What “gift” can I give tax free?

January 4, 2013 | by Einhorn Barbarito

Dear Ask the Attorney:

With all of the discussion lately about the “fiscal cliff,” I’ve heard a lot about the federal estate and gift taxes, but isn’t there an amount I can gift to my children each year that is not subject to gift taxes? What am I missing here, what is the connection between the gift tax exemption on the news and the amount I can give each year tax-free?

C.C.

Our guest blogger today is Christopher J. Roman, Esq.

Dear CC:

This is a subject that confuses a lot of people. There is an amount that you can gift each year that is not subject to the gift tax. In 2013, you can gift up to $14,000 to any one individual without making a taxable gift. This amount is commonly referred to as the “annual exclusion,” and is subject to annual adjustments for inflation. If you are married, you and your spouse can combine your annual exclusions and gift up to $28,000 to any one individual. For example, if you are married and have three children, you and your spouse can gift $28,000 to each child without making a taxable gift.

How does this interplay with the gift and estate tax issues that have been discussed on the news in connection with the fiscal cliff? I mentioned above that you can make gifts of up to $14,000 to any one beneficiary each year, but that if your gift exceeds that amount, you will be making a taxable gift. However, making a taxable gift does not necessarily mean that you will have to pay a gift tax. The reason is that in addition to the annual exclusion every individual has a lifetime gift tax exemption that must be exhausted before federal gift taxes are imposed. The lifetime gift tax exemption is currently

$5,120,000. That amount is the number that has been discussed on the news in connection with the fiscal cliff. For now, the amount of the exemption will remain the same, subject to adjustments for inflation.

The annual exclusion and the lifetime exemption interact as follows: if you make a gift over $14,000 to any person, then the first $14,000 of the gift is excluded from the gift tax under the annual exclusion while the remaining amount of the gift is exempt from the gift tax under the lifetime exemption up to $5,120,000. If your total lifetime gifts (that is, your lifetime total of all of your annual gifts that exceed $14,000) ever exceed $5,120,000, then a gift tax will be imposed. So if you make a gift of $100,000 to your son this year, the first $14,000 will qualify for the annual exclusion. The balance ($86,000) will consume a portion of your lifetime gift tax exemption, so that after the $100,000 gift, your remaining lifetime exemption will be $5,106,000 (which is $5,120,000 minus $86,000), but you will not need to pay any gift tax at all until your gift tax exemption is fully consumed.

If you have any estate planning or tax issues, please call a qualified Estate Planning and Taxation attorney for assistance.

"Ask the Attorney" is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.