduction of this exemption to a potential amount of $3,500,000. While this did not happen last year, it is still a future possibility.
- The 2022 **generation skipping tax transfers (GSTT) is also $12,060,000 per individual.** This is for gifts made that skip a generation or are made in trust for the benefit of multiple generations.

The ability to "split" gifts with your spouse allows you to increase the amounts that can be transferred to a beneficiary (**e.g.** children and grandchildren) gift tax free, by allowing a married couple to share their gift tax exemptions. Federal tax law permits one spouse ("donor" spouse) to utilize the "non-donor "spouse's annual gift tax exemption or lifetime unified gift and estate tax exemption when making a gift, thereby allowing the gift to be considered to have been made one-half by each spouse.

- For example, Steve wishes to make gifts to his three children. He could gift $16,000 to each child utilizing his annual exclusion for a total of $48,000. If Steve and his spouse elect to split the gift, he could then gift $32,000 to each child for a total of $96,000.
- In our second example, Steve wishes to gift stock in a family business to his daughter valued at $5,000,000. The value of this gift would be allocated against his federal gift tax exemption of $12,060,000, thereby reducing the amount available upon his death to $7,060,000. If his spouse elects to split the gift, they would each be deemed to have gifted stock valued at $2,500,000, thereby reducing the amount of the federal estate credit exemption available upon each of their deaths to $9,560,000.

Before spousal gift splitting is to be done, the following requirements must be met:

- The couple must be legally married at the time the gift is made.
- Each spouse must be a US citizen or US resident during the year in which the gift is made.
- The donor spouse must file a gift tax return and the non-donor spouse must consent to the splitting of gifts. **Note: Once the election to split the gifts is made, all gifts made to a third party in that year must be split.**
- The splitting of gifts can only be used for "gifts of present interest". Care must be taken in the drafting of trusts to ensure the gifts qualify as a present interest, **e.g.** by including Crummey withdrawal rights.
- The donor spouse cannot give the non-donor spouse a general power of appointment over the gifted assets or provide for the spouse to be a potential beneficiary.

In community property states, if community property is used to make the gift, each spouse is automatically deemed to have made one-half of the gift. However, if separate property is used to make a gift, then gift-splitting can be utilized by the non-donor consenting to split the gift.

Please note, that if either spouse makes a gift that exceeds the combined annual gift tax exclusion; or both spouses make a gift that exceeds that spouse's individual annual gift tax exclusion, then each spouse will need to file a separate federal gift tax return and provide consent to split the gifts.

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