Estate & Gift Planning Essentials Prior to the Sunset

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Current Exemption Amounts

- Federal:
  - 2024 - $13,610,000
    - Changes Annually
      - Will sunset effective 1/1/2026
    - Reduced for annual gifts exceeding annual gift exclusion

- Washington State:
  - $2,193,000
    - Unchanged since 2018
    - Not reduced for gifts made during lifetime

Estate Tax Rates

- Federal:
  - 40% flat tax rate on assets exceeding the lifetime exemption amount
    - $13,610,000 in 2024
    - $6,500,000?
- Washington State:

Taxable Amount	Rate	Tax owed
$0 to $1,000,000	10.0%	10% of taxable amount
$1,000,000 to $2,000,000	14.0%	$100,000 plus 14% of the amount over $1,000,000
$2,000,000 to $3,000,000	15.0%	$240,000 plus 15% of the amount over $2,000,000
$3,000,000 to $4,000,000	16.0%	$390,000 plus 16% of the amount over $3,000,000
$4,000,000 to $6,000,000	18.0%	$550,000 plus 18% of the amount over $4,000,000
$6,000,000 to $7,000,000	19.0%	$910,000 plus 19% of the amount over $6,000,000
$7,000,000 to $9,000,000	19.5%	$1,100,000 plus 19.5% of the amount over $7,000,000
$9,000,000 and up	20.0%	$1,490,000 plus 20% of the amount over $9,000,000

Effective Tax Rates for Estates > $13,610,000

- 40% Federal
- 20% Washington State
  - =60% effective tax rate for he amount above $13,610,000!

What to do Now?

- Gifting
  - No tax is due until you’ve exceeded your lifetime gifting exclusion
- Impacts for the gift recipients?
  - None – they get the gift and have no tax consequences, other than the income earned by the gift
- Estate planning!
  - Make sure your will or living trust document is updated

Who can Receive Gifts?

- Individuals
- Grantor Trusts
- Irrevocable Trusts
- Special Needs Trusts

Grantor Trusts

- Grantor trusts are trusts where the grantor (person funding the trust) retains the tax attributes of the assets placed in trust during their lifetime
- Benefits of grantor trusts:
  - Grantor continues to pay the tax associated with the income produced by the trust's assets during their lifetime, this results in an additional, unreportable gift of income taxes paid
- They don't require a separate filing during the grantor's life
  - As long as the attorney doesn't file for an EIN
  - Upon the death of the grantor, these trusts become irrevocable and file as their own entity

Irrevocable Trusts

- Can be funded during lifetime or through a will
  - If funded through a will, sometimes referred to as a "testamentary trust"
- Once funded, it is very difficult to make changes to the trust
- They file their own annual fiduciary income tax return (Form 1041)
  - Beneficiaries receive Form K-1 passing income through the trust, depending on distributions

- Note: capital gains are typically taxed at the trust level, unless specifically spelled out as being "distributable income" to the beneficiary in the trust document.

What do you Need Before you can Fund a Trust?

- A Trust document
  - Talk to your attorney
  - Depending on the type of trust, it may or may not require an EIN
    - Talk to a CPA who specializes in trusts if you and your attorney have questions about whether one is needed

Outright Gifting

- Transfers during lifetime directly to beneficiaries of gifts
  - Must transfer not only in title but in function
  - Must be “completed gifts” in order to be out of your estate

- What is accomplished by gifting?
  - Reduces your federal lifetime exemption
  - Reduces your taxable Washington estate
  - Accomplishes the goals of your will early!

Gifting Considerations

- What is the value of the estate?
- How much is needed for the client to live comfortably during their lifetime?
- Is there extra that could be gifted?
- Which assets make the most sense to transfer?

Ways to Maximize Gifting

- Discounts for minority interest
  - Can be applied to real property & business interests

- Take advantage of the annual exclusion
  - 2024 - $18,000
  - 2025 - $19,000

- Spread the wealth
  - Annual gift exclusion renews each year

ILIT – Irrevocable Life Insurance Trusts

- Amounts funded reduce lifetime exclusion to the extent they exceed the annual exclusions of the beneficiaries of the trust

- Results in:
  - A smaller taxable estate
  - A larger payout to beneficiaries

- Requirements:
  - Crummey Letters

What Transfers with the Gift?

- Original Basis
  - Though FMV on date of gift is what reduces your lifetime exemption amount
- Tax attributes
  - Depreciation
  - Acquisition date

How to Get More from Gifting

- Take advantage of annual gift exclusions
- Discounts for minority interest

	Basis	Current FMV	Use	Annual Income Production
Property A	600,000	2,500,000	Rental	130,000
Property B	13,000,000	17,800,000	Rental	190,000
Property C	900,000	2,300,000	Primary Residence	-
		22,600,000		

Facts:

Fred owns $22,600,000 of real property

He is single and has no children, but has a brother and 3 nieces & nephews

Wants to do gifting before 12/31/2025

Strategy

By transferring Property B into an LLC, and transferring ownership, the following can be done:

Gifting 25% to each of Fred's brother and his children

This would allow for a minority interest discount to be assessed

Minority interest discounts could range between 15-40%, depending on circumstances

FMV of Interest being transferred	17,800,000
Minority Interest discount	(5,340,000)
Amount being transferred	12,460,000
Less annual exclusion (4x$18K)	(72,000)
Reduction in Estate Exemption	**12,388,000**

How is Gifting Reported?

- Form 709: Gift and Generation Skipping Transfer Tax Return
  - This form reports the reduction in your federal lifetime exemption amount
  - No tax is due with gifts until you’ve exceeded your lifetime exemption amount
  - Once exceeded, the tax rate is a flat 40% tax

  - Needs to be filed each year gifts are made in excess of the annual exclusion amount

Excess Gifting

- What happens if you gift $15,000,000 and the estate exemption drops down to $6,500,000?

  - No claw back

  - But you’ve used your lifetime exemption, so any future gifts or estate will be considered 100% taxable at the federal level

Estate Planning – Get Married!

- Unlimited Marital Deduction
  - Credit shelter trusts through first spouse's death
    - Can be funded, tax free, up to the WA Estate Exemption amount
    - Above $2,193,000, they are subject to the WA Estate Tax Rates
  - QTIP Elections
    - Can be different at state and federal levels
    - What is a QTIP election?
      - It means that for all practical purposes, the assets are treated as your own and they receive a second step up upon your death
      - You can make this election at the federal level and not at the WA level and still receive a stepped-up basis upon the death of the second spouse
        - Your living will or trust document must allow for this election to be made by your estate's executor or personal representative
- Stepped up basis
- Gifting with DSUE

What is Portability?

- Portability
  - DSUE – Deceased Spouse Unused Exemption
    - Transfers to surviving spouse with filing of Form 706 and the election for portability
    - The deceased spouse's unused exemption is added to the surviving spouse's
- Surviving spouses can file for portability as much as 5 years after their spouse's date of death
  - This might be the lowest hanging fruit to increase your client's ability to transfer wealth if their spouse recently passed and no Form 706 was filed

Death Benefits & Gifting Considerations

- Stepped up basis
  - Highly appreciated assets may be best to hold onto until death due to capital gains
- BUT
  - Capital gains tax rate = 23.8%
  - Estate tax rate can be up to 60%
    - It might be worth transferring early and letting beneficiaries pay the lower capital gains tax rate

What Happens with No Estate Planning

	2024	2026
Estate	20,000,000	20,000,000
Less Exemption	(13,600,000)	(6,500,000)
Taxable Estate	6,400,000	13,500,000
Federal Tax-40%	2,560,000	5,400,000
Estate	20,000,000	20,000,000
WA Exemption	(2,193,000)	(2,193,000)
Taxable Estate	17,807,000	17,807,000
WA Tax	3,251,400	3,251,400
Total Tax	**5,811,400**	**8,651,400**
Difference		**2,840,000**

This is what you just lost for not taking any action!

What Happens With Estate Planning

	2024	2026
Lifetime Estate	20,000,000	20,000,000
Less Gifting During Lifetime	(13,610,000)	(13,610,000)
Estate at DOD	6,390,000	6,390,000
Less Exemption	-	-
Taxable Estate	6,390,000	6,390,000
Federal Tax-40%	2,556,000	2,556,000
Estate	6,390,000	6,390,000
WA Exemption	(2,193,000)	(2,193,000)
Taxable Estate	4,197,000	4,197,000
WA Tax	529,400	585,460
Total Tax	**3,085,400**	**3,141,460**
Difference		**56,060**

Consequences of No Estate Planning

For a $20,000,000 estate, the consequences of not doing estate planning could cost as much as 25% of the gross estate!

Total Estate Tax Paid if No Estate Planning	8,651,400
Total Estate Tax Paid with Estate Planning	3,141,460
Reduction in Tax Paid	**5,509,940**

Summary

- Look at your assets
  - The best place to start is just looking at what you have
- Determine what you need to keep for your lifetime
  - Identify which assets make sense to transfer during life
- Make sure your estate plan is up to date
  - Do you know what tax returns need to be filed?
    - During life
    - Estate filings
    - After death
- Make gifts before 1/1/2026!!!

HW's Estate Planning Team

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