

## OTHER INFORMATION

### OTHER TECHNIQUES FOR ESTATES EXCEEDING THE AVAILABLE UNIFIED ESTATE AND GIFT TAX CREDIT

When estates start exceeding the amount that can be sheltered by the available unified gift and estate tax credit (for a single person \$1,000,000.00 and for a married couple \$2,000,000.00) more sophisticated techniques to avoid or reduce the impending taxes are employed. The following are some of the techniques used and many are combined to create the desired tax reduction. Always, it is the goal to pass as much as possible on to those to whom you desire to enjoy the fruits of your labors.

### GIFTING

Each person possesses a \$13,000.00 per person and annual gift tax exclusion that allows any person to give up to the amount of \$13,000.00 per year to any other person and as many like-gifts to as many other persons as they see fit each year. Married couples can gift \$26,000.00 per child, per child's spouse and per each grandchild each year. Gifts of tuition are not considered a gift for any kind of tax purposes to family members.

Thus the \$26,000.00 gift and its yearly appreciation and income are removed each year from the estate. This gifting technique is used in more elaborate estate planning vehicles set forth below.

### USE OF IRREVOCABLE TRUSTS TO REDUCE ESTATE AND GIFT TAXES

To further clarify the following concepts, you must understand the discounting or reduction from the fair market value of assets given as gifts. Discounting reduces the fair market value of a gift resulting in a lower value being used to calculate the gift tax owed the IRS. This gift tax owed will either be paid this year or applied against your unified gift and estate tax credit applicable in the year you die (thereby reducing the amount available to you at your death).

These discounts are usually given to gifts of assets that require a waiting period in order to enjoy the full use and enjoyment of the gift given or given due to possessing a minority interest with a limited market for its sale.

#### *Examples:*

If you and I agreed on a selling price for my house then I tell you that you must wait ten years to take possession of the house, would you still pay our agreed upon price or request a much lower price due to the waiting period imposed?

Likewise, if I tell you that I will sell you a limited partnership interest, then after we agree on a price, I tell you that one family owns all outstanding general partnership interests giving you no say in managing the company; would your purchase price be lower?

This is how discounts are obtained from the IRS for valuing gifts made during a person's life for calculating gift taxes owed.

### **UNIFIED GIFT AND ESTATE TAX CREDIT**

In order to understand the remaining estate planning concepts, a basic understanding of the unified gift and estate tax credit is essential. ***These amounts should be addressed by the Federal government in December of 2010 and may change (verify change if necessary).*** Each individual person possesses the ability to shelter from tax liability (or avoid payment of estate or gift taxes on) the first \$1,000,000.00 of gifts of their property made to other individuals, whether these gifts were made prior to or at death. It does not matter whether these gifts were made to family members or to other persons. This means any assets owned by one individual and transferred to another individual, whether the transfer is through the use of a pay on death account, joint tenancy titling, a probate transfer, Living trust, and just plain gifts are included in the total amount calculation. Any gifts in an amount in excess of \$1,000,000.00 will cause the excess amount over \$1,000,000.00 to be subject to the tax.

A person may use up his tax credit prior to his death by making gifts exceeding \$1,000,000.00 during his or her lifetime or save all or a portion of the credit to be used to shelter their gifts made to others at death. However, only one credit per person is allowed. The only exception to the estate and gift tax credit is a person's \$13,000.00 yearly gift tax exclusion. *See discussion under Gifting.*

### **UNLIMITED MARITAL DEDUCTION**

The unlimited marital deduction allows a spouse to pass an unlimited amount of assets to his or her spouse tax free at their death without incurring estate and gift tax liability for this transfer. However great that may sound, this could create a giant tax bill for "the surviving spouse's estate".

When the surviving spouse dies, they do so with both your assets and their assets in their estate but they possess only one unified estate and gift tax credit to use against the tax liability for both estates. If all assets the survivor dies possessing exceed their \$1,000,000.00 unified credit, the amount over \$1,000,000.00 will be taxed at amounts starting at 37% and escalating quickly to 55%. That is why any estate planning needed to avoid this outcome must be in place before the death of the first spouse. Otherwise, one spouse's unified estate and gift tax credit will be wasted by using this transfer method.

### **FAMILY LIMITED PARTNERSHIP**

Typically a husband and wife become general partners owning a one percent interest in a business, farm, ranch or even stocks as general partners and ninety-nine percent is designated as limited partnership interests. The general partners control and manage the partnership, including its income payouts to the partners.

***For more information on the various ways to designate your estate, please contact me to go over your particular situation and needs to help insure that you are able to take advantage of all the planning situations available.***

**Steven Ballard, Attorney  
(530) 271-0573 • [www.stevenballardattorney.com](http://www.stevenballardattorney.com)**