Holiday Gifting Guide

Generosity and Your Taxes

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When you think of the holidays, a lot of things probably come to mind – family, friends, parties, good food. The IRS doesn't exactly fit into that picture, but if you're thinking of giving a loved one a large gift, you can expect Uncle Sam to come calling.

How much can I give?

The IRS allows taxpayers to give up to $14,000 per person per year without requiring them to file Form 709, otherwise known as the Gift Tax Return. This $14,000 is known as the annual exclusion. If the gift is made by check, the gift will be considered complete for tax purposes on the date the donee deposits or cashes the check.

What if I don't give cash?

If your gift is anything other than cash or marketable securities and it's not going directly to an individual (i.e. you're giving to a trust), even if the value is under $14,000, you may still want to file a gift tax return to start the statute of limitations. If the statute doesn't ever start, then the IRS can come back and revalue the gift at any time up through your death.

For example, you give a percentage of a family limited partnership that you believe to be worth under $14,000. When you die, because you never filed a gift tax return, the IRS can come back and say, "Hey, we want to look at this again. We think the value of the gift was really more than $14,000." If the IRS values your gift at more than $14,000, it could potentially mean you would have to pay a larger gift or estate tax. Filing a gift tax return and adequately disclosing the gift per IRS regulations is the only way to ensure that once the three year statute of limitations is up the IRS can't come back and question the value of your gift.

What if I give more than $14,000?

For a present interest gift over $14,000 per person per year, you need to file a gift tax return, and depending on what the gift is, you may need to get an appraisal. While you may not owe any gift tax on your Form 709, the amount of your gift exceeding $14,000 per person per year begins to use up your lifetime exemption which is $5,340,000 (2014) and $5,430,000 (2015), thus reducing the amount you have available to pass estate tax free to an heir upon your death. There are a few exceptions to this rule. You can gift an unlimited amount for the benefit of an individual if you directly pay your gift to an educational or medical institution on their behalf. For example, you can write a check to your grandson's college to pay his tuition in the amount of $20,000 and also give him an additional $14,000 in the same year without incurring gift tax.

What if my gift is to a charity?

If you make a charitable gift that represents your entire interest in the gifted property, no 709 is required. But charitable gifts of split interest (i.e., a charitable remainder trust) must generally be reported on a gift tax return. If you are required to file a gift tax return to report non-charitable gifts, gifts to charities should also be reported on the Form 709.

What steps should I take if I'm considering giving a large gift?

Before you give a large gift such as transferring assets to your heirs, you should talk to your CPA or attorney to make sure you're transferring the best assets in the best way and that you have the proper documentation to make it happen. Also, talk with them to make sure you understand what it means to gift something; essentially, you're giving up control of an asset. That's an important stipulation to take into consideration. It isn't a good idea to gift anything you retain control of, take income from or tend to use – such as the family cabin – because it isn't yours anymore.

If you know you need to file a gift tax return, see your Henry & Horne, LLP professional adviser for assistance to ensure the statute of limitation starts and that your gift is adequately disclosed per IRS regulations.

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