

How does it work?

Gifting business interests

You make gifts of ownership interest in the business during your lifetime. You can do this gradually, or all at once. Gifts are usually designed to fit within annual or lifetime gift tax exemptions.

This strategy could fit if:

You want to give some ownership in the business to children.

You are willing to share ownership of the business during your lifetime.

You have sufficient sources of income and can afford to gift, rather than sell, the business to family members.

The value of the business is growing, and you want your children to benefit from that growth while removing that growth from your taxable estate.

You are not concerned about losing the “step-up” in basis at death.

This strategy may not fit if:

Your financial situation requires that you sell the business.

Family members are not capable of managing the business, or not interested in owning it.

A “step-up” in basis is important to you.

What else should you consider?

- This strategy is often used as part of an overall succession plan. It is rare to see an entire business transferred by gift, but it makes sense to use these tax-free transfer opportunities as much as possible.
- You must have an independent appraisal to verify the value of the gift.
- Valuation discounts may be applicable if you gift minority interest, or an interest that is subject to restrictions on transferability.
- Gifts can be made in trust, if desired.
- Beneficiaries become owners and have all the legal rights of owners.
- You cannot retain income from the gifted asset. (You can't keep all the fruit and claim that you gave away the tree.)
- In some cases, your business structure may allow you to make gifts of non-voting or limited interests.

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What are the gift tax rules?

Annual exclusions

- Each individual may gift a specified amount per person each year with no gift or estate tax consequences. The annual exclusion is \$14,000 for 2017, and \$15,000 in 2018.
- For a married couple, both husband and wife can gift.
- There is no limit on the number of beneficiaries. You can gift to anyone — children, grandchildren, their spouses, unrelated individuals or trusts for their benefit.
- There is no lifetime dollar limit on annual gifts, as long as your gifts do not exceed the annual exclusion amount for any beneficiary during one year.
- Over time, annual gifts can add up, allowing you to transfer substantial wealth without estate or gift tax.

Lifetime exclusion

- Each individual has a lifetime gift exemption of \$5,490,000 in 2017, increasing to \$5,600,000 in 2018. This lifetime limit comes into play only if you make gifts in excess of your per-person annual exclusion gifts.
- This limit on cumulative gifts applies to the donor. Regardless of how many individuals you gift to, your lifetime limit is \$5,490,000 for 2017, increasing to \$5,600,000 in 2018.
- For a married couple, husband and wife combined can gift \$10,980,000 in 2017 (\$11,200,000 in 2018).
- If a \$1,000,000 gift is made today, it effectively “uses up” part of the applicable exclusion that would otherwise be available at your death.
- However, any unused exclusion is still available. And you still get the benefit of future increases in the applicable exclusion.

How is this strategy implemented?

- Work closely with your attorney and CPA and be sure you understand the gift and estate tax rules. Your tax advisors can also help you determine if valuation discounts may be applicable.
- Obtain an independent appraisal.
- Your attorney can prepare necessary documentation to transfer the shares or other business interests.
- If you gift shares in your business, consider a buy-sell agreement to protect against unexpected transfers to others.
 - For example: If you gift shares to a child and your child predeceases you, who will own the shares?
 - Consider using life insurance to fund the buy-sell agreement.
- Keep your estate plan up to date as family and business circumstances change.

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