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*ESTATE PLANNING NEWSLETTER*

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December, 2015

## Should You Be Gifting?

*Detangling Gift Tax, Estate Tax, Inheritance Tax, and Income Tax*

This time of year is the season of giving, but how much can I give? This is an interesting question which causes much confusion, misinformation, and misconceptions. Can I give \$10,000? \$14,000? Do I have to pay Income Tax? Do I have to pay Gift Tax? The correct answers lie at the intersection of rules regarding Federal Estate Tax, Federal Gift Tax, New Jersey Estate Tax, New Jersey Inheritance Tax, Federal Income Tax, and Medicaid eligibility.

### **Federal Estate and Gift Tax**

The Federal Estate and Gift Tax systems are unified. Under the Federal Tax rules, for decedents dying in 2016, each person can transfer \$5,450,000 cumulatively during life or at death tax free.

In addition, each person can give away \$14,000 per donee each year, without reducing the amount that can be passed Estate Tax-free at death. This amount, called the annual exclusion, under former law was \$10,000, and has been indexed for inflation to \$14,000 in 2016.

A reason for confusion is that the amount eligible to pass Estate Tax-free was significantly lower only a few years ago. Prior to 2004, the amount that could be transferred Estate Tax-free was only \$1,000,000 or less. As a result, annual exclusion gifts were critically important in the estate planning process. Many people with assets totaling more than \$1,000,000 wanted to avoid Federal Estate Tax by making gifts. Now that the Federal Estate Tax exemption has been increased to \$5,450,000, many more families fall below this threshold.

As an example, a parent with \$4,000,000 could make a gift of \$1,500,000 to a child, and that gift would be Estate, Income, and

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## Social Security & Medicare

*New Law – 2016 Changes in Social Security and Medicare Part B*

### **Social Security**

The new Social Security law will eliminate two strategies that had been available to married couples. Full retirement age is 66 for those born in 1943-1954, and phases in to age 67 if born after 1959. You can claim benefits at age 62, but this would be a reduced amount. For those who reach 66 in 2015, the maximum benefit, which depends on your work history, is \$2,663 per month. If you delay applying, the benefit increases by about 8% for each year of delay, up to age 70.

A common technique used under the prior law is known as “**file-and-suspend**.” This would allow your spouse to claim benefits based on your earnings, while allowing your own benefit to grow. Under the new law, your spouse can claim a spousal benefit only if you are already receiving your retirement benefit. This new law does not apply to those who are already using this file-and-suspend method; and this method is generally still available to those who turn 66 before May 1, 2016.

Under another strategy, known as “**claim now, claim more later**” (also known as “restrict an application to spousal benefit only”), a spouse who has reached 66 could file for a “spousal benefit” only, which is 50% of the spouse’s full retirement benefit, and allow his or her own benefit to grow, and then begin taking his or her full amount at age 70. Again, the new law phases out the availability of this method, but it is still generally available if you turn 66 before May 1, 2016, and to certain individuals who reach age 62 before December 31, 2015.

Under prior law, if you filed-and-suspended your benefit, but then became ill before age 70, you could elect to take your benefits retroactively at age 66 rather than using the delayed-retirement credits. The new law eliminates this option.

Regardless of these strategies, there are still many factors to consider in determining when you and your spouse should start receiving Social Security benefits, including your health and other income and resources.

### **Medicare**

The standard premium for Medicare Part B will remain at \$104.90 per month for most people who are currently receiving Social

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## **Gifts**

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Gift Tax-free. Under this scenario, the parent would have the ability to pass an additional \$3,450,000 free of Federal Estate Tax at death. However, in this example, since the parent only had \$2,500,000 of assets remaining after the gift, no Estate Tax would be due at the parent's death.

For Gift Tax purposes, a Gift Tax Return (Form 709) is required to be filed in any year in which gifts are made to a donee in excess of \$14,000. The purpose of the Gift Tax Return is to keep a record of the value of the gifts that have been made by the taxpayer during the taxpayer's life which use a part of the taxpayer's Estate Tax exemption. Filing appropriate Gift Tax Returns simplifies and clarifies the preparation of the Estate Tax Return after death. As long as the total lifetime gifts are less than \$5,450,000, no tax is due when filing a Gift Tax Return.

## **New Jersey Estate Tax**

The New Jersey Estate Tax system is based on the Federal Estate Tax system as it existed in 2001. In 2001, the amount that could pass Federal Estate Tax-free was \$675,000. This is the current amount that a New Jersey decedent can pass New Jersey Estate Tax-free at death. Amounts in excess of \$675,000 will result in a New Jersey Estate Tax being due. The New Jersey Estate Tax Rate Table is included on Page 4 of this newsletter.

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*Taxpayers in New Jersey can make gifts at any time during life, even up to the moment before death, to reduce New Jersey Estate Tax due at death.*

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Under New Jersey law, lifetime gifts do not reduce the \$675,000 amount that can pass tax free at death. This presents a significant opportunity for taxpayers to reduce the New Jersey Estate Tax by making gifts. Taxpayers in New Jersey can make gifts at any time during life, even up to the moment before death, in order to reduce the amount of New Jersey Estate Tax due at death. Although for some estates, the New Jersey Estate Tax will not be completely eliminated through gifting due to complicated tax formulas, gifting will nonetheless result in New Jersey Estate Tax savings.

## **New Jersey Inheritance Tax**

Under the New Jersey Inheritance Tax system, no tax is imposed on transfers to charities or to Class A beneficiaries, which include a spouse, domestic partner, decedent, parent, stepchild, or mutually-acknowledged child. However, gifts to siblings, aunts and uncles, nieces and nephews, step-grandchildren, and friends are subject to New Jersey Inheritance Tax.

The New Jersey Inheritance Tax rules also include a tax on gifts made "in contemplation of death," which is defined as gifts made during the three year period prior to the date of death. However, this additional tax is only imposed if the gifts are made to persons other than Class A beneficiaries or charities. As a result, gifts can be made to a child or grandchild at any time, during life or upon death, without incurring a New Jersey Inheritance Tax.

## **Income Tax**

Gifts are not subject to Income Tax. If a parent gives a child

\$50,000 in cash, this is not income to the child and the child does not have to report the gift on any tax return. However, there is an Income Tax issue regarding appreciated assets. For example, if a parent sold a stock for \$75,000 which was purchased for \$50,000, the parent would have \$25,000 of gain to be reported on the parent's Income Tax Return. If instead, the parent made a gift of that stock to a child, the child would receive a carryover basis of \$50,000. As a result, if the child sold the stock, the child would have to recognize the \$25,000 of gain that the parent would have been required to recognize if the parent made the sale.

## **Medicaid**

In order to be eligible for Medicaid, an applicant's assets cannot exceed \$2,000. Additionally, Medicaid will evaluate all financial transactions which took place during the five year period prior to the filing of an application. This period is called the "five-year look-back." In order to qualify for Medicaid, there must have been no gifts made during this look-back period or Medicaid will impose a "penalty period" during which the applicant will receive no benefits.

The prohibition of gifts during the five-year look-back is a bright line test with few exceptions. However, a significant Medicaid planning opportunity exists when gifts are made more than five years prior to the filing of the application. For example, a parent with \$600,000 could make a gift of \$400,000 while the parent is relatively healthy. Over the next five years, the remaining \$200,000 could be used for the parent's living expenses and care. Once five years elapses after the gift, the parent could apply for Medicaid and the \$400,000 gift would not prevent eligibility. Please note that it is critically important that no application is filed during the five year period after the gift in most circumstances.

## **Putting it all together**

The bottom line for a \$400,000 gift is:

- a) The gift does not increase the Federal Estate Tax and could help to reduce it;
- b) A Gift Tax Return should be filed, but no tax is due because the gift was less than \$5,450,000;
- c) The gift will reduce the New Jersey Estate Tax;
- d) No New Jersey Inheritance Tax is due, even if made within three years of death, because the gift was to a child;
- e) No income tax is due by the donor or the recipient; and
- f) The gift will not prevent Medicaid eligibility if made more than five years prior to applying.

## **Probating in New Jersey**

The probate process in New Jersey is not overly burdensome. A properly drafted Last Will and Testament can oftentimes be admitted to probate in less than an hour in a meeting at the Surrogate's Court and usually for less than \$150. As part of the probate process, the Executor receives Letters Testamentary, which allow the Executor to act on behalf of the decedent. The Executor also receives Short Certificates, which are a short form of the Letters Testamentary, and can be presented to financial

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## Keeping Your Loved One Safe After a Move to a Nursing Home

Your loved one is now the resident of a nursing home. This is not what your family wanted. However, after careful deliberation, you arrived at the conclusion that only a nursing home is capable of providing the 24-hour professional nursing care necessary to keep your loved one healthy and safe. Good nursing care will keep your loved one safe and provide the greatest chance to maintain as much independence as possible. Unfortunately, bad nursing care can cause your loved one to suffer avoidable injuries, such as bedsores and fractures as well as injuries from avoidable falls, medication errors, and assaults.

Follow these tips to increase the chances your loved one will be safe at a nursing home:

1. Have a properly drafted **Power of Attorney** and **Advanced Directive for Health Care** in place prior to your loved one entering a nursing home.
2. **Introduce yourself** to the nursing home's Administrator and Director of Nursing, as well as the members of the nursing staff. Learn their names.
3. **Take an active role** in selecting the Primary Care Physician (PCP). The PCP plays an important role in the health and well-being of the nursing home resident.
4. **Attend the Care Plan Conference.** At a Care Plan Conference, a document called a Care Plan is created which identifies the specific needs, risks, and goals for each resident.
5. **Review your loved one's Care Plan** with the PCP. Periodically communicate directly with the PCP to make sure they are aware of all current information.
6. Visit your loved one at **different times during the day.**
7. Learn the names of **other residents** who live in or around your loved one's room. Introduce yourself to their family. Exchange phone numbers. Agree to keep an eye on the other's loved one when visiting; and to call each other to discuss anything that might be suspicious.
8. **Take many photographs** of the room and your loved one. This is especially true to document any time that your loved one is injured. Some families have even successfully installed hidden cameras to document abuse.
9. Communicate to the Director of Nursing that appropriate members of the family would like to periodically **witness your loved one's clothing changes** to personally see their skin.
10. If you think there may be a problem, write down **names, dates, times, and what happened.** All complaints or problems should be made in writing to the Administrator.
11. If you suspect abuse or neglect of any nursing home resident, immediately contact the **New Jersey Office of the Ombudsman for the Institutionalized Elderly.** The "Ombudsman" investigates allegations of abuse and neglect for people age 60 and older, who live in nursing homes and other long-term healthcare facilities. The Ombudsman maintains a 24-hour hotline for complaints about abused and neglected nursing home residents: 1-877-582-6995.

## Probate in New Jersey

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institutions, realtors, taxing agencies, creditors, and the Motor Vehicle Commission to prove that the Executor has authority to act on behalf of the decedent.

The probate process is streamlined because it is unsupervised by the Court. That is, an Executor can collect all the assets, pay all the debts and expenses of the Estate, and make distribution pursuant to the terms of the Will without any requirement of notifying the Court. Our firm assists the Executor in performing each of these tasks in accordance with New Jersey law, while protecting the Executor and providing timely and pertinent information to the beneficiaries.

The lack of supervision by the Court usually expedites the administration of the Estate because it does not require that an Executor prove to the Court that the Estate has been administered correctly. However, sometimes a beneficiary may feel the need to question the Executor's actions. In that situation, it is up to the beneficiary to alert the Court that the Executor may not be performing his or her job correctly. The beneficiary would file a Verified Complaint to demand an accounting. The Court would then require the Executor to prepare an accounting and deliver it to each of the beneficiaries. The beneficiaries then have the ability to file exceptions to items in the accounting that they believe are inaccurate or which do not follow the terms of the Will. If no settlement occurs, a court hearing will be held about the disputed items and the Judge's ruling will resolve the case.

Our firm assists both Executors and beneficiaries in this type of case. In most cases, the matter can be settled without a court hearing. Oftentimes, the case is settled before a Complaint is even filed by sending a letter to the Executor or the Executor's attorney requesting an accounting. The Executor then has the opportunity to prepare an informal accounting. The beneficiary can respond by accepting the accounting or requesting additional changes. This give-and-take of information is often all that is necessary to ease the parties' concerns and keep the estate administration process moving.

## Social Security and Medicare

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Security benefits. For others, such as those who are on Medicaid and those enrolling in Part B for the first time, who earn less than \$85,000 per year (\$170,000 for couples filing jointly), the Part B premium will be \$121.80. The income amount used is the modified adjusted gross income (MAGI) amount for two years prior; your 2014 income is used to determine your Part B premium for 2016. Higher-income beneficiaries will pay higher Part B premiums based on the following schedule:

Part B Premium	2014 MAGI for Individuals	2014 MAGI for Couples Filing Jointly
\$170.50 (was \$146.90)	\$85,000 - \$107,000	\$170,000 - \$214,000
\$243.60 (was \$209.80)	\$107,001 - \$160,000	\$214,001 - \$320,000
\$316.70 (was \$272.70)	\$160,001 - \$214,000	\$320,001 - \$428,000
\$389.80 (was \$335.70)	Above \$214,000	Above \$428,000

New Jersey Estate Tax	
Estate Size	Tax Amount
\$0-\$675,000	0
\$675,000-\$727,175	\$0 plus 37.0% of the amount over \$675,000
\$727,175-\$900,000	\$19,304 plus 4.8% of the amount over \$727,174
\$900,000-\$1,100,000	\$27,600 plus 5.6% of the amount over \$900,000
\$1,100,000-\$1,600,000	\$38,800 plus 6.4% of the amount over \$1,100,000
\$1,600,000-\$2,100,000	\$70,800 plus 7.2% of the amount over \$1,600,000
\$2,100,000-\$2,600,000	\$106,800 plus 8.0% of the amount over \$2,100,000
\$2,600,000-\$3,100,000	\$146,800 plus 8.8% of the amount over \$2,600,000
\$3,100,000-\$3,600,000	\$190,800 plus 9.6% of the amount over \$3,100,000
\$3,600,000-\$4,100,000	\$238,800 plus 10.4% of the amount over \$3,600,000
\$4,100,000-\$5,100,000	\$290,800 plus 11.2% of the amount over \$4,100,000
\$5,100,000-\$6,100,000	\$402,800 plus 12.0% of the amount over \$5,100,000
\$6,100,000-\$7,100,000	\$522,800 plus 12.8% of the amount over \$6,100,000
\$7,100,000-\$8,100,000	\$650,800 plus 13.6% of the amount over \$7,100,000
\$8,100,000-\$9,100,000	\$786,800 plus 14.4% of the amount over \$8,100,000
\$9,100,000-\$10,100,000	\$930,800 plus 15.2% of the amount over \$9,100,000
\$10,100,000 and above	\$1,082,800 plus 16.0% of the amount over \$10,100,000

New Jersey Inheritance Tax	
Class of Beneficiary	Tax Rate
Class "A": spouse, domestic partner, descendant, parent, step-child, mutually-acknowledged child	Fully exempt
Class "C": sibling, son/daughter-in-law	First \$25,000 - fully exempt Next \$1,075,000 - 11% Next \$300,000 - 13% Next \$300,000 - 14% Over \$1,700,000 - 16%
Class "D": any beneficiary who does not qualify as Class "A", "C", or "E"	If under \$500 - fully exempt If over \$500, first \$700,000 - 15% Over \$700,000 - 16%
Class "E": Charities and other exempt entities.	Fully exempt

Pennsylvania Inheritance Tax	
Class of Beneficiary	Tax Rate
Spouse	Exempt
Descendants & Lineal Heirs	4.5%
Siblings	12.0%
Other heirs, except charities and governmental entities which are exempt	15.0%

Uniform Lifetime Table (for RMD for IRA Owners)					
Age	Distribution Percentage	Age	Distribution Percentage	Age	Distribution Percentage
70	3.65%	80	5.35%	90	8.77%
71	3.77%	81	5.59%	91	9.26%
72	3.91%	82	5.85%	92	9.80%
73	4.05%	83	6.13%	93	10.42%
74	4.20%	84	6.45%	94	10.99%
75	4.37%	85	6.76%	95	11.63%
76	4.55%	86	7.09%	96	12.35%
77	4.72%	87	7.46%	97	13.16%
78	4.93%	88	7.87%	98	14.08%
79	5.13%	89	8.33%	99	14.93%

Single Life Table Exerpt (for RMD for Inherited IRA)					
Age	Distribution Percentage	Age	Distribution Percentage	Age	Distribution Percentage
37	2.15%	55	3.38%	73	6.76%
38	2.19%	56	3.48%	74	7.09%
39	2.24%	57	3.58%	75	7.46%
40	2.29%	58	3.70%	76	7.87%
41	2.34%	59	3.83%	77	8.26%
42	2.40%	60	3.97%	78	8.77%
43	2.46%	61	4.10%	79	9.26%
44	2.51%	62	4.26%	80	9.80%
45	2.58%	63	4.41%	81	10.31%
46	2.64%	64	4.59%	82	10.99%
47	2.70%	65	4.76%	83	11.63%
48	2.78%	66	4.95%	84	12.35%
49	2.85%	67	5.15%	85	13.16%
50	2.92%	68	5.38%	86	14.08%
51	3.00%	69	5.62%	87	14.93%
52	3.10%	70	5.88%	88	15.87%
53	3.18%	71	6.13%	89	16.95%
54	3.28%	72	6.45%	90	18.18%

Federal Estate Tax Exemption Rates		
Year	Exemption	Max. Tax Rate
2015	\$5,430,000	40%
2016	\$5,450,000	40%

Federal Income Tax Rates							
Income Tax Rate	Single		Married, Filing Jointly		Estates and Trusts		LT Cap. Gains Tax Rate
	2015 Taxable Income	2016 Taxable Income	2015 Taxable Income	2016 Taxable Income	2015 Taxable Income	2016 Taxable Income	
10%	\$0-9,225	\$0-9,275	\$0-18,450	\$0-18,550	---	---	0%
15%	\$9,226-37,450	\$9,276-37,650	\$18,451-74,900	\$18,551-75,300	\$0-2,500	\$0-2,550	0%
25%	\$37,451-90,750	\$37,651-91,150	\$74,901-151,200	\$75,301-151,900	\$2,501-5,900	\$2,551-5,950	15%
28%	\$90,751-189,300	\$91,151-190,150	\$151,201-230,450	\$151,901-231,450	\$5,901-9,050	\$5,951-9,050	15%
33%	\$189,301-411,500	\$190,151-413,350	\$230,451-411,500	\$231,451-413,350	\$9,051-12,300	\$9,051-12,400	15%
35%	\$411,501-413,200	\$413,351-415,050	\$411,501-464,850	\$413,351-466,950	---	---	15%
39.6%	Above \$413,200	Above \$415,050	Above \$464,850	Above \$466,950	Above \$12,300	Above \$12,400	20%
Individuals will owe an additional 3.8% on net investment income if their modified adjusted gross income is over the following thresholds							
	\$200,000	\$200,000	\$250,000	\$250,000	\$12,300	\$12,300	