

Estate Planning & Gift Considerations

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As Seen in Anchin's Real Estate Year-End Tax Planning Guide

Under current law, the individual estate tax exemption is increased each year based on an inflation assumption. In 2024, the first \$13.61 million of an individual's estate is exempt from federal estate tax.

If you are a married couple splitting gifts, the effective exemption amount is \$25.84 million. This amount is reduced by any gifts made in excess of the annual gift tax exclusion in a given year. In 2024, individuals can make gifts of up to \$18,000 to any other individual with no gift tax consequences.

Any gifts in excess of that amount will reduce the lifetime gift and estate tax exemption. The exemption is scheduled to be reduced by half in two years or sooner through new legislation. A few estate tax planning techniques you may want to consider are as follows:

- **Make annual exclusion gifts.** Each person may make annual, tax free gifts of \$18,000 (\$36,000 for a married couple splitting gifts) to any number of individuals. Gifting on a tax-free basis is a great option for reducing (or even eliminating) larger gift and estate taxes in the future. Taxpayers living in states with no current state gift tax may wish to accelerate or focus on

additional gifting of assets in 2024. Of course, your financial security and long-term objectives should be assessed and discussed before proceeding with such a gifting strategy.

- **Grantor Retained Annuity Trusts (GRATs).** This provides you with a fixed annual amount (an “annuity”) from the trust for a term of years (as short as two years under current law). The annuity retained may be equal to 100% of the amount that you use to fund the GRAT, plus the IRS-sanctioned rate of return (known as the 7520 rate, currently 5.2%) applicable to GRATs. After the trust term ends, the amount of assets (if any) left in the trust after the annuity payments have been made remain in the trust, free of gift or estate taxes. Because your beneficiaries will retain the full value of the GRAT assets at the end of the trust’s term, if you survive the annuity term, the value of the GRAT assets in excess of your retained annuity amount will then pass to the beneficiaries with no gift or estate tax, either outright or in further trust. If the grantor dies during the term of the GRAT, the entire balance will be included in the grantor’s estate as if the (GRAT) transaction never took place. In addition, if the value of the GRAT assets fall below the amount required for the requisite annuity payments, the GRAT collapses as if the (GRAT) transaction never took place.

* **Planning opportunity:** Note that the amount of principal not received as part of an annuity payment will be subject to a current gift tax. Since the amount is not considered a present interest (meaning beneficiaries do not have immediate use of the money), the amount will not be eligible for the gifting exclusion. Why not use a “zeroed-out GRAT” structure so that the value of the gift transferred to the beneficiary is zero?

* **Planning opportunity:** Instead of setting up one GRAT to house all transferred assets, why not set up multiple GRATs to house different asset types – some conservatively invested and others with more risk? The winners, or appreciated GRATs, do their job of transferring wealth to the next generation; the losers collapse, as if the GRAT for these assets never took place. In the end, all GRATs should have an economic purpose and have some risk exposure. Also, varying the beneficiaries and trust start dates may be advisable.

- Consider funding education through 529 plans to apply 2024 annual gift tax exclusion treatment to the contributions. You can now still “front load” 529 plans by making five years’ worth of annual exclusion gifts to a 529 plan. In 2024, you can transfer \$90,000 (\$180,000 for a married couple splitting gifts) to a 529 plan without generating gift tax or using any of your gift tax exemption. The money (and the growth of the 529 account) leaves your estate faster than if you made the contributions each year. (Note: gifts cannot be made to the same beneficiaries over the next four years without incurring a gift tax.)
- Below Market Loans or Intra-Family Loans: Today, family members can extend long term loans to each other at interest rates currently less than 4.4% for long-term loans (over 9 years). It is a simple and effective estate planning mechanism for transferring wealth to children or grandchildren without gift tax. Note that when you make a loan to a family member, you must charge interest to avoid making a gift. Therefore, to the extent that the family member earns a higher rate of return on the borrowed funds than the interest rate being paid, the excess or difference is effectively transferred free of gift taxes. The loan should be documented and executed.

Sales to Defective Trusts

Transferring a real estate property into a trust as part of an estate plan, where the value of the property exceeds the available exemption could result in gift tax due. Instead of gifting the property to the trust, sell the property to a grantor trust in exchange for a down payment and a promissory note.

Under current tax rules, the grantor and the grantor trust are considered the same, and transactions between them are ignored: there is no income tax gain recognized when the assets are sold to a grantor trust, and no interest income needs to be recognized as interest is paid back on the note. There is no gift when the value of the promissory note matches the value of the assets.

This arrangement allows an individual to move appreciating assets to the trust in exchange for a note (repaid in cash) and some interest. Further, the note can be structured as interest-only with a balloon payment at the end of the term.

An individual effectively exchanges the appreciating assets for cash and reduces the future value of his taxable estate. To make this work, the trust must have sufficient assets to justify the borrowing (10% of the purchase price is common) and this amount could be gifted to the trust if necessary (which would require some available gift exemption).

Finally, an appraisal is required to support the value of the assets sold, which could possibly show lower valuations because of the current economy and valuation discounts.

Life Insurance

As part of the estate planning process, thought should be given to liquidity. That is, what will be the source of funds for the payment of estate tax? For those with significant holdings of illiquid assets, such as real estate and art, these assets will be subject to estate tax, but [may not be easily sold](#). More importantly, it may not be opportune or desirable to dispose of these assets, and even if there was a decision to sell, the ability to have proceeds available to pay the tax within nine months of death, when it is due, could be problematic. Life insurance may provide a solution. There are planning opportunities with insurance and creative structures available to fund policies that are efficient without placing high demands on current cash flow.

Spousal Lifetime Access Trust (“SLAT”)

The Spousal Lifetime Access Trust serves to utilize an historically high lifetime gift tax exemption, while still providing the ability, should the need arise, to access the gifted assets. To illustrate the concept, suppose Spouse A creates a trust for the benefit of the other spouse, Spouse B, and possibly their children. The trust allows for distributions to Spouse B during such spouse’s lifetime, after which time the trust continues for the benefit of the children. Spouse B would create a similar trust for the benefit of Spouse A and the children. In good times, the couple would use and enjoy assets outside the SLATs. But should there be a reversal of fortune in the lives of A and B, there is the ability for them to receive distributions from the trusts for their benefit. While any such distributions would bring assets into the estate that were previously removed, this would be done only where there was a real need for

these assets.

The income from a SLAT is taxable to the creator of the trust, whether or not there are distributions to beneficiaries. The creator's payment of the trust's tax might seem like an additional gift to the trust, but IRS rules do not count it as such, making this feature an added benefit.

This strategy also allows for the trusts to continue after the death of the beneficiary spouse for the benefit of the children and grandchildren, who may receive distributions from the trust during their lifetimes. In this case, it is possible to avoid having the trust taxed in the estate of these beneficiaries upon their deaths, providing the creator of the trust with the opportunity to do multi-generational planning.