

# U.S. ESTATE/GIFT TAX PLANNING - PART 2

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# THE WOLFE LAW GROUP

The Wolfe Law Group is an international array of legal and tax experts providing collaborative services for Global High Net Worth Investors on a per client basis.

Gary S. Wolfe, A Professional Law Corporation has over 35 years of experience providing clients with expertise for IRS Civil and Criminal Tax Audits, International Tax Planning, and International Asset Protection.

## **Awards**

Since 2015 Gary have been the recipient of 29 separate international tax awards from 10 different global expert societies in London/UK including:

International Tax Planning Law Firm of the Year Award (2017) – International Advisory Experts.

International Tax Advisor of the Year (2017) - Global Business Magazine/Prof. Sector Network.

[Click here for complete list.](#)

## **Books**

To date Gary has written 18 e-books [\(available on Amazon\)](#) regarding the IRS, International Tax Planning and Asset Protection. [Click here for complete list.](#)

## **Articles**

To date Gary has published or been interviewed in 100+ separate articles published by 15 different US and International magazines. [Click here for complete list.](#)

## **Video**

In December 2016 Gary was interviewed by California CEO Magazine and RCBNNNews.org on the subject of Criminal Tax Evasion and IRS Tax Audits: Civil and Criminal Issues. This 4 part series, which has been published by [Lorman Education](#), can be viewed below:

[Criminal Tax Evasion - Part 1](#)

[Criminal Tax Evasion – Part 2](#)

[Criminal Tax Evasion – Part 3](#)

[Criminal Tax Evasion – Part 4](#)

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## U.S. Estate/Gift Tax Planning - Part 2

Under the 2017 TAX ACT (THE "ACT"), the US Estate and Gift Tax Exclusion was more than doubled for 2018 forward.

For singles it went from \$5.49 m to \$11.2m (For married taxpayers from \$10.98m to \$22.4m).

Effectively a married couple can as of Tax Year 2018 gift \$22.4 m (and additional husband & wife gift splitting of \$28,000 collectively per donee).

The gift tax planning is based on multiple considerations:

- 1) Politics may revise that amount after future elections.
- 2) The major tax advantage of gifting the total exclusion of \$22.4m for married taxpayers is that the post-gift appreciation on the assets is excluded from estate tax (40%).
- 3) Once the assets are no longer part of the taxpayer's estate they are not subject to 3<sup>rd</sup> party creditor claims for satisfaction of any debts owed by the decedent taxpayer.

Real Estate presents major tax benefits if properly structured, subsequent to the 2017 TAX ACT.

Consider an estate that in addition to other assets has millions of dollars in depreciable assets (i.e. commercial real estate including office

buildings, shopping centers, and rental apartments held in a revocable trust).

While transferring the real estate assets to an irrevocable trust the taxpayer may use various valuation tax planning which may include minority interest discounts, blockage and other discounts to diminish the gift tax value of the real estate.

Under the case law, gift tax planning discounts for fractional interests transfers of real estate may reduce the fair market value of the gift transfer (for tax purposes) by up to 50% of the value of the underlying real estate.

For the particular taxpayer the transfer of assets via gift may allow transfer of nearly two times the amount estate/gift tax exclusion i.e. \$44.8m (2 x \$22.4m), which is estate and gift, tax-free.

Under the 2017 Act, the real estate may gain the benefit of the 20 % Tax Deduction for Pass Thru Co. distributions if it is held by a Pass-Thru Co.

The real estate ownership interest(s) (held in the form of either stock, partnership interest, LLC member interest, sole proprietorship) may be used to capitalize the irrevocable trust, triggering the application of the gift tax rules.

The transfer of the assets to the trust should be supported by written appraisals as the value of each asset.

Once the appraisals are completed, the transfers should be aggregated for their total value and a Form 709 Gift Tax Return should be filed for the tax year of the transfer.

As long as the aggregate value of all the real estate is under \$22.4m (after application of discounts) then no 40% gift tax is due.

Post gift appreciation is excluded from further gift or future estate tax (40%).

Third party creditors are unable to attach these assets.

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