GIFTS ARE GOOD FOR TAXES BUT NOT IF YOU GET SICK

by Alan D. Feller, Esq.

This falls under the category of "a little knowledge is a dangerous thing." The public relations machine that works for the annual gift tax exclusion has done an amazing job. People know about it; they cite the gifting amounts ($16,000 to any person from an individual or $32,000 to any person from a married couple for 2022) and generally accept that it is part of one's financial life. A concept so cemented in people's minds requires some skillful jackhammering.

Annual gifting using the tax exclusion is a perfectly fine tool for families that are anticipating an estate tax liability. As a reference point, the Federal Estate Tax begins at $12.06 million dollars, New York is $6.11 million. Intelligent gifting, besides its material benefit to the recipient, is part of an estate plan to reduce estate taxes by giving away resources incrementally without filing a gift tax return. The annual gift tax exclusion amount allows gifts to be made up to that amount without triggering a gift tax return filing requirement. Gift tax returns tally large gifts that ultimately count against the estate tax exclusion amount. Here is the kicker: If your estate does not project to be anywhere near the estate tax limits, then the annual gift checks that you keep writing will adversely impact you, should you need Medicaid for long-term care.

Nursing Home Medicaid and, in the near future, Home Care and Assisted Living level 3 Medicaid will penalize gifts. Medicaid does not warmly embrace your $16,000 gift to Cousin Jimmy as sound financial planning. Medicaid sees that gift as a penalizable scheme to reduce your assets to qualify for Medicaid.

The burden is truly on the gift giver to prove to Medicaid or at a Fair Hearing that this is not the case. Here is how Medicaid penalizes your gifts: Let's say, for 5 years straight, you send out two annual gift tax exclusion checks per year – one to Cousin Jimmy and the other to Aunt Clementine. Medicaid, as part of the 5-year nursing home look back, calculates that you have gifted $160,000. Medicaid will take that gifted amount and divide it by the Medicaid Regional Rate for the County of record. Putnam and Westchester have a 2022 Regional Rate of $13,399. The result is a 12-month penalty which means that you will have to pay privately for nursing home care for 12 months. Remember that the gift total was $160,000. Twelve months of nursing home care in the Hudson Valley will most likely cost upwards of $190,000-$220,000. The math definitely is not in your favor.

You know your situation. If your holdings are significant and net worth figures hover in the millions of dollars, then gifting should be in the conversation to lower estate taxes. If your assets do not approach estate tax limits, then having Medicaid pay for long-term health care will be in play, and in that case, gifting can be problematic. Understanding what realistic liabilities lie ahead is the key to sound planning. Talk to the professionals at The Feller Group, P.C. today at (845) 621-8640 to schedule your free no-obligation virtual or in-office consultation.

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