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Time is running out - Gifting in 2012

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What is the urgency for gift and estate tax planning in 2012? On December 31st, the current \$5.12 million federal and estate gift tax exemptions are scheduled to expire. On January 1st, 2013, they will be replaced with exemption amounts of \$1 million. The advantage of the higher exemption amounts can be captured by making gifts prior to the end of the year. However, in order to ensure that such gifts are completed in time, individuals must start the gifting process immediately.

The decrease in the exemption amount is combined with an increase in the gift and estate tax amount. Thus, in addition to planning for the jump in capital gain rates (from 15% to a maximum of 23.8%) and dividend rates (from 15% to a maximum of 43.4%) caused by the end of the "Bush-era tax cuts" and the enactment of the Medicare contribution and payroll tax, individuals also must plan for a jump in the top federal estate and gift tax rate from 35% to 55%. Otherwise, the drop off of the "fiscal cliff" may be higher than expected.

Some common estate and gift planning techniques to consider include: establishing and funding lifetime spousal benefit trusts; establishing an irrevocable life insurance trust and funding the trust with a paid-up life insurance policy; establishing a grantor retained annuity trust (GRAT) and funding it with low-value closely held stock or other assets that are expected to rise in value; gifting all or a portion of non-liquid property, such as a family vacation home; and, making outright gifts of appreciated property to shift taxable gain to lower-bracket family members. Each of these techniques must be carried out carefully to ensure that the gifts are complete and that estate inclusion rules will not apply.

It is possible that after the Presidential election results are in, and prior to the end of the year, Congress will make changes to the looming drop in the estate and gift tax exemption. However, the political uncertainty makes it hard to predict what will happen. Discuss the various possibilities and your specific estate planning situation with your financial, tax, estate and business planning advisors, and determine what gifting is appropriate for you in the remaining months of 2012.

Kelly Guarino is an associate with Lourie & Cutler, P.C., Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540