Annual Gifting

It's Better to Give AND Receive.

By: Bert Languet, CFP®

Whether it is gifting to family or to a charity, the first question is, what is the purpose? Are there strings attached to the gift? What's important about this gift to you? Who will it effect and how will it affect them? Once you know the why and the who, then you can concentrate on the how and the what to gift. There are different rules for giving to individuals and charities. Just make sure that you have considered your own financial situation before you commit to giving your assets away.

The who and the why: What are you trying to accomplish?

There are many reasons that you may want to gift assets to your family members or even friends. It can be to fund a college education, assist in buying a home, creating long or short term financial security, retirement planning, or one of many other goals. While many people wait to leave funds in their wills, others seek to make a difference while they are alive and can see the gift in action. In many cases it can help the donor get a feeling of how the person can handle money and may direct how funds are given through their wills.

For a charity, the gifts can be part of an annual gifting campaign to provide ongoing support, part of a funding drive for a major capital project, such as a new building, or to create an endowment that provides stability to the charity. Before committing, make sure that you know why you are giving and what you expect the charity to do with the funds. If you do have stipulations, then make sure you communicate those in advance to the charity and that they will comply with your wishes.

The Rules

In 2017 you can gift $14,000 to any individual and not have to inform the IRS. For a married couple, the exclusion of the combined amount is $28,000. If a husband and wife agree to give their child and the child's spouse the maximum gift possible without having to notify the IRS, the amount is $56,000 per year. If the goal is to maximize the gift to the child and spouse as soon as possible, the gift could be as much as $56,000 in December and then after January 1, another $56,000 for a total of $112,000 within a very short time. A gift can exceed the $14,000 limit and not be taxable, however you would need to file an IRS Form 709 and the excess above the $14,000 would be used against the lifetime exclusion amount of $5,490,000. In other words, everyone can exclude $5,490,000 in 2017 from having to pay estate taxes. With proper planning, a couple can have an

estate of $10,980,000 or less and not pay any estate taxes.

There are ways for you to give money to an individual that does not trigger the $14,000 limit. You can pay for medical, dental, or tuition expenses and not be subject to the $14,000 limit or filing rules. For dental or medical expenses, the payments are not subject to the gifting limits if the recipient or donor is not reimbursed by medical insurance. If paying directly to a college or university, then you should be careful that this does not affect any financial aid that the student is receiving.

You may deduct charitable contributions of money or property made to qualified organizations if you itemize your deductions. Generally, the deduction is up to 50 percent of your adjusted gross income for cash contributions and 30 percent for appreciated securities. Donations to foundations are limited to 30 percent and 20 percent respectively. Deductions in excess of your adjusted gross income can be carried forward up to five years.

The Protecting Americans From Tax Hikes (PATH) Act of 2015 made "qualifying charitable distributions" from traditional IRAs and Roth IRAs permanent. This allows an individual to direct from the IRA trustee a contribution to the qualifying charitable organization with no intervening possession by the IRA owner who is at least 70 ½ years of age up to $100,000, avoiding the potential to trigger the 50 percent of the Adjusted Gross Income (AGI) limit. The transfer can satisfy the donors Required Minimum Distribution (RMD) for the tax year as well.

The What

In most cases for gifts under the $14,000 limit, you will give cash assets. If giving non-cash assets such as property or stock, you and the donee need to examine any tax implications. If the stock or property has a loss, then it may be more beneficial for you to sell the asset and take the loss before passing the gift as cash to the recipient. In some situations, you may pass an appreciated asset to the donee and let them sell the gift if the donee is in a lower tax bracket, thus getting more funds to the recipient after taxes.

When giving to a charity it is often beneficial to give appreciated assets such as stock, artwork, or property and let the charity sell the asset, as they will not pay taxes on the capital gains. Smaller gifts are often in the form of cash as it is more convenient.

The How

Other than directly giving cash or assets, what are some ways to give funds to individuals or charities?

529 Plan: These are college savings plans that grow tax deferred. The gains are tax free if used for qualified secondary education expenses.

A donor can contribute up to five years per beneficiary ($70,000 upfront) with no more contributions allowed for the following five years. There is a total contribution limit of $425,000 in Maine. Possible conflicts with financial aid from other sources need to be considered.

UTMA/UGMA accounts: These are a custodial accounts with an adult appointed to act as a custodian. The custodian has the power to invest and withdraw funds for the benefit and support of the child. The money cannot be used to pay for items considered support obligations of the parent. Any income used for the child's support could be counted as taxable income to the parent. At the age of majority – between 18 and 25 depending upon the state, the child gets full control of the account.

Trusts, revocable or irrevocable: A revocable trust is one in which you can change the terms and an irrevocable trust is one in which you transfer the ownership of the property and cannot make changes once established. An irrevocable trust allows you to appoint a trustee and specify the terms of the trust, but you do not directly have control over the assets. Trusts can be established to control funds for special needs individuals and/or folks who need help handling money, so called Spendthrift Trusts.

Donor Advised Fund: With this fund, you can donate cash, stocks, or other assets and then decide where the money goes later while getting the deduction today. The fund is managed specifically to allow you to later direct to which charities you want funds sent.

Charitable Remainder Trust (CRT): In this type of trust, an individual establishes a trust and names a charity as the beneficiary. Once the trust is funded, the assets are typically converted to income producing assets if not currently allocated in that manner. An example would be a piece of property that is sold, and the cash is used to purchase a portfolio of stocks and bonds that will generate a stream of income and dividends. You receive a tax deduction in the year of the gift. The CRT must distribute at least five percent of its initial value each year. You decide who gets the income and for how long. The income can go to yourself and/or your spouse and ceases upon the second death at which time the remaining assets pass to the charity.

Charitable Gift Annuities: With this type of annuity, you donate an asset to a specific charity, and it becomes an irrevocable gift. The funds become part of the general fund of the charity. In exchange for your donation, the charity makes payments to you for life, and when you die, the charity keeps the remaining funds and the payments cease. Part of your donation is tax deductible and part of your income is tax free. Always speak with a trusted tax advisor to fully understand how your gift will impact your taxes and lifestyle.

Before considering making a gift to individuals or a charity, first consider your own financial situation. Will this gift or gifts detract from your own lifestyle? What is the best way to leverage the gifts for the most impact to the receivers? Discuss the potential gifts with your CPA, financial planner, and or attorney to come up with a plan that assists your intended recipient(s) and makes the most financial sense for you .

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