GIFTS TO INDIVIDUALS

1. The Internal Revenue Code gift tax annual exclusion

   permits tax-free gifts of up to $10,000 per donee to be made each year. (A donee is a person who receives a gift from a donor. It is the donor who is subject to federal gift tax, if any.)

2. A donor can give up to $10,000 per year tax free to any

   number of donees, so that, for example, a parent may give a total of $30,000 divided equally among his three children each year without any tax being incurred.

3. Under the "split gift" provision of Internal Revenue Code

   Section 25.13, if a married couple (both spouses must be citizens of the United States) formally consents to split gifts, a gift made by one spouse to anyone other than the other spouse shall be considered made half by each spouse. The result is that, for example, a married couple with two children can give each child $20,000 each year without incurring gift tax. Consent must be expressed by filing a gift tax return, IRS Form 709-A, in each such case. Call the 800 number listed in the telephone directory for Forms, under U.S. Government, Internal Revenue Service.

4. In addition to the gift tax annual exclusion, transfers of

   money for tuition to an educational organization or for payment to a provider of medical care for the donee are not treated as taxable gifts. A parent can give a child $10,000 in one year and also pay the child's college tuition and doctor's bills without incurring gift tax.

5. In order to qualify for the annual gift tax exclusion, the

   gift must constitute a "present interest". The giving of a future interest in property will not qualify for the exclusion. Certain irrevocable trusts, however, in which gifts are placed in trust for a person under the age of twenty-one, may be considered gifts of present interest (rather than future interest) and thus qualified for the annual exclusion. Such trusts must give the minor beneficiary of the trust the current right to remove assets from the trust or to have assets of the trust expended for his benefit before he reaches twenty-one. Such a trust, for example, must also include a provision that any amounts not so expended by or for the beneficiary pass to him when he attains the age of twenty-one, and that if the beneficiary dies before twenty-one, the balance of the trust is payable to his estate or his designee appointed under a general power of appointment.

6. The basic principle of the IRS gift tax, reflected in the

trust rules of the preceding paragraph, is to treat as a taxable gift any transfer of property by an individual for less than adequate consideration. Generally speaking, to be a taxable gift, a transfer must be complete, leaving the donor with no dominion or control over the gift. A "gift" which leaves the giver in control of the subject matter of the gift, or which may in some way revert to the giver, is probably not a gift by IRS standards.

7. A Deed of Gift (Form 408) is a useful device for putting on

record the transfer of a gift. It proves ownership and also serves as documentation for the IRS if necessary.

8. A gift to a minor under the Uniform Gifts to Minors Act

differs from a trust in that even though the gift is delivered to a custodian rather than to the minor donee, the gift is the minor's absolute property from the moment of delivery. There is no need to apply to a court for a guardian of the minor's property. The gift is given to the custodian who can then deal with it according to the authority given by the donor. Any income that comes from the gift must be used for the donee's benefit. Because the gift is the minor's absolute property, it cannot revert to anyone in the event of his death before majority, but instead passes by his will or by the laws of intestacy if he makes no will. When the donee reaches 21, he has an absolute right to possession of the gift.

9. The subject of gifts and their tax consequences is much too

complex to be covered fully here. Do further research, or seek expert advice, if you go beyond simple transfers.