BLUEGRASS ELDERLAW PLLC

Amy E. Dougherty
amy@bgelderlaw.com

Mary Ellis Patton
mary@bgelderlaw.com

Katie E. Finnell
katie@bgelderlaw.com

120 N. Mill Street, Suite 201
Lexington, KY 40507

859.281.0048 (phone)
859.252.8087 (fax)

www.bgelderlaw.com

What you don't know about gifting, the annual gift exclusion, and Medicaid.

Are you afraid to give a gift of more than $15,000 in any one year because you will have to pay taxes? Are you confident that making the $15,000 annual gift will keep you Medicaid complaint?

If you ask an adult American how much they can give away each year without paying taxes, most will automatically respond, "$15,000." It has become almost a part of the American DNA. Unfortunately, most people misunderstand the rule.

The Gift Tax Rule

In 2022, the annual gift tax exclusion increased from $15,000 to $16,000. In 2023, it increased again to $17,000. In 2024, it increased to $18,000. The annual gift tax exclusion is really a reporting rule. Any gift over $18,000 must be reported on a federal gift tax return, IRS form 709. This does not mean that you pay tax on it. Gifts reported on Form 709 count towards the lifetime federal gift tax exclusion (which in 2024 is roughly $13.61 million per person). No tax is owed until the gift-giver exceeds total gifts of $13.61 million.

Annual gift-givers can give to as many people as they wish. The $18,000 figure applies to gifts made to each individual person – not the total of the gifts made in a single year.

Married couples can double the gift amount without being required to report. Yes, a married couple, can for example, give $36,000 to each of their children (and their spouses) without having to report the gift.

With proper planning, a married couple can gift roughly $27.22 million, plus as many annual gifts as they choose, without paying gift tax.

Why the Gift Tax Rule Doesn't Matter

With the gift tax exclusion being at $13.61 million, few estates are paying federal gift tax.

If you want to give a large gift to a child or another loved one, there is likely nothing holding you back. Most Americans will simply not gift more than $13.61 million in their lifetime. There is no reason to fear, give your gift, fill out your Form 709, and enjoy.

Gifting and Medicaid

The Gift Tax Rule is exclusively a tax rule. It is not a Medicaid rule. Medicaid does not take the gift tax rule into consideration and will penalize gifts made in the five years prior to the Medicaid application.

Medicaid considers any gifts made in the five years prior to an application for Medicaid financial assistance to be made in contemplation of that assistance. Thus, Medicaid will assign a penalty period for gifts made within the five year "lookback" which starts when the client is "otherwise eligible" (eligible except for the gift) and has applied at the Medicaid office for assistance. Medicaid calculates a penalty which is a period of time of ineligibility for financial assistance.

For clients who have done no planning and now have a family member residing in a nursing home, lifetime gifting can still be beneficial as the family may be able to preserve up to half of the value of the gift by "curing" the gift in a "give-and-give-back" or "half-a-loaf" strategy. This involves returning a portion of the gift in a prescribed manner and reapplying for Medicaid in a timely way. This strategy should only be done with an attorney's help and supervision.

Possible Tax Concerns for Gift Recipients

While the gift-giver will likely not have tax consequences for giving the gift and the gift recipient will not pay income tax on the gift, the recipient still needs to be aware of potential capital gains income taxes when he wishes to liquidate the asset. Under federal law, the new owner of the gifted asset retains the cost basis (often the acquisition cost) of the gift giver. Thus, if the gift giver's home is the subject of the gift and the gift giver purchased the home for 25 percent of its current value, the gift-recipient owner, when selling the house, will incur a capital gain of 75 percent of the sale price. To avoid this result, the home can be sold by the gift giver using his $250,000 capital gains tax exclusion and gift the cash.

Conclusion

If you are thinking about using a gifting strategy in conjunction with your estate plans, you should contact an elder law attorney. Gifting can be a wonderful planning technique if you are able to weigh the benefits and consequences.