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Get ahead of the coming gift-tax-apalooza

By Chris Taylor
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NEW YORK (Reuters) - If you're a wealthy American who's planning to hire an estate or trust attorney later this year, here's a thought: Good luck. You're going to need it.

That's because the transit of Venus of estate planning is passing through, and by the New Year it is likely to be gone. It's the lifetime gift-tax exemption of \$5.12 million, paired with a similar estate-tax exemption. And it means that through the rest of this year, parents can pass along assets valued up to that amount to their heirs - maybe a house, maybe a stock portfolio, maybe part of the family business - without paying a single penny to Uncle Sam.

"The joke among attorneys is that no one's planning a vacation for the last quarter," says Scott Farber, a wealth strategist with U.S. Trust in Miami. "We anticipate being inundated by last-minute planning, and it could become a real problem. When everyone's getting it done at once, it'll be one big logjam."

In fact, some attorneys have already seen the flood gates opening. Ian Weinberg, chief executive of Family Wealth & Pension Management in Woodbury, New York, says his weekly calls and meetings on the subject have tripled since the beginning of the year and continue to increase with each passing week. Quips Weinberg: "Every estate attorney worth his or her salt is already working on this right now."

The reason for the panic: At midnight on December 31 the lifetime gift-tax exemption is scheduled to revert back to its traditional level of \$1 million. If Congress doesn't act - and given the glacial pace of lawmaking in recent years and the distraction of a presidential election, that's entirely possible - any gift above the \$1 million ceiling will be taxed at punishing levels, potentially over 50 percent.

Currently, an individual can give any other individual up to \$13,000 per year without running into gift taxes or using up their lifetime limit. But for uber-wealthy families, that's a relatively modest sum that doesn't help much with estate planning. While the \$5 million lifetime limit has been in place since the beginning of 2011, with the scheduled end now in sight many families are now scrambling.

You don't have to be a Rockefeller to be affected. Annette Caldwell, a middle manager in the aviation industry from Queens, New York, is already convening with family members about what to do. Her dad, Daniel, and mom, Mary, both now in their 80s, grew up in the Great Depression and raised five kids in a typical middle-class household. But add up the family home and some savings, and the estate is now worth more than \$1 million.

That's why she and her family are shifting into gear and talking with Long Island, New York estate-planning attorney Ann-Margaret Carrozza about gifting some assets into trusts so they'll be sheltered down the line.

"Imagine if you paid taxes on your paycheck, and then the government turned around and said, 'Well, that wasn't enough, we're going to take another third or more,' " says Caldwell, 40. "That's essentially what's going to happen to a lot of families if this higher exemption is eliminated."

Of course, even with the clock ticking, family gifts are a tricky matter to bring up. Deeply held emotions, resentments and grudges can transform any multi-generational money discussion into a powder keg. And if parents are going to need those assets to live on, they shouldn't be giving them away in the first place. But given the potential tax savings, well-heeled families should at least have a conversation about this limited-time offer.

"For wealthy families, this opportunity is the golden goose," says Weinberg. "It's a monster. For a couple giving to a child, you're looking at a combined \$10 million that they could gift tax-free."

Of course, nothing is written in stone, especially where mercurial Washington politicians are concerned. The current high level may well be extended, which would render any immediate gifting unnecessary. In the meantime, Weinberg bets that some kind of compromise will be reached, well below \$5 million but above \$1 million.

At any rate, complicated estate planning isn't something that can be wrapped up in a day or two. There are a myriad of moving parts that need to come together:

1. Get started now.

As strange as it sounds, even though it's only June, it's already kind of late in the game. "Let's say you agree on a plan today," says Weinberg. "It'll probably take a couple of months to hash out. Then a business valuation or real-estate appraisal will need to be done, and that'll take another month. Then legal documents will need to be drafted and re-drafted. This triggers a major chain of events, and it's going to be a full sprint to the end of year."

2. Use trusts intelligently.

Gifts aren't a matter of handing over the deed to a house, or the keys to the company headquarters. Trusts are a common way to handle major assets like a home, and should be used for gifting as well, especially if your kids may be too young or immature to take on massive financial responsibilities.

Furthermore, assets are more protected if you put them in a trust rather than hand them over directly. "I'd caution against making an outright gift to children, because of asset protection issues," says Carrozza. "They might get divorced, or have a car accident and get a judgment against them, or have creditors come after them. The assets just aren't safe unless they're owned by a properly structured trust."

3. Look to the future.

Remember that it's not just about what the gift is now, but what it could eventually become. "Ideally you're giving away assets with the greatest potential for appreciation," says Farber. "That's because if you gift \$5 million now, it could grow to become \$20 million - and then that appreciation could potentially escape taxation as well."

4. Don't count on Washington.

After December 31, it's unclear what's going to happen to the lifetime gift-tax exemption. But with limited time left in an election year and so many political considerations in play, it's probably not wise to bet on swift and decisive action. Says Farber: "I've given up trying to predict what politicians will do. You have to plan for what the law is today."

(The author is a Reuters contributor.)

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