legally speaking
WILLS, TRUSTS & ESTATES - PLAIN AND SIMPLE:

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YEAR END GIFTING

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Each December I usually write about year-end gifting, as now is the time that many people think about gifting to loved ones, especially with the holidays upon us. In addition to making you, as well as the beneficiary of your gift, feel good, lifetime gifts can help reduce your potential estate tax at death.

Federal law permits you to make gifts valued up to $14,000 each year to as many people as you desire ($28,000 between spouses). This is a per-recipient amount, not a collective cap. The recipients do not need to be related to the gift-giver. These "annual exclusion gifts" do not use up any of your federal exclusion from gift and estate taxes ($5.45 million in 2016). In addition, you can also make direct payments for a loved one's tuition, medical expenses and health insurance premiums, which don't use up any of your annual exclusion amount for gifts, or any of your federal $5.45 million gift and estate tax exclusion amount.

While New York State does not impose a gift tax on lifetime gifts, it does "bring back" into your estate taxable gifts that you make within three years of your death for purposes of computing the New York State estate tax your estate will owe. This means that gifting should be done sooner rather than later, if it looks like the size of your estate will be over the New York State exclusion amount ($4,187,500 until March 30, 2017, and going up to the federal exclusion amount by 2019).

A gift made sooner rather than later also means that the appreciation on the property gifted passes to the donee free of gift and estate tax consequences to you. This is of particular importance when the gift is comprised of real estate, artwork or stocks, which is likely to have increased in value since it was initially acquired. It is important to note, however, that a gift of appreciated property carries with it "built in" capital gain (generally, the difference between what you paid for it and the price at which the property is eventually sold).

The income tax "basis" of property is usually what someone paid for the property. When receiving a gift of property that has increased in value since the date of the purchase, the donee generally takes the donor's basis and is responsible for income taxes on the amount above that basis when it is sold by the donee. For example, let's say Mary makes a gift to her son, Sam, of stock for which she paid $100,000 in 2006. Sam's basis in the stock is also $100,000. If Sam sells the stock in 2016 for $500,000, he will recognize a capital gain of $400,000.

Property that is inherited at death is subject to a different "basis" calculation. Therefore, it is important to consider the basis of property you are considering gifting. In some instances, it may be better to retain assets in which you have a low basis so that your beneficiary receives a "step-up" in basis to the value at your date of death (presumably higher, and potentially avoiding any capital gain on sale). The basis rules can be extremely complex, and it is important that you consult with your tax advisor before making large gifts.

Don't forget year-end charitable gifts too, as gifts to qualified charities can help to reduce your 2016 income taxes, while helping those in need.

Happy Holidays to all!

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