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For 60 years, Seiler LLP has provided advisory, tax and accounting services to some of the world's most affluent individuals, families, privately-held businesses and non-profit organizations. Our clients include prominent business, community and philanthropic leaders, as well as high-net-worth, multi-generational families and successful entrepreneurs.

Based in Silicon Valley and San Francisco, we deliver the sophisticated solutions, innovative thinking, global capabilities and highly personalized service our clients require to navigate the complexities of their financial worlds, not only for today but for many years to come.
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- *San Francisco Business Times*'s and *Silicon Valley Business Journal*'s "Best Places to Work 2017"
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In This Issue

Do You Need to File a Gift or Estate Tax Return?

If you've made substantial gifts to your loved ones, or if you're the executor of someone's estate, it's important to understand the rules surrounding gift and estate tax returns. Determining whether you need to file a return can be confusing, and in some cases it's advisable to file a return even if it's not required. Here's a brief summary of the rules.

Gift Taxes

Generally, a federal gift tax return (Form 709) is required if you:

- Make gifts to or for someone during the year (with certain exceptions: for example, gifts to U.S. citizen spouses are excluded) that exceed the annual gift tax exclusion (currently, $14,000); there's a separate exclusion for gifts to a noncitizen spouse (currently, $148,000),

- Make gifts of *future* interests, even if they're less than the annual exclusion amount, or

- Split gifts with your spouse, regardless of amount.

The return is due by April 15 of the year after you make the gift, but the deadline may be extended to October 15. Being required to file a form doesn't necessarily mean you owe gift tax. You'll owe tax only if you've already exhausted your lifetime gift and estate tax exemption (currently, $5.45 million).

In some cases, it's a good idea to file a gift tax return even if you're not required to do so. For example, suppose you give $10,000 worth of closely held stock to each of 10 family members, for a total of $100,000. Each gift is within the annual exclusion amount, so you don't file a gift tax return. However, 10 years later, the IRS determines that the value of each gift was actually $20,000 and assesses penalties for failure to file a gift tax return (plus taxes, penalties and interest if you've exhausted your lifetime exemption).

Had you filed a properly completed gift tax return at the time you made the gifts, it would have triggered the three-year limitations period for auditing your return. Without a return, there's no time limit on how long the IRS can wait to challenge the valuation of your gifts.

Estate Taxes

If required, a federal estate tax return (Form 706) is due nine months after the date of death. Executors can seek an extension of the filing deadline, an extension of the time to pay, or both, by filing Form 4768. Keep in mind that the form provides for an *automatic* six-month extension of the filing deadline, but that extending the time to pay (up to one year at a time) is at the IRS's discretion. Executors can file additional requests to extend the filing deadline "for cause" or to obtain additional one-year extensions of time to pay.

Generally, Form 706 is required only if the deceased's gross estate plus adjusted taxable gifts exceed the exemption. A return is required even if there's no estate tax liability after taking all applicable deductions and credits.

Even if an estate tax return isn't required, executors may need to file one to preserve a surviving spouse's portability election. Portability allows a surviving spouse to take advantage of a deceased spouse's unused estate tax exemption amount, but it's not automatic. To take advantage of portability, the deceased's executor must make an election on a timely filed estate tax return that computes the unused exemption amount.

Handle with Care

Determining whether a gift or estate tax return is necessary or desirable can be complicated. When in doubt, consult your estate tax advisor to discuss your options.

Estate Planning Red Flag:
You Haven't Substantiated Your Charitable Gifts

To avoid losing valuable charitable deductions, be sure to familiarize yourself with the substantiation requirements.

- **Cash gifts under $250:** Use a canceled check, receipt from the charity or "other reliable written record" showing the charity's name and the date and amount of the gift. There's no need to combine separate gifts of less than $250 to the same charity (monthly contributions, for example).

- **Cash gifts of $250 or more:** Obtain a *contemporaneous* written acknowledgment from the charity stating the amount of the gift, whether you received any goods or services in exchange for it and, if so, a good faith estimate of their value. An acknowledgment is "contemporaneous" if you receive it before the earlier of your tax return due date (including extensions) or the date you actually file your return.

- **Noncash gifts under $250:** Get a receipt showing the charity's name, the date and location of the donation, and a description of the property.

- **Noncash gifts of $250 or more:** Obtain a contemporaneous written acknowledgment from the charity that contains the information required for cash gifts plus a description of the property. File Form 8283 if total noncash gifts exceed $500.

- **Noncash gifts of more than $500:** In addition to the above, keep records showing the date you acquired the property, how you acquired it and your adjusted basis in it.

- **Noncash gifts of more than $5,000 ($10,000 for closely held stock):** In addition to the above, obtain a qualified appraisal and include an appraisal summary, signed by the appraiser and the charity, with your return. (No appraisal is required for publicly traded securities.)

- **Noncash gifts of more than $500,000 ($20,000 for art):** In addition to the above, include a copy of the signed appraisal (not the summary) with your return.

Saving taxes isn't the primary motivator for charitable donations, but it affects the amount you can afford to give. Substantiate your donations to ensure you receive the deductions you deserve.

3 Reasons You Should Continue Making Lifetime Gifts

Now that the gift and estate tax exemption has reached $5.49 million (for 2017), it may seem that gifting assets to loved ones is less important than it was in previous years. However, lifetime gifts continue to provide significant benefits, whether your estate is taxable or not.

Why Make Gifts?

Let's examine three reasons why making gifts remains an important part of estate planning:

1. ***Lifetime gifts reduce estate taxes*.**

   If your estate exceeds the exemption amount — or you believe it will in the future — regular lifetime gifts can substantially reduce your estate tax bill. Assume that your estate is worth $7.49 million. If you were to die this year, your estate tax liability would be $800,000 (40% × $2 million). You can reduce the size of your taxable estate by starting a gifting program.

   The annual gift tax exclusion allows you to give away up to $14,000 per recipient ($28,000 if you "split" gifts with your spouse) tax-free. In addition, direct payments of tuition or medical expenses on behalf of your loved ones are excluded. Let's say you're married with four children and eight grandchildren, and that at any given time over the next six years four of your grandchildren are in college. You and your spouse give each child and grandchild $28,000 per year and make direct tuition payments of $20,000 per year for the grandchildren in college. In six years, you'll have reduced your taxable estate by nearly $2.5 million.

   Taxable gifts — that is, gifts beyond the annual exemption amount — can also reduce your estate tax liability by removing future appreciation from your taxable estate. You may be better off paying gift tax on an asset's current value rather than estate tax on its appreciated value down the road. When gifting appreciable assets, however, be sure to consider the potential income tax implications. Property transferred at death receives a "stepped-up basis" equal to its date-of-death fair market value, which means the recipient can turn around and sell the property free of capital gains taxes. Property transferred during life retains *your* tax basis, so it's important to weigh the estate tax savings against the potential income tax costs.

2. ***Tax laws aren't permanent*.**

   Even if your estate is within the exemption amount, it pays to make regular gifts. The 2012 tax law made the $5 million exemption (indexed for inflation) "permanent." But that doesn't mean lawmakers can't reduce the amount in the future, exposing your wealth to gift and estate taxes overnight. A program of regular annual exclusion gifts and direct payments of tuition and medical expenses can provide some insurance against future changes to the tax laws.

***3. Gifts provide nontax benefits*.**

Tax planning aside, there are many other reasons to make lifetime gifts. Perhaps you want the chance to see your children or grandchildren enjoy your wealth. Or perhaps you wish to use gifting to shape your family members' behavior — by providing gifts to those who attend college, for example. If you own a business, gifts of interests in the business may be a key component of your ownership and management succession plan.

A Win-Win Proposition

Regardless of the amount of your wealth, consider a program of regular lifetime giving. If your estate is large enough to be taxable — or if Congress reduces the exemption in the future — gifting can soften the blow of estate taxes. And even if estate taxes never become a concern, gifting provides significant nontax benefits for loved ones.

Estate Planning Red Flag:
Your Trust Owns S Corporation Stock

S corporations must comply with several strict requirements or risk losing their tax-advantaged status. Among other things, they can have no more than 100 shareholders, can have no more than one class of stock and are permitted to have only certain types of shareholders.

In an estate planning context, it's critical that any trusts that own S corporation stock — or receive such stock through operation of your estate plan — be eligible shareholders. Eligible trusts include:

- Grantor trusts, provided they have one "deemed owner" who's a U.S. citizen or resident and meet certain other requirements. Not all grantor trusts are eligible, including some that contain common tax-planning features. Also, when the grantor dies, the trust remains eligible for two years, after which it must distribute the stock to an eligible shareholder or qualify as a qualified subchapter S trust (QSST) or an electing small business trust (ESBT).

- Testamentary trusts — that is, trusts established by your will. These trusts are eligible S corporation shareholders for up to two years after the transfer and then must either distribute the stock to an eligible shareholder or qualify as a QSST or ESBT.

- QSSTs. These trusts must meet several requirements, including distributing all current income to a single beneficiary who's a U.S. citizen or resident, and filing an election with the IRS. They cannot be used to benefit multiple beneficiaries or to accumulate income, although in effect there can be multiple beneficiaries if they're treated as each owning a separate share of the trust. A QSST's income is taxed at the beneficiary's tax rate.

- ESBTs. A trust qualifies as an ESBT if:

    1) all of its beneficiaries or "potential current beneficiaries" would be eligible shareholders if they held the stock directly,
    2) no beneficiary purchases its interest and
    3) the trustee files an election with the IRS.

If you have any S corporation stock held in a trust, be sure to review its terms carefully to avoid inadvertently disqualifying the S corporation.