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SHOULD I GIFT MY HOUSE TO THE KIDS NOW OR LEAVE IT IN MY ESTATE?

There are two schools of thought when it comes to gifting your real estate. Some believe that they should have full use and enjoyment of their house while they are alive and then transfer it at death in accordance with their wishes. Others believe that it makes better sense to transfer property before their death, while they can still affect the outcome.

This can be accomplished through an estate planning tool called "gifting". Gifts are an important estate planning tool for those with taxable estates. Lifetime gifts, whether to a spouse, children or others, should be examined very carefully. Giving away property may sound simple at first, but you must consider the gift tax consequences. Remember that a federal gift tax is imposed upon transfers of real and/or personal property made during the transferor's lifetime with and without adequate or full consideration. In plain English, this means that any transfer of value is subject to the federal gift tax if the person making the gift doesn't receive something of similar value in return.

So, who pays the gift tax? You guessed it; it's the individual making the gift. In addition, if the person making the gift doesn't pay the gift tax, the receiver may become personally liable for the tax that is due. The federal government does however, provide an annual gift tax exclusion.

Types of property that can be transferred as a gift include: real estate, stocks, bonds, certificates of deposit, or cash. In 2020, Federal law permits an annual exclusion of up to \$15,000 on transfers to family members or other persons without payment of the federal gift tax. Thus, a person may give up to \$15,000 per person, per year to as many people as he or she desires. On top of that, a married couple can double it to \$30,000 per gift.

If you're not inclined to gift your real property away during your lifetime, you would then distribute it from your estate. In that regard, you wouldn't have to worry about the gift tax because when you distribute assets from your estate, it's not a gift for tax purposes. Instead, it's an asset that is considered when determining the estate tax. (they get you either way!!) However, just like the gift tax exclusions, the estate tax has its own exclusions. Depending on the year of death, your estate will enjoy an estate tax exclusion based upon a certain value. This means that if the value of your estate is under that value, no estate tax is imposed. Currently, for 2020, the individual Federal estate tax exemption is \$11.58 million.

For real property, the most important factor is called the "step up basis" which means that when the real property is distributed from the estate it assumes the "date of death" value as the ground mark for tax purposes rather than the purchase price paid 50 years ago. As such, the capital gains are nearly eliminated. This is in stark contrast from gifting your house, for which you will most certainly suffer a large tax consequence in some shape or form.

This is a brief description of the differences between gifting during your lifetime vs. at death. There are many more factors to consider. Therefore, before you make a decision in this regard, I highly recommend that you meet with an attorney who can determine the value of your estate and guide you in the right direction to achieve the most tax savings.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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