Estate planning clients seek gift-giving guidance in 2010

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Published: September 15, 2010

Tags: estate planning, estate tax, generation-skipping tax, gift tax, taxation, trusts and estates

This has been an unusual year for estate planners.

The lack of a federal estate tax, and the uncertainty about whether it will return, has encouraged some clients to transfer their wealth by making gifts. But the circumstances will vary from client to client, so it's important to consider a number of factors, including lower values for real estate and stock, as well as the possibility of increased tax rates in 2011, when advising client on whether gift giving makes sense for them.

If real estate or stocks are being given, lower transfer values resulting from the shaky economy means lower transfer costs for those make gifts.

"Let's say you have a stock valued at $1 million," said Bernard A. Krooks, a partner at Littman Krooks in Manhattan and White Plains, N.Y. "If you gift it all now, and the value goes up as the market improves, all of that appreciation is outside of the transfer tax system, and you pay [a gift tax of] 35 percent tax on the one million."

But if you wait, the stock could be subject to higher taxes due to appreciation, or a 55 percent estate tax rate if the giver dies in 2011.

2010 "is a once in a lifetime opportunity," for gift-giving, said Krooks. "From a purely technical tax perspective, this year is a hot time to make a gift."

Good year for the kids and grandkids

With no generation-skipping tax in 2010, this is a good time for clients to make gifts to grandchildren, noted Steve Oshins, a partner at Oshins & Associates in Las Vegas.

But it's important to act now, because "the GST is due to come back in January" at the 2001 levels of a $1 million exemption and 55 percent tax, Krooks cautioned.

Life insurance can also be a good gift giving option, said Richard K. Brown, Chairman of CIT Companies in Denver, Colo.

"People are beginning to understand how to leverage life insurance for guaranteed returns," he said. A whole life insurance policy will return between six and eight percent in 2010, which is "very strong" in light of the current economy.

Brown has a client who used to give $13,000 every year to each of his five children. But in 2010 the client purchased a $1 million dollar policy on each of the children.

"Now the money can grow tax-free, which the children can use to go to college or buy their first home," Brown said.

Unclear future

Some clients would be well-advised to wait until mid- to late-December to make a gift, if there is a chance they could pass away in 2010 and thereby take advantage of the lack of a federal estate tax.

"By that point, elections will have happened, Congress will or won't do whatever they are going to do, and the odds of dying in 2010 will be significantly reduced," Krooks said.

It's still unclear what happens in 2011, as **the federal estate tax quagmire** drags on.

"I don't have any confidence in [Congress]," Oshins said. "I have a feeling we are going to go into 2011 with the estate tax exemption back to $1 million with a 55 percent tax."

Despite the tax advantages, Lyle D. Mattern, a CPA at Bauerle and Company in Denver, Colorado, said that some clients are leery of aggressive gifting out of fear that they won't have enough left to take care of themselves.

Because values have dropped, some clients with lower wealth are concerned about giving away too much too soon.

"Clients in the range of one to three million dollar estates have been freezing their gifting," he said. "It's a hunker-down fear mode."

Krooks agreed.

"Every senior I talk to, their greatest concern is that they will outlive their money," especially given the current economy and the prospect of living longer.

If a client is hesitant to make a gift the lawyer thinks is in his or her best interest, Krooks suggested putting the pitch in writing.

That might encourage the client to take the idea more seriously, study the numbers and work through the benefits from a tax perspective, he said.

And it will help if the federal estate tax kicks back in next year and clients complain about the high tax rates, he noted.

“If they choose not to [make a gift], then you have a paper trail” of your advice, he said.

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