

# LEGAL EASE



Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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## How much can I give away without paying a gift tax?

In 2018, you can give more away without paying gift tax, both as a result of the increase in the annual gift tax exclusion and the increase in the lifetime gift tax exemption. For the last five years. The annual gift tax exclusion had remained flat at \$14,000 per donor per person for the last five years. A married couple could give \$28,000 per year to any number of people without paying gift tax; a single person could give \$14,000 per year in the same manner. If more than the annual gift tax exclusion amount were to be given to a single person or persons in a given year, then it would be necessary to file a gift tax return. However, since most people have not given away more than \$5 million in their lifetimes, it became a formality.

Now, in 2018, the annual gift tax exclusion has been raised to \$15,000 per year. The lifetime gift tax exemption is \$5.6 million for individuals and \$11.2 million for couples (the new tax law may have increased the amount to \$11.18 for individuals). Therefore, if you give away more than \$15,000 to any one person in 2018, you should file a gift tax return but you would have needed to give away more than the lifetime exemption in order to actually pay any tax. It is important to note that the person to whom you give the money does not need to pay income tax on the funds; the only possible obligation for tax is to the giver.

There are exceptions to the above rules. Generally, transfers to a spouse result in no federal tax whatsoever. However, if the spouse to whom the transfer is made is not a U.S. citizen, only \$152,000 can be given in 2018 without reporting the gift. Gifts to charitable entities do not need to be reported unless you retain some interest in the gifted property. The \$15,000 limit applies to other property, such as stock, and not just to cash gifts.

The amount that can be contributed to an ABLE account each year is increasing from \$14,000 to \$15,000 starting in 2018. Achieving a Better Life Experience (ABLE) allows people with disabilities to save up to \$100,000 in special savings accounts to use for disability related expenses without jeopardizing their eligibility for Medicaid, SSI or other means tested government benefits. It must be opened by the person with the disability if the disability occurred before age 26. The funds in the account are tax free upon distribution.

Through all this discussion, it is vital to remember that these gifting rules are IRS rules and do NOT apply to Medical Assistance eligibility. Therefore, you can give money away tax free but if the transfer occurs within five years prior to admission to a qualifying Medicaid facility, the transfer will result in a penalty when the institutionalized person is otherwise eligible for Medical Assistance (i.e. out of money). This type of gifting strategy is not recommended as a means to qualify for Medicaid. Consult with a qualified elder law attorney if you are thinking of making large gifts and skilled nursing care is a possibility in the foreseeable future.