

# MAXIMIZE GIFTS BEFORE THE END OF 2013

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Many clients have been concerned about transferring wealth to their children or grandchildren, yet continue to delay succession planning due to the recent favorable changes in estate and gift tax laws that allow for higher exemption amounts permitting transfers free of beneficiaries' estate or gift taxes. Creative estate planning now can reap substantial estate or gift tax benefits down the road which, if delayed, may become difficult to match. Succession planning for a family business or family vacation property should be addressed before it is too late to maximize tax benefits.

Currently, an individual can leave \$5,250,000 to beneficiaries estate and gift tax free (married couples can leave \$10,500,000). These limits will increase to \$5,340,000 for an individual in 2014 (\$10,680,000 for a married couple). In addition to these limits, every individual can also leave \$14,000 as an annual exclusion to any individual without any estate, gift, or income tax consequence.

For clients who are concerned about transferring wealth before or after death to family members or third parties, forming a limited liability company or family limited partnership will allow a transfer of a partial interest in such entity resulting in another benefit as the IRS allows a discount for partial interest transfers beyond the actual proportionate interest transferred. This concept has been proven and accepted for years, but with the higher exemption rates in effect for the future, families can take advantage of more transfers or gifts to reduce future estate and gift tax. As long as the client can show that the entity is legitimate and/or was created with a "business purpose," case law has proven time and again that discounts for partial interest transfers will save taxpayers substantial estate or gift tax in the future.

In simple terms, partial interest gifting can result in valuation discounts for "lack of control" and "lack of marketability," among others, with the result that a gift may be valued at 15% -60% below the amount of the actual gift. Examples of reported cases where the Court has allowed

significant discounts include 30%-40% discounts for entities holding securities, a 30% 44% discount for an entity holding real estate, 32%-63% discounts for entities holding real estate and securities, and 38%-60% discounts for entities holding ranch properties or a winery. A recent Tax Court held that even when an owner gifted partial interests in artwork to his children, a 10% discount from the actual value gifted was reasonable due to uncertainties that a hypothetical purchaser might experience in selling fractional interests to the children of the deceased owner. Even though every entity or case has unique facts, clients should consider investing the time and energy for succession planning now to see if partial interest gifting will benefit their estates, given the examples noted above that have been allowed by the IRS.

By creating business entities sooner than later and gifting out partial interests in the assets held by the entity or using your \$14,000 annual exclusion for partial interest gifts (or \$28,000 annual exclusions for a married couple), future growth in the gifted interests will accrue in the childrens' estates, not the parents' estate. On top of the benefit of a partial interest discount, more assets can be transferred to the next generation (or even grandchildren) with less tax to the government.

We are willing to assist you in evaluating whether the creation of a business entity or commencement of partial interest gifting will result in substantial savings for the next generation! If you wish to consider discussing your unique estate plan, you are invited to contact our firm to discuss how the concepts discussed above may benefit you.