



Real Estate Report

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Gifting of Partnership Interest

By: Jeffrey Kohn, Accountant

Once common technique of gifting partnership or LLC interests is now under scrutiny and the IRS is being more aggressive in challenging this estate planning strategy. The IRS is limiting a taxpayer's ability to make such gifts and it has become necessary to be more careful about the way that the transfer is structured.

In prior years, it used to be that a taxpayer could easily transfer a minimal percentage of a partnership or LLC each year as a gift without affecting the taxpayer's lifetime gift tax exemption. The lifetime gift tax exemption (\$5 million for 2011) is the total amount that a taxpayer can transfer to others free of gift tax. This amount does not include the annual exclusion (\$13,000 for 2011). For example, a father owns a building, and wants to give away part of it to his children. So he puts the property into a partnership or LLC. The property is valued, and he transfers a value of \$13,000 per year to each child. This allows him to give a tax-free gift to his children, without the need to file a gift tax return or use any of his \$5 million lifetime exemption.

Now, the IRS is holding that the recipient has to be able to either have use of the interest, or receive consistent income from the interest, or else it's not considered a gift. Often times a percentage of a partnership or LLC interest is transferred, but the recipient has no real use of it because the donor still maintains full control and

has retained rights to potential income. The IRS is more heavily scrutinizing these types of transactions, and this may negatively impact the tax benefits of gifting partnership or LLC interest.

There is also a timing issue at hand. For 2011 and 2012, current law states that the lifetime exemption is \$5 million. But on

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January 1st 2013 the lifetime exemption amount is scheduled to be reduced to \$1 million. Therefore due consideration should be given to ensure that the enhanced exemption is fully utilized and future estate tax liabilities are fully mitigated.

If structured in an appropriate way, there are many benefits to gifting partnership or LLC interests, and can be a worthwhile and effective strategy. Here is why:

- Generally, there is no tax upon contribution of assets to the partnership or LLC, even if the asset has increased in value.

- The general partner can make a gift transfer up to \$13,000 per recipient, per year. This does not affect the \$5 million lifetime exemption. And, there is no need to file a gift tax return as long as the gift has a value of \$13,000 per year or less.
- Valuation discounts can be applied to the interest, which may potentially allow for a greater transfer of value to the recipient.
- Any post transfer appreciation related to the gift escapes estate taxes on the donor's passing, and the eventual liability is further deferred.

The next several months are critical in ensuring that due attention and consideration is paid to estates of individuals with a substantial asset base. The increase in the lifetime exemption of \$5 million is scheduled through December 31st 2012, at which time it is planned to be reduced. Therefore, an opportunity to avoid estate and gift taxes in the future will be lost. The gifting of partnership or LLC interests still remains, but requires planning ideas to achieve the goal of wealth transfer to the next generation, at a minimal tax cost.

As always, please call your RINA representative for more information regarding estate planning ideas, opportunities and consequences.



Ask the CPA

By: Brenda Jemmott, Tax Manager

Can I claim Section 179 depreciation on my commercial rental activity?

Maybe. IRC Section 179 allows taxpayers to expense certain current year fixed asset additions that would normally be depreciated. Prior to The Small Business Jobs Act of 2010, real property costs were not eligible. That changed for qualifying costs placed in service in 2010 and 2011. Eligible costs include nonresidential qualified leasehold improvements, qualified restaurant property costs and qualified retail improvements. There are, however, limiting factors, including a “trade or business income” limitation. If the property is owned by a partnership,

partnership must have income, too. Trade or business income includes wages and other business income. Also, certain rental income may be treated as active business income for purposes of the taxable income limitation.

You may be able to claim 179 on Commercial Real Estate activity. Contact your RINA tax advisor to determine whether it would be applicable.

We had made improvements to our office building in 2007 which included windows, lighting and plumbing. We recently learned these reduced our energy costs. Are there tax benefits for this and are we too late to claim them?

You may claim a deduction if the improvements decreased your power and water costs by 50% from the standard costs established for buildings in the same classification as your office building. The deduction is the capitalized costs of the energy saving improvements, limited to \$1.80 per square foot multiplied by the number of square feet of your office building.

To claim the deduction, you can amend your 2007 income tax return or you may claim the deduction on your next timely filed federal income tax return by requesting an automatic change in accounting method.

Contact Brenda at (510) 893-6908 if you have questions regarding how to claim the federal energy efficient commercial building deduction.

Looking for Real Estate Tax Relief?

Attend One of Our Upcoming Seminars
“Strategies that Allow Tax Credits of 10% - 20%”
Presented by Ray Evans, CPA

Find out how you can receive an income tax credit of 20% of the amount spent to rehabilitate your certified historic structure, or 10% credit for old, non-historic buildings placed in service before 1936.

Walnut Creek: Wednesday, May 25th – 8:30am to 10am
RINA accountancy corporation, 1220 Oakland Blvd., Suite 300
Complimentary Continental Breakfast will be served

Oakland City Center: Wednesday, May 25th – 11:30am to 1pm
RINA accountancy corporation, 475 14th Street, Oakland
Complimentary Lunch will be served

San Francisco: Thursday, May 26th – 11:30am to 1pm
RINA accountancy corporation, 100 Montgomery St, Ste 2075, SF
Complimentary Lunch will be served

Please RSVP to teresa.moss@cdec1031.com or call 877-448-1031



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