

Is an Annual Exclusion Gift on Your List?

By: Steven A. Walker

It's that time of year when we are busy making lists and checking them twice but don't forget about utilizing your federal annual gift exclusion amount before the final days of 2016 slip away. Federal tax law allows you to make gifts of up to Fourteen Thousand Dollars to an unlimited number of people without incurring a gift tax or without the gift counting against your Federal estate and gift tax exemption amount (currently \$5.45 million). You don't have to give away cash in order for the gift to qualify because an annual exclusion gift can be a gift of assets or personal property. As a business owner, a practical application of an annual exclusion gift is to use it to transfer ownership interests in your business to a son, daughter, grandchild, or other "blood relative".

If you are married, you can double up and make a transfer that equals Twenty-Eight Thousand Dollars. This is true even if your spouse does not own any business interests. It's called gift splitting when one spouse gives his/her annual exclusion amount to the other spouse.

As a general rule, a gift to any one person not exceeding the annual exclusion amount does not require that a gift tax return be filed. However, if you are going to engage in gift splitting by taking your spouse's annual exclusion amount, then you **MUST** file a gift tax return. Even though you may not be engaging in gift splitting, if you are transferring business interests, it is a good practice to file a gift tax return. We recommend that you file a gift tax return for the following reasons:

1. It puts the IRS on notice of the gift and starts a three year clock for them to challenge the value of the gift. This cuts off the IRS's ability to later challenge the value of a gift made years earlier perhaps as part of an estate tax audit, particularly when the value of the estate is close to or exceeds the federal estate tax exemption amount.
2. It enhances the paper trail establishing that interests in the business were actually transferred and when they were transferred.
3. It can help protect business assets in the event the recipient child, grandchild, etc. is involved in a divorce. Assets acquired by gift are not marital property in the event of a divorce and the filing of a gift tax return can affirmatively establish that the business owning child received the business assets via a gift and the value of those interests at the time of the gift.

Another use of your annual exclusion gift is to consider making a gift to a 529 college savings plan. There is a special rule with 529 college savings plans which allows you to make a lump sum contribution and then spread the contribution over a five (5) year period. This would allow you to make up to a Seventy Thousand Dollar contribution in 2016 and then spread the gift over the 2016, 2017, 2018, 2019, and 2020 tax years. Please remember though that you will not

be able to make any further annual exclusion gifts to that recipient until 2021 (assuming you make the full \$70,000 contribution in 2016).

Looking ahead to next year, the IRS has announced that the 2017 annual exclusion gift amount will remain at Fourteen Thousand Dollars but the federal estate and gift tax exemption amount will be \$5.49 million per individual up from the current \$5.45 million amount.

Please contact our office if you would like any further information regarding the above or if you need assistance in preparing the appropriate documents for completing business transfers.

