Ask the Probate Judge—Gifting Review

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Q: Do you know what the annual gift tax exclusion will be for 2008? Thanks.

According to Internal Revenue Service (IRS) Rev. Proc. 2007-66 that I found on the Internet, in 2008 the annual gift tax exclusion remains $12,000 per person per year. This amount increases periodically by $1,000 increments, although usually not annually.

For those who need a refresher course in gift tax law, federal tax law allows you to make gifts of cash or other property worth $12,000 or less per year to as many people as you wish without tax consequences. This is called the "annual gift tax exclusion." Recipients of gifts can be children, other relatives, or anyone else.

To use this "annual gift tax exclusion," the total amount you gift to a person during the year should not exceed $12,000. A married couple can gift up to $24,000 per person per year.

The IRS does not consider these gifts to be income, so recipients do not declare the gifts on their income tax return. Nor does the donor file a gift tax return if the amount of each gift is $12,000 or less per person per year.

Gifts greater than $12,000 per person per year may be made without tax consequences if paid directly to persons who provide certain medical care or for tuition to qualified educational institutions.

If you gift more than $12,000 to anyone in a year, you are supposed to file a U.S. Gift Tax Return, IRS Form 709. Contributions to qualified charities do not incur gift tax, even if greater than $12,000. However, you cannot take an income tax deduction for the gift, unless it is to a qualified charity.

Some people make gifts to reduce the amount of their estates. In 2008 estates worth $2 million or less (per person) will not be subject to estate tax. Others make gifts because they have a charitable or generous nature.

Remember that recipients of gifts do not receive a "stepped-up basis" in value for non-cash gifts. For example, suppose you own stock for which you paid $20 per share. The stock has now appreciated to $100 per share. If you gift the stock to someone during your lifetime and the recipient sells the stock, the recipient's basis in the stock is $20 per share. The recipient must pay a capital gains tax on the $80 per share profit. Your original basis carries over to the recipient of the gifted stock.

Inherited assets, on the other hand, generally receive a stepped-up basis to fair market value at date of death. If the stock in the example above were inherited by the recipient after the owner's death and the stock were worth $100 per share at that time, the basis of the stock would be stepped-up to $100 per share. If the recipient sold the stock soon after, little or no capital gain tax would be owed.

Gifts must be made with "no strings attached," and you cannot retain any control over or place any conditions upon gifts you make. Once you give assets to someone, the gifted assets are no longer part of your estate.

If you want a gift to qualify for the annual gift tax exclusion in 2007, make sure the recipients know that checks must clear the bank by December 31, 2007. This means that checks must be paid by the bank (make allowances for holidays, postal and other delays) before the last day of the year to count as a gift in 2007. If the check does not clear the bank by the last day of the year, the gift will count in the following year.

Happy holidays, merry gifting, and a prosperous new year to all!