Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wants to share this information with you.

GIFTS – IS IT REALLY BETTER TO GIVE THAN TO RECEIVE?
The Tax Consequences of Making a Gift

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It is relatively easy to make a gift. Many people don't even consult with their attorney or accountant when making a gift as they believe they know all of the rules. Unfortunately for them, there are tax traps set with every gift that is made. One of the biggest misconceptions is the annual exclusion which currently is $14,000 per donee per year, but much of the public believes that this amount is also permitted to be given away without punishment for asset protection planning purposes. It is not! The Wisconsin Medicaid authority does not follow rules relative to taxes.

The annual exclusion of $14,000 is important as no gift tax return (Form 709) is required to be filled for this gift. The donee's (child's) receipt of funds will not be taxable on his or her personal income tax return. The $14,000 exclusion is available each year.

Another misconception is that if a gift is greater than $14,000, then a tax is due. Again, each person who is a U.S. citizen or resident has an exemption of $5,450,000 for lifetime gifts. In other words, a person could make a gift and not pay taxes until the $5,450,000 threshold is met, in addition to the $14,000 annual exclusion gifts. It may also be important to understand that the $14,000 annual exclusion gifts may be given to any person, whether related or not. This could include a child, stepchild, grandchild, in-law or any other friend or family member.

In addition to these gifts, a family member, such as a grandparent, could fund a so-called 529 Plan for their grandchild with the current maximum of $70,000 for a onetime gift. This would mean that the grandparent is using their annual exclusion for the current year plus the next four years. If the grandparent should die within the next five years, then a portion of the gifts will be included in their tax return for estate tax purposes to the extent that they have a federally taxable estate. However, there is really nothing lost because if the person had not made the gift, they would have had the assets in their estate in any event. A benefit would be that the amount has been gifted and, therefore, any appreciation or income earned on the gift from the date the money was transferred out of the donor's name is also exempted for estate tax purposes.

It is important to note that there are no gift taxes assessed for gifts made between spouses, so long as the spouses are U.S. citizens. Therefore, if a wife were to transfer her summer home to her husband, there would not be any gift tax return filed, as there is the unlimited deduction between spouses.

When a gift is made, there is also the issue of tax basis. This is the cost basis of the donor (parent). This means that when a gift is made, the recipient of the gift receives the gift at the donor's basis. For example, if the donor gives shares of IBM stock to his son, and if the value of the shares is $100 as of the date of the gift, and the donor paid $40 per share, the donee's (child's) basis is $40 per share, and gain or loss will be recognized by the donee based on the $40 per share tax basis. When a donor gives shares of stock, it is very easy to determine what the fair market value is on the date of the gift for gift tax purposes, but it may be more difficult for the donee to determine what the tax basis is for the shares. The donee will need to determine the exact cost basis.

If a Power of Attorney is being utilized in order to make the gift, there should be specific powers within the Power of Attorney which permit the gifting to occur. Also, there should be self-dealing powers if the donee is the attorney-in-fact under the document.

"Those Who Plan Ahead Win.
Those Who Don't Plan Ahead Lose."

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

*Attorney Timothy P. Crawford is a Nationally Board **C**ertified **E**lder **L**aw **A**ttorney (**CELA**). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

Timothy P. Crawford was invited to join the **Council of **A**dvanced **P**ractitioners (**CAP**) of the **N**ational **A**cademy of **E**lder **L**aw **A**ttorneys (**NAELA**) in August of 2005. **CAP** is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client's Choice Award.

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