WEALTH TRANSFER STRATEGIES THROUGH GIFTING —BY WALLY JANDOLI, CLTC

Let's look at an opportunity that has come up with the new Estate Tax Rules. Because of the larger exclusion and lower tax rates, there may be unprecedented opportunities for gifting. By making gifts up to the exclusion amount, clients can significantly reduce the value of their estate without incurring gift tax. In addition, any future appreciation on the gifted assets will escape taxation. Assets with the most potential to increase in value, such as real estate (e.g. a vacation home), expensive art, furniture, jewelry, and closely held business interests offer the best tax savings opportunity.

Gifting may be done in several forms. These include direct gifts to individuals, gifts made in trust (e.g., grantor retained annuity trusts and qualified personal residence trusts), and intra-family loans. Currently, you can also employ techniques that leverage the high exclusion to potentially provide an even greater tax benefit (for example, creating a family limited partnership may also provide valuation discounts for tax purposes).

For high-net-worth married couples, gifting to an irrevocable life insurance trust (ILIT) designed as a dynasty trust can reduce estate size while providing a substantial gift for multiple generations (depending on how long a trust can last under the laws of your particular state). The value of the gift may be increased (leveraged) by the purchase of second-to-die life insurance within the trust. Further, the larger exclusion enables you to increase, gift tax free, the premiums paid for life insurance policies that are owned by the ILIT or other family members. Premium payments are often limited to avoid incurring gift tax. This in turn restricts the amount of life insurance that can be purchased. But the increased exclusion provides the opportunity to make significantly greater gifts of premium payments, which can be used to buy a larger life insurance policy.

Before implementing a gifting plan, however, there are a few issues you should consider...

- Can you afford to make the gift in the first place (you may need those assets and the related cash flow in the future)?

- Do you anticipate that your estate will be subject to estate taxes at your death?

- Is minimizing estate taxes more important to you than retaining control over the asset?

- Do you have concerns about gifting large amounts to your heirs? (i.e., is the recipient competent to manage the asset)?

- Does the transfer tax savings outweigh the potential capital gains tax the recipient may incur if the asset is later sold? The recipient of the gift gets a carryover basis (i.e., your tax basis) for income tax purposes. On the other hand, property left to an individual as a result of death will generally receive a step-up in cost basis to fair market value at date of death, resulting in potentially less income tax to pay when such an asset is ultimately sold.

Caution: *The amount of gift tax exclusion you used in the past will reduce the $11,200,000 available to you in 2018. For example, a person who used $1 million of his or her exclusion in 2012, will be able to make additional gifts totaling $10,200,000 during 2018 free from gift tax.*

Tip: In addition to this opportunity to transfer a significant amount of wealth tax free, it's important to remember that you can still take advantage of the $15,000 (in 2018, $14,000 in 2017) per person per year annual gift tax exclusion. Also, gifts of tuition payments and payment of medical expenses (if paid directly to the institutions) are still tax free and can be made at any time.