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## Family Businesses Catch a Big Break

By ANNE TERGESEN

**It is the gift tax that keeps on giving.**

Families now have the chance to pass a substantial stake in their businesses to the next generation—even before handing over the reins. But transferring ownership can raise complicated succession and estate-planning issues that families need to address before giving away so much as a share of stock.



Mark Matcho

To recap: As part of the tax deal passed by Congress late last year, the gift-tax exemption jumps to \$5 million from \$1 million for individuals and to \$10 million from \$2 million for couples in 2011 and 2012.

Yes, that means people can give away that much now without paying a penny in taxes.

"We have a golden opportunity to move wealth at no tax cost," says Mark Nash, a partner in private-company services at PricewaterhouseCoopers. And those who make a gift now, tax-free, also shield future appreciation from taxes.

But the two-year window raises difficult questions for family-business owners. While those in charge don't necessarily have to give up control, they may need to make some momentous decisions. Among them: who will eventually lead the business, how to treat other beneficiaries fairly and how to pass down wealth without jeopardizing their own retirement security.

The answers may determine which estate-planning techniques make the most sense for a family to use, says Patrick Ungashick, president of White Horse Advisors, an Atlanta financial-advisory firm that specializes in small businesses. Because decisions of this

magnitude "cannot typically be made in weeks or even months," he adds, "those who want to take advantage of the new gift-tax ceiling shouldn't wait to start planning."

Over the next two years, Terry Davis, 53 years old, says he plans to transfer to his two sons a portion of his stake in The Wire Shop Inc., a Fort Valley, Ga., manufacturer of wiring used in heating and air-conditioning units, among other products. Because Mr. Davis, who also is the CEO, doesn't intend to step down for eight years, he plans to give his sons nonvoting shares. "I'd like to keep control," he says.

By giving away some of his stock now, Mr. Davis says, he won't have to worry that his sons could be forced to take on debt or sell the company at a "fire-sale price" to satisfy the estate-tax bill they otherwise may incur upon his death.

Yet such a move causes a new anxiety for Mr. Davis: Before his oldest son, Austin, 28, joined the company in 2006, his "exit plan was to build up the value of the business and sell it." Now, with most of his assets tied up in the business, he says, "it's a challenge to see how to fund my retirement."

Mr. Davis says he recently upgraded his company's retirement plan from a Simple Individual Retirement Account plan to a 401(k). As a result, he will receive a company match and can contribute a maximum of \$22,000 this year, versus \$14,000 with a Simple IRA.

He also may exercise an option to purchase the building his company rents. That way, he can lease it back to the company for an amount that will leave him with an income after covering the mortgage.

For those in Mr. Davis's shoes, other possible solutions include establishing a profit-sharing or defined-benefit pension plan, or staying on the job as a salaried employee, consultant or paid chairman. Those who paid themselves below-market salaries during lean times may be entitled to recover "lost wages."

Some family businesses even establish "salary continuation plans" to provide one or more key employees with a regular paycheck for a set number of years in retirement. To pass muster with the Internal Revenue Service, such programs should generally be established well ahead of an owner's retirement and pay "reasonable" amounts, White Horse's Mr. Ungashick says.

Another option to generate retirement income: Rather than give away shares—either outright or in a trust—you can sell them to a so-called defective trust for the benefit of children or grandchildren.

These complex arrangements come with many tax benefits. They typically involve the sale of shares in a privately held company at a discount, and a loan—plus a gift—from the business or its owner to finance the purchase. Since the trust purchases the shares at a discount, the beneficiaries can keep the excess value, plus any appreciation, estate-tax-free. And if structured properly, the business owner won't owe any capital-gains tax on the sale's proceeds, which can be used to fund his or her retirement.

However the gift is made, business owners should consider it in the context of an overall estate plan, consultants say. A decision to transfer assets to some children now can raise awkward questions about the timing, nature and size of gifts to others.

Consultants frequently advise families to earmark assets outside a company for those who aren't on the payroll. That way, the child who takes over can manage the business without having to consult siblings, some of whom may press for fat distributions.

If you don't have other assets to give away, some experts recommend you or the business purchase a life-insurance policy in a trust in order to shelter the death benefit from the estate tax.

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