MEDICAID AND TAX UPDATES FOR 2022

by Aaron E. Futterman, CPA, Esq.

Every January first brings changes to the laws and rules surrounding Medicaid eligibility and estate tax planning. Some of these updates are seen by exploring a question that involves both. People believe these two topics, Medicaid and estate taxes, are unrelated and are for families that are on opposite extremities of wealth and assets. However, one question, raised often by clients, shows the confluence of the topics and that an understanding of both areas of the law are necessary to properly advise clients. The question usually goes like this (or similar variation)… "I thought I could give $10,000.00 to my kids free…right?"

Clients commonly believe that the annual exclusion from gift tax extends to Medicaid rules, and we must advise them that this is incorrect (usually). Of course, this leads to the question of … "what does the gift tax have to do with estate tax and what does it have to do with Medicaid and … by the way… what is the gift tax?"

Our explanation begins by stating that the gift tax is unrelated to the income tax and the gift recipient will not need to report it on their income taxes; then, that the gift is not deductible on the donor's income tax return. After, that there is a federal gift tax imposed on gifts greater that $16,000.00 per person per calendar year in 2022 , also that there is no New York State gift tax equivalent. We then must explain that the DONOR is the person who pays the gift tax if gifts exceed $16,000.00. Then, that although there is a tax due and a gift tax return (IRS form 709) must be filed, we will not need to write a check to the IRS unless the gifts during the year exceeded $12,076,000.00 . This figure represents the 2022 indexed for inflation amount of the lifetime exclusion of $12,060,000.00 plus the annual exclusion of $16,000.00; the New York State basic exclusion amount has increased for decedents dying in 2022, it is now $6,110,000.00 up from $5,930,000.00.

Next comes the explanation of the connection between gift tax and estate tax - to prevent families from impoverishing wealthy individuals close to death. We then explain New York State's three-year claw back rule which brings gifts back into the taxable estate if made within three years of death.

Finally, after going through the tax issues we now need to break the news to clients that the tax-free annual gift exclusion is solely an IRS rule and applies only to taxes. Clients must understand that gifts can cause ineligibility for Medicaid (which pays for nursing homes) if the gift was made within the five-year lookback period.

For community Medicaid, gifts made on or after October 1, 2020, are without any penalty if clients apply for home care Medicaid prior to April 1, 2022. However, if an application for home care Medicaid is made on or after April 1, 2022, and the gift was made on or after October 1, 2020, a new 30-month lookback and penalty period will be applicable.

To confuse matters entirely, we must explain that under some circumstances gifts are not punished at all, even within the lookback periods. Gifts not punished include gifts to the individual's spouse or to a child who is blind or disabled, or to a trust established solely for the benefit of such child; or to a trust established solely for the benefit of a disabled person under 65 years of age. A gift may not cause a period of ineligibility if made for a purpose other than to qualify for Medicaid .

In summary, we can clearly see the relationship between these two different topics and our need to stay updated on latest changes in both areas of the law so we can always best advise our clientele. Updated figures for 2022 include:

MEDICAID IN NEW YORK 2022:

1) Regional Rate for LONG ISLAND: $14,012.00 – used to calculate penalty resulting from gifting a Medicaid applicant's assets.
2) Resource Allowance: $16,800.00 . The amount of assets permitted.
3) Community Medicaid Monthly Income Allowance: $934.00 . Income a Community Medicaid applicant is allowed to keep each month.
4) Community Spouse Monthly Income Allowance: $3,435.00 . Monthly income a "well" spouse can keep while his/her "ill" spouse resides in a nursing home.
5) Community Spouse Resource Allowance (max): $137,400.00 . Assets, excluding the primary residence, that a "well" spouse can keep while his/her "ill" spouse resides in a nursing home.

ESTATE/GIFT TAX 2022:

1) Federal gift tax annual exclusion $16,000.00 per person per calendar year.
2) Federal lifetime exclusion $12,060,000.00 – set to expire, unless Congress acts, at the end of 2025.
3) The New York basic exclusion amount is $6,110,000.00
4) No New York gift tax, but three-year claw-back for gifts made within the three-year period prior to death.

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Aaron, along with his partner Ronald Lanza established the Law Firm of Futterman, Lanza & Pasculli, LLP (formerly Futterman & Lanza). Aaron Futterman presents frequently and enjoys educating people on elder law, estate planning, Medicaid planning and how people can best protect their assets."