Timing Considerations for Year-End Gifting

Are you planning to make a year-end gift to a child or grandchild? How about a holiday gift to that special niece who always remembers your birthday? If tax-planning considerations are also important, making year-end gifts to non-charitable beneficiaries may be more complicated than simply dropping a personal check into the nearest mailbox by December 31st. Here are some basic rules for making year-end gifts.

Under the Internal Revenue Code, individuals may give up to $14,000 to an unlimited number of non-charitable beneficiaries in each calendar year. Married couples may double-up and make combined gifts of up to $28,000 to children, grandchildren, or other non-charitable beneficiaries. The principal behind the annual gift tax exclusion is to shelter gifts commonly made on birthdays, holidays, weddings, and other special occasions. Affluent families may also utilize the annual gift tax exclusion as a strategy to mitigate the impact of future estate taxes.

The timing of making year-end gifts is important because a transfer of property is treated as a completed gift for federal gift tax purposes only after the donor has unconditionally relinquished all dominion and control over the transferred property. Even though the donor may have no intention of revoking (taking back) the gift, merely retaining the ability to revoke the gift could shift the completion of the gift into the next calendar year.

Gifts by Check

A gift by check is only completed when both of the following two events have occurred, (1) the donor has delivered a check to the beneficiary with the intent to make a gift, and (2) the beneficiary has deposited or cashed the check at the beneficiary’s bank. Technically, the donor retains the ability to stop payment on the check, or withdraw funds from the account, until the time the check is presented by the beneficiary’s bank to the donor’s bank, however, courts have ruled that the earlier presentation of the check by the beneficiary to their bank is sufficient to complete the gift.

For example, if a grandparent with the intent to make a gift delivers a check to a grandchild in late December 2015, the gift will be deemed to have occurred in 2015 if the grandchild presents the check to his or her bank (for deposit or cash) no later than December 31st. The timing of the gift could be critical if the grandparent is in failing health and intends to immediately utilize the annual gift tax exclusion for the following year by making another gift to the same beneficiary on January 1, 2016.

Gifts of Securities

A gift of securities is subject to the same basic rule that a gift is complete only after the donor has unconditionally relinquished all dominion and control over the transferred property. As a result, a donor’s
verbal or written instruction to a broker to transfer securities to a beneficiary’s account is not sufficient for a completed gift until the securities are physically transferred and the donor no longer possesses the ability to rescind the transfer instructions.

For example, if a donor delivers written instructions to his broker on December 31, 2015 to transfer $14,000 worth of securities to a beneficiary’s account, but the transfer of the securities is not recorded until January 1, 2016, the annual gift tax exclusion for 2015 could be disallowed by the IRS on the grounds that the gift was not completed in 2015. (A gift of corporate stock in certificate form is a completed gift when the donor endorses the stock certificate and delivers the certificate to the beneficiary or his agent.)

**Joint Accounts**

If another person is added to an existing joint bank account or brokerage account, no gift is made until the other person withdraws on the account for his or her own benefit. The amount of the gift is equal to the amount the beneficiary withdraws from the account without any obligation to repay the donor or use the withdrawn funds for the donor’s benefit.

For example, if an elderly parent adds a son or daughter as a joint-owner on the parent’s checking account as a mere convenience, and the child withdraws funds only as needed to pay the parent’s recurring bills and expenses, no gift has been made. The gift tax implications may be different for other types of property, such as jointly-owned real property.

**Making Larger Gifts in 2015 (and beyond)**

If there is a desire or need to make gifts above the current $14,000 annual gift tax exclusion to one or more individuals, donors may use some or all of their federal exemption amount, which is $5,430,000 for 2015. The American Taxpayer Relief Act of 2012 has made the higher federal exemption amount permanent and the inflation-indexed exemption amount will continue to gradually increase each year. Donors should consult with an attorney or an accountant about the tax-reporting requirements of making gifts above the $14,000 annual gift tax exclusion amount.

**Charitable Gifts**

The timing rules for making charitable gifts are more favorable to taxpayers. A charitable gift by check is deductible by a donor in the year a check is mailed, even if the charity does not cash or deposit the check until the following year. Similarly, charitable gifts charged to a credit card are deductible in the year made, even though the credit card bill is paid the following year. Only donations to qualified charitable organizations are tax-deductible.

This information is not provided as legal advice, but for information purposes only. You are strongly advised to seek advice from competent legal and tax counsel to determine the applicability of this information to your estate and financial planning decisions.