Taking Advantage of Tax-Free Gifting Opportunities Amid Economic Downturns

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Last week, the Dow Jones Industrial Average closed out its worst quarter in history, a mark of the crushing effect that COVID-19 is having on America's economy. For those who were considering gifting stocks this year, however, the economic downturn presents a unique opportunity to do so–transfer tax free.

What is Considered a Gift?

A "gift" is any transfer of money or property to an individual, either directly or indirectly, where full consideration (measured in monetary value) is not received in return.

Is Every Gift Taxable?

The general rule is that any gift is a taxable gift, but there are of course exceptions, such as: (1) gifts that are not more than the annual exclusion amount for the calendar year -- $15,000 for 2020; (2) tuition or medical expenses paid for another; (3) gifts to a spouse; and (4) gifts to a political organization. In addition, gifts made to charitable organizations are tax deductible, based on the value of the gift(s) made.

How Much Can I Give Away Tax-Free?

Just because a gift is "taxable" does not mean that you must actually *pay* tax. If you make a gift that does not fall into one of the above categories, you must file a gift tax return. This is the government's way of keeping track of gifts made by each person. Tax must only be paid on gifts that exceed each person's lifetime estate and gift tax limit.

In November 2019, the Internal Revenue Service announced the official revised lifetime estate and gift tax limits: $11.58 million per individual. That means that, as of now, an individual can leave, over a lifetime, $11.58 million -- and $23.16 million per married couple -- to heirs without paying any federal estate or gift tax. When it comes to New York estate taxes, however, the limit is currently $5,850,000 per individual.

Despite these large lifetime limits, the annual gift exclusion amount holds steady at $15,000. That means that if you make a gift of less than $15,000 this year, you do not even have to file a gift tax return. If you make a gift in excess of $15,000 this, you will need to file a gift tax return and the excess amount will count towards the lifetime limit. Accordingly, for those whose estates may be valued at more than $11.58 million per individual, it may be paramount to take advantage of opportunities to transfer in smaller amounts annually.

Are Post-Transfer Gains Taxed?

The value of an asset is determined by its "fair market value," which means the price at which the property is valued at the time of the transfer. Let's take stock market values as an example -- a portfolio that is, on a normal day, worth $30,000 may currently be valued at $15,000, due to the plummeting markets. So, for tax purposes, it would currently be valued as a gift worth $15,000. If after the pandemic, the value of that stock increases, or simply returns to its pre-pandemic levels, the recipient of the asset retains the benefit of the appreciation in value, and any additional post-transfer gains remain tax-free.

In other words, during this time when reductions in the value of assets are seemingly inescapable, a low "fair market value" is optimal for tax-advantageous estate planning. Crafting an estate plan involving lifetime gifts can be complicated. If you need specific legal advice, please contact our partner, Mindy Smolevitz, at (516) 393-8256 or msmolevitz@jaspanllp.com.