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Is Now a Good Time to Make a Gift?

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The recent decline in asset values may make gifting a more attractive estate planning technique for many individuals, particularly if you are considering gifts of stock or other non-cash assets. Gifting of assets to a trust for your children and grandchildren can be an important part of an estate plan, and one that should not be overlooked. The reduced value of many non-cash assets allows more of these assets to be placed into a trust without exceeding the annual gift tax exclusion amount or the Federal Gift Tax Exemption. If these assets later appreciate in value, the subsequent increases will further enhance the value of the gift to the beneficiaries.

Taxation of gifts made to a trust for the benefit of your children and grandchildren depends, in large part, on the value of the gift. Annual exclusion gifts[1] are transfers of assets or cash that do not exceed the annual gift tax exclusion – currently $15,000 per recipient per year. Most married couples can give up to $30,000 per recipient in any calendar year. Depending on the circumstances, many annual exclusion gifts do not require a Federal Gift Tax Return (Form 709) and are not considered taxable gifts. Annual exclusion gifts reduce the overall value of the donor's estate, but do not reduce the Federal Estate Tax Exemption of the person making the gift.

Gifts in excess of the annual exclusion amount may still avoid Gift Taxes if the person making the gift applies his or her Gift Tax Exemption by filing IRS Form 709. The Gift Tax Exemption is unified with the Estate Tax Exemption, at $11.58 million in 2020. Gifts in excess of the annual exclusion ($15,000 per person per year) reduce the $11.58 million exemption for purposes of both the Gift Tax and the Estate Tax. For example, if a person makes taxable gifts of $1.0 million to a child in 2020, their lifetime Gift Tax and Estate Tax Exemption will be reduced to $10.58 million. If this person dies in 2020 when the applicable Estate Tax Exemption is $10.58 million then (in the absence of other prior taxable gifts) only estate assets in excess of this exemption amount will be subject to Estate Tax.

Management of the Gift and Estate Tax Exemptions is important given the uncertainty over future exemptions and tax rates. If no legislative action is taken, the current Estate and Gift Tax Exemption will conclude at the end 2025 and return to the 2010 Exemption amount of $5.0 million, plus indexing. Similarly, future elections or changes in law may result in a reduction to the Gift and Estate Exemption before 2025.

Proper use and budgeting of the exemption should also be considered because the Federal Estate Tax starts at 18% and rises to 40% of all amounts more than $1.0 million over the exemption. Like the exemption amount, these tax rates are subject to future elections and changes in the law.

Historically, estate tax rates have been significantly higher than current income tax rates, and changes in the law could result in a return to higher tax rates overall.

If you are concerned that your estate may be taxable, the current decline in asset values may present an opportunity to transfer more of your estate into trust for your beneficiaries. These transfers can help lessen the impact of a reduction in the exemption amount, or an increase in the tax rates. The reduced value of stocks and other assets could provide an opportunity to leverage gifts to a trust and reduce the risk of future taxation. Transfers to trusts can enhance the value of these gifts by protecting them for your children and grandchildren.

- [1] Some limitations may apply depending on the citizenship of the transferor and the recipient.

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