This post was published to Rubin on Tax at 5:51:07 PM 7/30/2010

THE PROS AND CONS OF MAKING GIFTS IN 2010

With a year without estate tax, and reversion to 2001 rules in 2011, 2010 surely goes down as one of the most challenging years in transfer tax planning. One of the big issues in 2010 is whether taxpayers should be making taxable gifts. As with most planning issues, there is no cut and dried answer - the circumstances of the taxpayer need to be considered. Below are some of the key pros and cons of making taxable gifts in 2010.

PROS

-With lower stock market and real estate values, the transfer value (and thus transfer costs) are likely lower than in the past.

-The maximum gift tax rate is only 35% in 2010, returning to 2001 rates in 2011. If the transferor survives three years from the date of the gift, any gift tax paid escapes transfer tax, thus reducing the maximum effective rate to below 26%.

-If the Bush tax cuts are allowed to expire, income tax rates will increase. Therefore, gifting strategies that allow income to accrue in lower rate taxpayers will be more valuable than in the past.

-With a low interest rate environment, many gifting strategies produce lower gifts than in high interest rate years.

-Direct gifts to lower generations, as opposed to gifts to generation skipping trusts, may be more favored in 2010 than in other years due to uncertain availability of generation skipping tax exclusion ratio benefits for transfers to trusts.

CONS

-If the transferor dies in 2010, no gift tax would apply. Therefore, unnecessary transfer taxes are incurred. However, this risk can be minimized by waiting to complete gifts until very close to the end of the year. This also allows for more flexibility should Congress change the transfer tax laws prior to the end of 2010.