

## Farm Management



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# Gifts has its place in estate plan



## Farm & Family

By STACEY LEE

**A**S I write this article, I am reflecting on the busy and wonderful Christmas holidays. Watching “A Christmas Carol” by Charles Dickens on TV is an annual tradition of mine — what a wonderful story!

Since I am still in a holiday frame of mind, I’m going to use a modern Ebenezer Scrooge as my recent legal client with questions about lifetime gifting, or lack thereof, in my client’s case.

Please note that although the act of gifting is often done out of pure generosity, helping the younger generations out, or to further a charitable organization’s mission, gifting can also be very useful in reducing a taxable estate, transferring income tax obligations to a child who is in a lower tax bracket and farm-business transition planning.

Scenario: Eb Scrooge, a 90-year-old man, came into my office to discuss his estate plan. Eb brought in his old, tattered will that was dated 70 years ago and had not been updated since. Eb had never married and did not have any children. Eb had admitted that he had been greedy and self-serving his entire life, driving away friends, family and the love of his life due to his “Bah! Humbug!” attitude. Eb had spent his lifetime as a lonely, sad, but extremely wealthy man.

However, Eb had come into my office with a renewed sense of energy and wanted to share with me the life-changing dream he had had the night before. Eb told me he was visited by three “gifting” ghosts in his dream — the gifting ghost of young bachelor Eb, the gifting ghost of farmer-banker Eb and the gifting ghost of retirement Eb. Each gifting ghost had brought Eb back to that particular time in his life to revisit his estate plan to see if gifting would have been appropriate at that time.

### Key Points

- Gifting is one special component of drawing up an estate plan.
- Your tax attorney and accountant will explain federal and state gifting laws.
- Be mindful that gifting does not fit into everyone’s estate planning strategy.

### The gifting ghost of young bachelor Eb

Eb said that this first gifting ghost brought him to see an estate planning attorney when he was 24 years old and was engaged to a beautiful young woman named Belle, who was becoming increasingly frustrated by Eb’s love for money over her. Eb had mistakenly thought that any money or assets he shared or gifted to his spouse would be subject to gift or estate taxes.

This gifting ghost and the attorney explained to Eb that there is unlimited gifting between spouses and that Eb would not need to pay any gift taxes or dip into his lifetime gifting allowance when gifting money or assets to his spouse. If Eb would have known this many years ago, it may have changed the course of his life, and Belle may not have left him at the altar for being such a scrooge!

The current federal law is that gifts (cash or assets) between spouses qualify for the unlimited marital deduction, eliminating federal gift taxes on these transfers. There is also no gift tax filing requirement on gifts between spouses.

### The gifting ghost of farmer/banker Eb

The second gifting ghost brought Eb to see an estate planning attorney when Eb was 50 years old and in the height of his farming and banking career. Eb was a workaholic, reinvesting all of his earnings into farmland. Eb’s farming and investment portfolio continued to grow, and so did Eb’s bitterness over having to pay more and more income taxes.

This gifting ghost and the attorney explained to Eb that, among several other income and estate planning alternatives,

he could consider gifting some of the cash or assets that he doesn’t want or need to reduce his income tax or potential estate tax liability.

First, Eb could either sell at a discount or possibly gift assets of grain, machinery, farmland or low-basis/highly appreciated investments to his financially struggling nephew. Second, Eb could consider putting his farming operation or farmland into an entity and beginning a gifting plan of the entity interest to his struggling nephew. Another alternative Eb could consider would be to gift cash to a supplemental needs trust established for his loyal clerk’s disabled son, Tiny Tim, whom Eb had started warming up to.

The current federal law for 2015 is that each individual can gift up to \$14,000 (\$28,000 per married couple) to each person each year, which is called the annual gift exclusion. A federal gift tax return needs to be filed on any gifts to any individual, other than your spouse, which exceeds the annual \$14,000 exclusion.

Also note that the gift tax is tied to the federal estate tax. So, you can gift during your lifetime or pass away with \$5.43 million in 2015. The annual gift exclusions do not count against the lifetime gift exemption.

There is currently no gift tax in Minnesota. The Minnesota Gift Tax law that was passed in 2013 was repealed. There is, however, a state law that adds back gifts made within three years of decedent’s death to the estate to determine whether there is Minnesota estate tax due.

There are several income tax and estate tax consequences that are specific to the type of gift being made. Gifting prior-year grain, fully depreciated equipment, low-basis land, entity interests, appreciated investments and cash gifts all have differing tax consequences. Check with your attorney and CPA before gifting.

### Gifting ghost of retirement Eb

The third gifting ghost that visited Eb brought him to see his estate planning attorney when Eb was cash renting all of his farmland, generating additional sub-

stantial income from his significant investments, paying large amounts of income tax and suffering from poor health in his advanced age.

Eb’s attorney explained the estate tax consequences if Eb passed away without revamping his estate plan. Eb was tired — tired of paying all those income taxes, tired of being lonely, and tired of being such a scrooge.

Although gifting assets can potentially protect assets for Medicaid reasons associated with nursing home costs, gifting can also cause issues with eligibility for Medicaid. This needs to be evaluated on a case-by-case basis. Obviously, this is not an issue for Eb Scrooge.

After Eb had finished sharing his dream with me, Eb’s excitement was evident. Eb’s change of heart regarding gifting, due to his recently obtained knowledge of the gifting laws and realizing that it was not too late, rejuvenated him.

After discussing his estate with me, Eb realized that he had extended family, loyal past employees, and charities that could greatly benefit from his considering a gifting plan.

### Gift only if you can afford it

As a note of caution, don’t gift unless you can afford to do so. If you are financially dependent on the income stream or wish to retain control of the particular assets, gifting may not be the appropriate strategy. My client, Eb Scrooge, had assets that he did not need or even want. His reasons for gifting were legitimate and did not jeopardize Eb’s financial security or his estate planning goals.

The good news is that Eb Scrooge is well on his way to take advantage of the gifting laws, help many individuals and charities, and reduce his income and estate tax obligations.

Most of all, however, Eb Scrooge had found his Christmas spirit this holiday season! Happy 2015!

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