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YEAR END GIFT AND TAX PLANNING - A POTENTIAL SILVER LINING?

Usually, as we approach year end, we are inundated with questions about gifting strategies to reduce our clients' taxable estates. This year, because of the downturn in our national economy, questions about gifting have slowed to a trickle. Even in this economy, however, there are advantages to gifting - both for tax and medicaid planning purposes.

A review of the basic rules is helpful. Each person can gift up to \$12,000 annually to others without tax consequences. Together, married couples can gift up to \$24,000 per person. Multiply this sum by the number of children and grandchildren and there is the potential for considerably reducing one's taxable estate.

Gifting assets that have lost value may be advantageous to reduce a taxable estate. For example, assume you owned 1000 shares of stock in General Electric which closed, on November 1, 2007, at \$40.68. A gift of \$12,000 worth of that stock in 2007 would have required the transfer of about 295 shares. If you wanted to make a gift of the same value on November 1 of this year, when GE was trading at \$19.40, it would take 618.5 shares. Clearly, you are able to gift a larger portion of your depressed assets without tax consequences this year. Those shares are removed from your estate and, when the market recovers, the appreciation is also out of the estate.

The same logic can be applied to Medicaid planning. The transfer of a portfolio of assets that was worth \$240,000 last year would have resulted in an ineligibility period for Medicaid benefits of approximately 24 months. This year, that same portfolio may be worth 1/3 less or \$160,000. The ineligibility period to transfer the portfolio now would only be 16 months.

Gift planning can be an important estate planning strategy. Whether the transfer of wealth to beneficiaries is intended to reduce estate tax liability or to protect assets and hasten Medicaid eligibility, it is important to meet with your planning professional as soon as possible..

Editors Note: The authors are with Berwitz & DiTata LLP, a Garden City based Elder Law firm. This firm concentrates in Estate and Retirement Distribution Planning, Estate Administration and Elder Law.