‘Tis the Season for Giving

By: Casey Winebarger, Esq.

It’s the little things at this time of year that make me feel like it’s the holidays, whether it’s the smell of hot cocoa, the brisk chill in the air, or the crack of a warm fire. But none of these things immediately bring Christmas to mind quite like hearing the ring of the Salvation Army bell outside my favorite stores.

As the ring of that bell symbolizes, the holidays are a time when people are in the spirit of giving, whether to their family and friends, their churches, or their favorite charity. But these gifts don’t just help out the recipients. If done correctly, giving may also help you save money on your taxes.

The benefits of giving are two-fold. In the long term, gifting money or property removes it from your estate and lowers the potential estate tax burden that could result at the time of your death. If you give property that has appreciated in value since it was acquired, you remove that appreciation from your estate, too. Furthermore, if the appreciated property is given in-kind, rather than sold and its proceeds gifted, there is no taxable event, meaning you will not owe any income taxes on the accumulated gains.

In the short term, giving can help reduce your income tax liability. This can happen in several ways. First, if you have property that has decreased in value since it was acquired, you could sell it and give the proceeds, thereby generating recognition of a loss. That loss could then be used to offset any gains you may have on your income taxes.

Second, if you give to a qualifying charitable organization, you could get an income tax deduction in the year the gift was made. There are a few requirements you must satisfy in order to get this deduction. The recipient-organization must be a 501(c)(3) tax-exempt public charity (a list of qualifying charitable organizations can be found in IRS Publication 78, “Cumulative Lists of Organizations Described in Section 170(c) of the Internal Revenue Code” available on www.irs.gov; this list is updated annually). You must also substantiate your gift with a receipt or cancelled check showing the date, recipient, and amount of the gift. If the gift is not cash, the receipt must include a description of the property. Finally, the charitable deduction is an itemized deduction; therefore, you must itemize in order to take it. The maximum you can deduct for charitable donations in one year is 50% of your adjusted gross income. Any excess can be carried forward to the next tax year.

While gifting can help reduce your income and estate taxes, you should be aware that it could cause you to incur a gift tax liability. The IRS imposes a gift tax on all gifts of money and property, regardless of who the recipient is, which is charged to the donor. However, there are several exclusions and credits which prevent most folks from ever having to pay gift tax. In 2010 and 2011, the annual exclusion allows you to gift up to $13,000 per recipient per year without incurring gift tax or having to file a gift tax return. Married couples can collectively give up to $26,000 per recipient per year and still be excluded from the gift tax. For gifts over the annual exclusion amount, you have a lifetime credit of $1 million. This means that you can give up to $1 million over and above the annual exclusion amount without paying gift tax. You must, however, file a gift tax return in this instance.

As 2010 winds down and we start to buy holiday gifts for our loved ones, think about how you might also be able to give a gift to yourself – the gift of a lower tax bill on April 15. Remember, to be applicable to your 2010 taxes, your charitable donation must be received by the organization on or before December 31. Merry Christmas and Happy Holidays!

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