

Gift Tax Topics

Client Communications, Returns and Selected Topics

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THE REASON FOR THIS PRESENTATION

- What can you assume your clients know about estate planning topics in general, and the gift tax in particular?
- Do you have written resources you can provide your clients to let them know their responsibilities for reporting those gifts?
- Are you comfortable preparing a Federal Gift Tax Return?
- Do you and your clients have and maintain annual gift records? Can you find them?
- Do you use checklists for preparing tax returns and other work projects?

MARGARET VS. AI

- Presentation materials - client communications - contain both 'manually' created and AI created explanations.
- Those I created, I created before using AI and did not edit my work as a result of my later AI requests, but I did use google search as I needed to.
- The AI is using the free version of Chat GPT (v3.5). Later versions and other AI platforms would provide more current information.
- General conclusion - AI does a good job - not as detailed or nuanced as what I put together on my own. BUT, they must be checked carefully.

EXPLAINING GIFT TAX TO CLIENTS

- What should be explained - the basics
 - Definition of a gift
 - The annual exclusion
 - The lifetime gift and estate tax exemption
 - Outright gifts to spouses are generally exempt from gift tax
 - When there is a taxable gift with a resulting gift tax, who pays the tax?
 - Is a gift subject to income tax?
 - When is a gift tax return required?
 - Splitting gifts with your spouse
 - Gifts of property and the income tax basis rules
 - Gifts to 529 Plans - Frontloading your gifts

EXPLAINING GIFT TAX TO CLIENTS (continued)

- What should be explained - beyond the basics
 - The Tuition and Medical Expense Exemption
- What in the world is going to happen on January 1, 2026? How can a client make an informed decision? Does your client know that she needs to give away more than approximately \$7,000,000 to insure that gift and estate tax will be saved after a possible decrease in the exemption amount in 2026? And if Congress intervenes to continue the current Exemption Amounts, do your clients know that they may have paid the price of a low basis for a gift/estate tax savings that did not materialize

EXPLAINING GIFT TAX TO CLIENTS (continued)

- Beyond the Basics (continued)
 - Valuation Discounts
 - Obtaining Appraisals
 - Income Tax Basis - Beyond the Basics
 - State Law
 - Timing of Gifts - Gifts by Check at year end
 - Withdrawal (Crummey) Powers
 - Unequal gifts to family members
 - Generation Skipping Tax

THE FEDERAL GIFT TAX RETURN SELECTED TOPICS

- When is a return required
 - Gifts of more than allowable annual exclusion are made
 - If gifts *of any amount* are split
 - If generation skipping transfers in trust are made in any amount for which allocation of the GST Exemption should be made - but think about the deemed allocation rules
 - Gifts to a spouse in Trust, for which a QTIP Election are made
- Gifts to charity. A gift to charity is only required to be reported on a gift tax return if a gift tax return is otherwise required. If a 709 is required, however, all gifts to charity during the year are required.

THE FEDERAL GIFT TAX RETURN SELECTED TOPICS

- Obtaining Information from the Client
- Consider using a preparation checklist
- Obtain and Maintain Copies of Prior Gift Tax Returns
- If gifts are being split, do it correctly
- When to apply the annual exclusion to gifts in Trust
- Do the GST Annual Exclusion and the Gift Tax Annual Exclusion dovetail with each other?
- Do the GST and Estate Tax Lifetime Exemptions dovetail with each other?

THE FEDERAL GIFT TAX RETURN SELECTED TOPICS

- Adequate Disclosure on the Gift Tax Return
 - All taxable gifts in any year must be reported on a Gift Tax Return.
 - If a taxpayer fails to report such a gift or if the value is understated, it is possible the IRS will try to use IRC § 6501(c)(9) to disregard the 3 year statute of limitations on that gift tax return.
 - Adequate disclosure is defined in Treas. Regs. § 301.6501(c)-1(f)(4). Although the regulations do not *require* an appraisal, obtaining a qualified appraisal is highly recommended
 - Recent Development – Schlapfer v. Commissioner; Tax Court Memo 2023-65 (May 22, 2023)

THE FEDERAL GIFT TAX RETURN

SELECTED TOPICS

- Gifts subject to an estate tax inclusion period. These gifts (such as gifts to a QPRT or a GRAT) should be reported, but there are specific instructions for those types of gifts
- Deceased Spousal Unused Exclusion (DSUE). These amounts must be listed on Schedule C of the return to reconcile the DSUE and the Donor/Taxpayer's unused exemption amount.

CLIENT GIFT RECORDS CREATING AND MAINTAINING

- Is the Form 706 enough?
- If not, what records of each gift need to be created and maintained:
 - Date of Gift(s)
 - Name of Donor(s) and Donee(s). Is Donee a skip person?
 - Split/Sole Gift
 - Description of Gift
 - Value of Gift, including whether an appraisal was completed, a valuation discount applied, the name of appraiser and where a copy can be found
 - If withdrawal rights, were notices given and dates

CLIENT GIFT RECORDS CREATING AND MAINTAINING

- How to maintain these records
 - At your firm, maintain in client file
 - Make sure the client gets an updated copy each year and inquire where they keep them
 - Update annually even if you do not prepare the gift tax return
 - If your firm does not prepare the gift tax return, be sure to get a copy of the return for your files