

ASK THE EXPERT

TAX-FREE GIVING TO HEIRS

THE PROBLEM: My elderly Aunt gave me full Power of Attorney. As her condition declined, I sold her home and other assets and put the proceeds in a joint bank account in my aunt's and my husband's names so he could pay her bills. She recently died. We successfully avoided probate and now want to give her assets, around \$800,000 to her heirs. Can we transfer the cash without the heirs or ourselves having to pay gift tax?

THE EXPERT: Vincent W. Ansanelli, III, Elder Care Attorney and Managing Partner of Ansanelli Law Group, LLP, Amityville.

THE RULES: Jointly held assets automatically pass to the surviving joint account holder (in this case, your husband). Any subsequent lifetime transfer of those assets will be considered a gift, subject to gift tax. However, the law allows annual gift-tax exclusions and, in addition, a lifetime exemption.

THE STRATEGY: Maximize use of gift tax exclusion by making annual \$14,000 gifts both to the heirs and to their spouses, if they're married.

HOW IT WORKS: When your aunt died, the \$800,000 in the joint account became part of your husband's taxable estate. In order to pass that money to the heirs, he will have to make gifts to them (and/or their spouses). Individuals can give an unlimited number of people up to \$14,000 a year without either side incurring taxes.

If you choose, you and your husband each can give \$14,000 annually to each of the heirs without any of you having to pay taxes. Each heir would thus get \$28,000 a year tax-free. In addition, if the heirs are married, you and your husband could each give \$14,000 apiece to their spouses so that each spouse would get a total of \$28,000 a year tax-free.

The alternative would be to transfer more than the annual limit. But that would mean you and your husband would use up a large portion of your lifetime gift-tax exemption. In either case, get professional advice before deciding.

THE RESULTS: Your situation shows that avoiding Probate is not always a prudent objective. There are usually other important estate-planning issues, such as asset protection and tax consequences, to be considered.