



Estate and Gift Taxes

Tax and Business Update

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Estate and Gift Tax Exclusion

Every taxpayer is allowed exclusions from gift and estate tax before the tax is imposed. The estate and gift tax exclusion amount is a combined \$5.45 million for 2016 and \$5.49 million for 2017. After 2010, if a spouse dies and does not use his entire exclusion amount, the balance can be added to that of the surviving spouse. Because the estate and gift tax exclusion is a unified amount, any of the exclusion used for lifetime gifts reduces the amount remaining for estate tax purposes.

Gift Tax Planning

Annual gift tax exclusion. For 2016 and 2017, a taxpayer can give up to \$14,000 to any number of recipients without being subject to federal gift tax. Gifts that qualify for this annual exclusion are never taxed. If a gift is over \$14,000, only the excess is a taxable gift but does not result in gift tax until cumulative lifetime taxable gifts exceed \$5.45 million for 2016 (\$5.49 million for 2017).

Transfers for tuition and medical care. Direct payment of medical expenses or primary, secondary or college tuition for another person is not a gift for gift tax purposes. Payment must be made to the school or medical provider and not to the beneficiary.

Married taxpayers. Married couples can essentially double the annual gift tax exclusion to any one person (to \$28,000 for 2016 and 2017) by using gift-splitting or, for taxpayers in community property states, the community property rules.

Taxpayers with estates less than the exclusion amount:

- A gift in excess of the \$14,000 annual exclusion is unlikely to ever cause a tax liability but does necessitate the filing of a gift tax return.

- If appreciated property is gifted, the recipient takes the giver's basis. Thus, a gift can cause recipients to pay income tax on capital gains that they would not pay if they inherited the property.

Taxpayers with taxable estates:

- Transferring property during life rather than waiting until death can save taxes in some situations.
- Gift tax paid by the donor is removed from the estate and never taxed provided the donor does not die within three years of making the gift.

Transfers to Spouse and Charity

- Most transfers to a spouse, regardless of the amount, are tax-free. This is due to the unlimited marital deduction.
- There is an unlimited charitable deduction for the value of property transferred during life or at death for most charitable and public purposes. Gifts and bequests to lodges, amateur sports organizations, veterans groups and tribal governments may not qualify for the deduction.

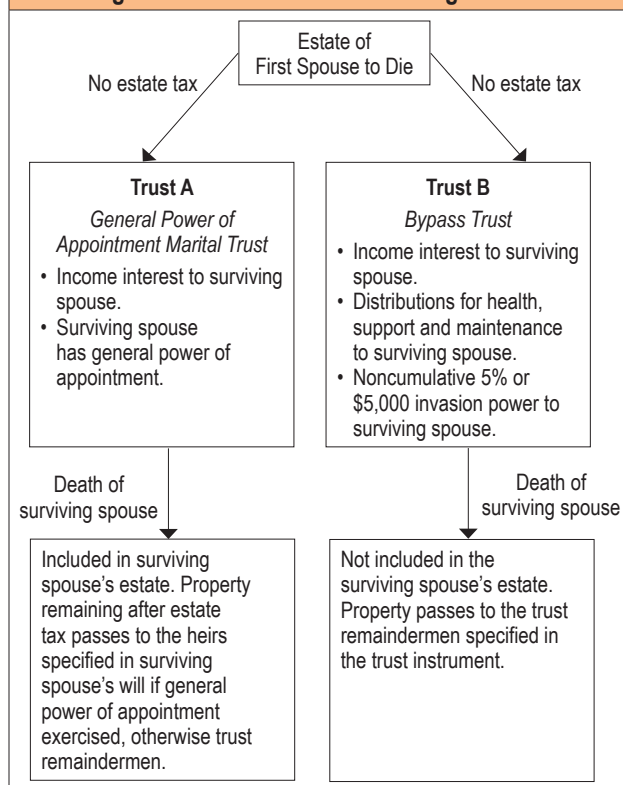
Estate Tax Planning—Portability

Portability allows a married couple to treat their two individual applicable exclusion amounts as if they were one large combined exclusion amount. It is beneficial for couples whose combined assets do not exceed the combined applicable exclusion amounts. The primary advantage is the ability of the surviving spouse's estate to receive a second step-up in basis without engaging in other sophisticated planning. The portability election must be made by the deceased spouse's executor on a timely filed estate tax return (Form 706).

Estate Tax Planning—Bypass Trust

- A common estate plan for married couples whose combined net worth exceeds their combined applicable estate tax exclusion amounts uses the marital deduction in conjunction with a bypass trust.
- Bypass trust planning, instead of electing portability, may be preferable if: (1) assets could appreciate significantly (to higher than the combined applicable exclusion amounts), (2) one spouse is incapable of managing and preserving assets, (3) there are children from the current or a former marriage, (4) there are concerns over who will receive the assets or (5) individuals reside in a state that has an independent death tax with a lower applicable exclusion amount than the federal amount.
- Assets equal to the amount of the applicable exclusion amount are used to fund the bypass trust and the marital deduction shelters the remaining assets from estate tax.
- The assets sheltered by the marital deduction may also be placed in a marital trust.
- When a bypass trust is coupled with a marital trust, the arrangement is often referred to as the A-B trust format.

Diagram of Basic A-B Trust Planning Structure



Estate and Financial Planning Documents

Planning Goal	Alternatives
Financial management during incapacity	<ul style="list-style-type: none"> • Durable power of attorney. • Revocable living trust. • Court-supervised guardianship or conservatorship.
Health and personal care during incapacity	<ul style="list-style-type: none"> • Health care power of attorney or proxy. • Living will and other advanced directives. • Decision left to family members. • Court-appointed guardian.
Leave property to heirs, especially if different from state's rules for those who die without a will.	<ul style="list-style-type: none"> • Will. • Revocable living trust. • State's intestacy law (if no will).
Appoint a guardian for minor children.	<ul style="list-style-type: none"> • Will. • Court-appointed guardian.
Further explain will and disposition of personal property	<ul style="list-style-type: none"> • Testamentary letter. • Memorandum disposing of personal assets.

Caution: Consult with competent legal counsel for drafting of legal documents.



The handout is designed to provide accurate information regarding the subject matter covered. However, before completing any significant transactions based on the information contained herein, please contact us for advice on how the information applies in your specific situation.
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