PREMIER
BROKERAGE SERVICES, INC.

IRS Issues Final Regulations on "Claw-back" of Lifetime Gifts

Overview

On November 22, 2019 the IRS issued final regulations addressing the basic exclusion amount allowable when computing federal gift and estate taxes. **These final regulations prevent lifetime gifts which exceed the available exclusion amount at death from being 'clawed back' and taxed as part of the donor's estate**.

Example

The Tax Cut and Jobs Act of 2017 is expected to "sunset" in 2026, lowering the allowable basic exclusion amount from $10,000,000 to $5,000,000 (adjusted for inflation).

Here is an example of what a claw-back would have looked like prior to the new regulations:

- **Client makes a gift of $11,000,000 today** (which is within the allowable basic exclusion)
- **At death, the basic exclusion amount is $6,000,000**
- **Result: $5,000,000 of the gift is taxed in the estate at death**

New Rule

The final regulations clarify that taxpayers making large pre-sunset gifts may base their estate tax credit on the greater of two amounts:

- The amount in effect in the year of death; or
- The amount in effect in the year of the gift (not to exceed the amount of the gift)

Significance

Taxpayers hesitant to take advantage of today's unprecedented basic exclusion amount ($11,580,000 in 2020) need to be aware that they can make tax-free gifts today without fear of penalizing their heirs when they die. **Experts agree that an Irrevocable Life Insurance Trust funded by a short pay life insurance contract can be a particularly strong technique to optimize this limited-time estate planning opportunity**.

Corporate Headquarters: 604 Harper Avenue ▪ Jenkintown, PA 19046 ▪ Tel: 800.543.5555
Miami Office: 3470 NW 82nd Avenue, Suite #670 ▪ Doral, FL 33122 ▪ Tel: 800.683.3077
www.premierbrokerage.com

CASE STUDY

Overview

- James & Elaine Cannon are a 70-year old husband and wife with an **Estate Value of $140 MM**
- Their Estate Planning Attorneys recommended that James and Elaine fund future Estate Transfer Costs with **$70 MM of Survivorship Coverage**.
- James and Elaine have $45 MM of Survivorship Insurance in-force leaving a **shortfall of $25 MM**.

Considerations

- James and Elaine have utilized $2 MM of their **Lifetime Gift Exclusion**
- Both James and Elaine were approved at Standard NT rates during prior underwriting
- The additional $25 MM of coverage will fall under **Jumbo Guidelines** due to the total line; as such carriers will be limited to offering **Internal Retention** only.

Strategy

James and Elaine's Advisors have recommended that they apply for a $25 MM Principal Life Survivorship Policy funded with a single premium.

The Bottom Line

- The advisors were able to benefit from **LIBRA Insurance Partner's Enhanced Capacity Platform with Principal Life**, allowing the full $25 MM of death benefit (rather than being limited to the normal $12.5 MM).
- The advisors were also able to take advantage of **Principal Life's Single Pay Underwriting Platform** which allowed them to improve both James and Elaine to a Preferred rate class. **This reduced the Single Premium by $1.5 MM (from $9,895,778 to $8,322,283)**.
- James & Elaine were able to **optimize the $11 MM Gift Tax Exclusion** before it reverts to $5 MM in 2026.

Corporate Headquarters: 604 Harper Avenue ▪ Jenkintown, PA 19046 ▪ Tel: 800.543.5555
Miami Office: 3470 NW 82nd Avenue, Suite #670 ▪ Doral, FL 33122 ▪ Tel: 800.683.3077
www.premierbrokerage.com