Does Taking Care of My Parents Mean That I've Made a Taxable Gift?

How State Laws on Taking Care of Parent(s) Affect Gifting

As baby boomers age, younger generations must contemplate the question of what needs to be done when it comes to taking care of their parents. The answer depends upon where you reside and how payments are made.

<u>Where You Reside</u>

Whether a transfer is a gift or a fulfillment of a legal obligation to support is a matter of state law. Where a duty to support exists, payments made to support an aging parent is not a gift. The duty to support must be a legally enforceable obligation under state or local law, not a moral obligation. A person's domicile impacts what is deemed support because state law determines if a payment is for support or a gift. Many states in the US have filial responsibility laws which require adult children to be responsible for some level of care of their parents. New Jersey, Connecticut and California have these laws, while New York does not.

Since adult children in New York have no legal obligation with respect to the care of their parents, or any obligation with respect to their expenses, transfers of money or other assets to parents are subject to the gift tax (and are taxable to the extent that they exceed the annual exclusion). Generally speaking, once you cross the Hudson River into New Jersey, where financial care for parents is required, a person's support for their parent is not subject to the gift tax regulations. Many states impose an obligation limit, so only amounts under the limit (and the annual exclusion) are free of gift tax.

<u>How Payments Are Made</u>

Regardless of where you live, certain transfers are not subject to the gift tax, such as payments made directly to medical service providers, including amounts paid for medical insurance. Even if you reside in a state where care for parents is subject to gift tax rules, expenses can be approached in a tax-advantaged way. Consider making medical payments directly to the medical provider from your funds, while advising your parents to pay other expenses (that would otherwise be subject to a gift tax) from their own resources. Each family is unique and the laws in each state may differ slightly. Understanding tax law and dispersing wealth efficiently and in accordance with them requires careful planning.

For more information, or to discuss specific circumstances, contact your Anchin Relationship Partner, Tamir Dardashtian or Michael Rudegeair, members of Anchin Private Client, at 212.840.3456 or info@anchin.com.

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