

Peluso & Weintraub, P.C.

## Another Mystery Resolved

Time to address a legal myth that seems to never fade.

A biggy...maybe the granddaddy of all myths that clients steadily stream into the office and restate, is that only a certain amount of money can be given away each year, the most frequently referenced amounts being \$10,000.00, and \$14,000.00.

The source of the myth can be found in certain rules governing gift and estate taxes. There is a specific type of tax that is incurred by higher value estates prior to distribution of a decedent's assets to beneficiaries and/or heirs. As of 2015, the federal government allows for individuals in most instances to leave upon death the amount of \$5,430,000.00, free of tax. The federal government also has a rule that an individual can give away during his or her lifetime, the same amount, without incurring any gift tax. The two amounts, one given after life and the other given during, are viewed by the federal government as inter-related in this way: the amount that someone gives away during life reduces the amount that can be given after death free of tax. This inter-relationship is often referred to as the "Unified Credit."

An example of this inter-relationship can be seen in an instance where a person gives away \$1,000,000.00, during life, to a single person. When the giftor dies and leaves money to beneficiaries, the giftor's estate will be subject to federal estate tax after approximately \$4,430,000.00, as a result of the \$1,000,000.00 life-time gift reducing the Unified Credit amount of \$5,430,000.00.

There is an exception to this rule of such inter-relating or unifying the estate and gift tax, and this is where the myth arises. The exception is referred to as the "Annual Exclusion" and states that one can give a gift of \$14,000.00 to a giftee each year and that amount will not reduce the \$5,430,000.00 that could have otherwise been left after death. In fact, there is no limit on the number of such \$14,000.00 gifts in any given year to different recipients. For example, a person could give away \$14,000.00 for numerous years to ten or more different people and still have the entire amount of \$5,430,000.00 available to pass free of tax upon death. The \$10,000.00 figure referenced previously is just an earlier limitation amount that has been raised to the recent amount of \$14,000.00. The Annual Exclusion and the Unified Credit amounts are both subject to change and have been increased over the years.

In many instances, there is no reason to limit gifts to \$14,000.00 if the giftor would prefer to give more. If someone has a net worth of less than the Unified Credit amount, it may not matter if the giftor uses-up some of the Unified Credit amount by giving gifts that exceed \$14,000.00. For example yet again, why would a person with a net worth of \$2,000,000.00 care about preserving the full life-time exemption? It may not matter if

such a person gave away \$1,000,000.00 and thereby could only leave \$4,430,000.00 upon passing because he or she has a net worth well below Unified Credit amount. Folks who do not have or anticipate a net worth greater than the Unified Credit amount will likely not need to feel limited in their gifting to the Annual Exclusion amount.

Now that the myth is revealed, one's attention can shift to a number of other questions that are germane to gifting such as how much to gift, which asset to give, other tax implications such as capital gains, whether to give to a personal recipient or a trust, and the list goes on.

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