

ESTATE, GIFT AND GENERATION SKIPPING TAXES

The federal estate tax, with a bracket as high as 47%, can be a very big check to write. Avoiding, or at least minimizing, this tax is a major consideration in most estate plans. There are three different wealth transfer taxes to take into consideration:

- The federal gift tax
- The federal estate tax
- The generation skipping transfer tax

The same transfer of wealth may be subject to both (1) the gift tax or the estate tax *and* (2) the generation skipping transfer tax. But, the same transfer is not subject to both the gift and the estate tax.

The “applicable exclusion amount” is the amount that each person can transfer free of estate tax. In 2006 that amount is \$2 million. In 2009 it will increase to \$3.5 million. In 2010 there will be no estate tax. However, under current law, in 2011 the estate tax is reinstated with an applicable exclusion amount of only \$1 million. Until 2011, the gift tax exemption is \$1 million. We believe that legislation will be enacted before 2010 to stabilize this situation. We also believe it is unlikely that the estate tax will be repealed altogether. Until Congress addresses the situation, we must plan based on what the law is today.

As of January 1, 2006 the amount that can be given annually, free of all estate and gift tax, is \$12,000 per person, up from the previous limit of \$11,000. Since this is in addition to your gift tax exemption, you may give up to \$1 million *plus* \$12,000 per year per person. By way of example . . . if you give \$120,000 to one of your children this year, \$12,000 will be treated as nontaxable and \$108,000 will be applied against your lifetime exemption. On the other hand, if you give \$120,000 to ten of your children and grandchildren, the entire amount will be nontaxable.

If you exceed your \$1 million gift tax exemption during your lifetime, you will pay federal gift tax on the excess. Please note that *you*, not the person who received the gift, is responsible for payment of the tax. At the time of your death, all taxable gifts are added back into your estate and a determination of the total tax is then calculated, taking into consideration any gift tax you may have paid during your life.

As if the tax environment weren't bad enough, you may also be liable for a generation skipping transfer tax (GST) if you transfer wealth to a person who is more than one generation below you, such as a grandchild. The GST is a flat tax tied to the top marginal estate tax rate, currently 45%. The good news is that the GST does not apply unless your taxable generation skipping transfers exceed \$2 million. And, the GST generally does not apply to annual gifts that are \$12,000 or less.

Remember, these limitations are *per person*, which means that with proper planning a married couple may transfer twice as much wealth as a single person.

