

## **PORTABILITY**

Under Federal law, each of you can give away during lifetime and at death as much as \$5,340,000 (2015) in cash or other property without generating any gift or estate taxes. This amount is referred to as the “Exemption Amount,” and it is indexed for inflation. The Exemption Amount for 2016 is \$5,450,000.

Unless you make sizeable gifts, it is possible that you will never use up any part of your Exemption Amount while you are alive. The reason is that under Federal law, each of you can give away \$14,000 each year to any person you choose, without reducing your Exemption Amount. This \$14,000/year exclusion from the gift tax is known as the “Annual Exclusion,” and it is also indexed for inflation and will increase in \$1,000 increments every few years. You will use part of your Exemption Amount if the gifts you make during your lifetime exceed or fail to qualify for the Annual Exclusion. To the extent you use your Exemption Amount on gifts made during your lifetime, you will also reduce the Exemption Amount which is available at your death. You will only owe gift tax, which is a 40% tax, if you use up your entire Exemption Amount during your lifetime, and then make additional gifts which exceed or do not qualify for the Annual Exclusion.

Married persons can also save estate taxes by taking advantage of “portability” after one spouse dies. In the past, if a spouse failed to use all of that spouse’s Exemption Amount, the unused portion was lost for good. Now, though, the surviving spouse can claim the unused portion of the deceased spouse’s Exemption Amount, thereby increasing the amount that can be given away during lifetime by the surviving spouse or left tax-free when the surviving spouse dies. Portability can be very useful in lowering the amount of estate taxes that must be paid. However, the only way to take advantage of portability is to file a federal estate tax return (Form 706) for the estate of the spouse who dies first. This return is due 9 months following the death of the deceased spouse (although it can be extended for an additional 6 months). The federal estate tax return is a complicated return that can be expensive and time-consuming to prepare. Also, the amount claimed by the surviving spouse is a fixed number which does not adjust for inflation. If the surviving spouse lives long enough, or if the United States experiences periods of high inflation, the value of the deceased spouse’s unused Exemption Amount could be reduced significantly.

It should be noted, however, that portability only applies to the amount claimed from the “last” deceased spouse. If the surviving spouse remarries and then once again becomes a widow or widower, the unused Exemption Amount claimed from the first spouse will be lost, and only the unused Exemption Amount from the last deceased spouse can be claimed. It may turn out that the last spouse’s unused Exemption Amount is larger than that of the former spouse, which would be a good result. But it might also be the case that the last spouse is wealthy and decides to use his or her entire Exemption Amount on gifts to other persons, leaving the surviving spouse with no unused exemption to claim.