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## SUGGESTIONS FOR PERSERVING WEALTH

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### Gift Tax Revisited

The gift tax is based on all of an individual's property transferred during that individual's lifetime. The Economic Growth and Tax Relief Reconciliation Act of 2001 (the "Act") eliminated the unified transfer tax system (i.e., federal estate/gift taxes) and increased the lifetime gift tax exemption applicable to lifetime gifts made after 2001 to \$1 million. Unlike the estate tax, the Act did not repeal the gift tax.

Through 2009, the gift tax rate is the same as the estate tax rate. The current gift tax rate is 45%. After 2009 the top gift tax rate will be reduced to the top individual income tax rate of 35% and operate according to the table shown below:

<b>Amount of Taxable Gifts</b>	<b>Tentative Tax</b>
Not over \$10,000	18% of such amount
Over \$10,000 but not over \$20,000	\$1,800 plus 20% of excess over \$10,000
Over \$20,000 but not over \$40,000	\$3,800 plus 22% of excess over \$20,000
Over \$40,000 but not over \$60,000	\$8,200 plus 24% of excess over \$40,000
Over \$60,000 but not over \$80,000	\$13,000 plus 26% of excess over \$60,000
Over \$80,000 but not over \$100,000	\$18,200 plus 28% of excess over \$80,000
Over \$100,000 but not over \$150,000	\$23,800 plus 30% of excess over \$100,000
Over \$150,000 but not over \$250,000	\$38,800 plus 32% of excess over \$150,000
Over \$250,000 but not over \$500,000	\$70,800 plus 34% of excess over \$250,000
Over \$500,000	\$155,800 plus 35% of excess over \$500,000

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### Annual Gift Tax Exclusion

A potential advantage of making lifetime gifts is the avoidance of tax through the annual gift tax exclusion. Under the annual gift tax exclusion, yearly gifts of a present interest of up to \$13,000 per donee (recipient) are not subject to transfer tax. Although the annual limit applies per donee, there is no limit as to the number of donees who may receive such gifts each year, nor is there a requirement that donees be related by blood or marriage to the donor.

As stated above, only gifts of present interests in property may qualify for the annual gift tax exclusion. A transfer of a present interest occurs if the donee is immediately entitled to use, possess, and enjoy the gifted property. For example, presume that Jack transfers \$750,000 worth of corporate bonds into a trust that provides trust income will be payable annually to Jack's daughter, Candy, for her lifetime. The gift is deemed a present interest, because the trust agreement requires the trustee to annually distribute all trust income to Candy. On the other hand, if the trustee were permitted under the trust agreement to accumulate any or all of the trust's income or divert income from Candy, the gift would not be a present interest and would not therefore qualify for the gift tax annual exclusion.

### Gift Splitting

Gift splitting offers an opportunity to married donors to double the annual gift tax exclusion amount, if desired, for each donee. The spouse must consent to the split-gift in writing, and must report his/her consent on a federal gift tax return. Presuming the \$13,000 annual limit still applies, a donor may give \$26,000 ( $\$13,000 \times 2$ ) to each donee if the spouse consents to the split-gift. The annual gift tax exclusion is available in addition to the gift tax credit amount. For gifts exceeding the amount of the annual gift tax exclusion applicable in the year in which the gift is made, the gift tax credit amount of \$345,800 may be used to offset gift tax liability. The \$345,800 represents the amount of gift tax that, in the absence of the credit, would be due on the lifetime transfer of \$1,000,000 in property (over and above any annual exclusion gifts). Gifts and amounts over the \$1 million gift tax credit will generally be subject to federal gift tax.

### Practice Tip

When a gift splitting election is made, when a bargain sale between related parties has occurred, or if the annual value of any lifetime transfer(s) to a donee exceed \$13,000, then a federal gift tax return, Form 709, is required to be filed on or before April 15 of the following year. Frequently, individuals simply forget to file gift tax returns. It is often a good idea to file gift tax returns in order to start the statute of limitations running. Generally, the Internal Revenue Service may examine gift tax returns within three years of the date of filing. If no Form 709 is filed, then the statute of limitation never runs.

### Subsequent Sales of Gifted Property

Tax rules applicable to gifts of property valued at less than the donor's basis clearly discourage gifts of property whose basis exceeds fair market value. In computing the capital loss, the donee is required to assume a basis that is the lower of current fair market value or the donor's basis. Thus, the donee has virtually no capital loss opportunity. For example, David paid \$50,000 to acquire common stock in XYZ Corporation. Due to the recession, the value of XYZ has fallen to \$30,000. That is the fair market value of the stock on the date David transfers the stock to his favorite niece, Karen. Karen's basis for computing the capital loss is not her uncle's original adjusted basis. It is the fair market value on the date the transfer is completed.

If Karen sells the stock for a price ranging between \$30,000 and \$50,000, she recognizes neither gain nor loss for capital gains tax purposes. If she sells above \$50,000, she realizes gain. For example, if Karen sells the stock for \$60,000, she realizes a gain of \$10,000 ( $\$60,000 - \$50,000$ ). If Karen sells the stock for \$20,000, she recognizes a \$10,000 loss ( $\$20,000 - \$30,000$ ). Arguably, David should sell the XYZ stock and avail himself of any available capital loss advantage.

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***If you have any questions concerning the information in this newsletter, please give Glenn Booker a call at (229) 883-2441.***