

Deathbed Transfers -- Make Sure a Gift Doesn't Become an Inheritance

Gifts may be made after death for many reasons. Donors may not want to part with assets until they are certain they won't need them. Or, perhaps they have never considered lifetime gifts an alternative to an inheritance. When donors are not expected to live long, these concerns may be less important. They may finally realize they have a surplus of funds and, for the first time, take seriously the prospect that taxes will erode their estates. These tax-saving gifts may otherwise turn into taxable inheritances. But deathbed transfers require careful selection and timing.

Cash Is Better Than Checks

Gifts qualifying for the \$10,000 annual gift tax exclusion (indexed for inflation) remove the assets from the donor's taxable estate at death without incurring a gift tax during life. Donors often give each donee a check for the amount of a deathbed gift, but the checks must be cashed before the donor dies in order to qualify for the exclusion.

The IRS has successfully argued that gifts are not complete until checks are cashed, because the donor can stop payment or withdraw the funds in the account before the bank pays the check. Uncashed checks are included in the donor's estate for estate tax purposes. But a different result could occur depending on how the uncashed check is characterized under state law.

If checks are given, the donor should make certain that they are quickly deposited. If time is short, (such as in the case of a weekend gift), it may be possible to have the beneficiaries sign over their checks to a third party in exchange for either cash or property. But you should consult with your advisor to determine whether this option is viable. In addition, using certified checks can help simplify this process, because they are considered completed gifts as soon as they are delivered.

Gifts in Kind

Another solution is to make sure that the beneficiaries actually receive the gifts qualifying for the annual exclusion. Donors may want to have ready access to their assets by holding cash or jewelry in a safe until giving them to the recipient. Undivided interests in works of art or other personal property may be gifted. Gifts of real estate or fractional interests of real estate may be made by signing deeds. Or an assignment of stock could be made.

If deathbed transfers are planned, it may be a good idea to make sure that the donor has executed a durable power of attorney for property that specifically authorizes the agent to make annual exclusion gifts. Planning can help you sort through the many available options to find the best alternative.

Seek Assistance

Please let us know if you would like us to help you develop an effective plan to make tax-saving gifts to your loved ones. Because of the many plans of action available to you, this process can seem complicated. Our professionals are available to address any concerns or questions you may have.