



## JAMES E. DE MARTINO, ATTORNEY ELDER LAW STRATEGIES

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# IRS GIFTING V. MEDICAID GIFTING

## NJ Long Term Care Planning

A commonly asked question concerns a person's ability to give \$18,000 per year, to any number of individuals, without incurring a gift tax from the Internal Revenue Service.

Although this is a perfectly acceptable mechanism to "spend down" for death tax purposes, it runs at odds with Medicaid. In short, if such transfer was made within the past 60 months of applying for Medicaid, it subjects that person to a penalty.

In order to determine the nature and extent of the penalty, one takes the \$18,000 and divides it by \$11,550 (the NJ Medicaid divisor). The result is 1.15. For all intents and purposes, Medicaid rounds it to the next higher decimal. Consequently, a transfer of \$18,000, within the 5 yr. look-back period results in a two month penalty.

Translated, this means that the person must wait two months (penalty period) before applying for Medicaid. Consequently, that person must find another way to pay for long-term care for those months.

James E. De Martino is licensed to practice in the State of New Jersey.

Our practice is limited to estate planning, long-term care planning, and NJ Medicaid asset protection.

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## UPDATED FOR 2024

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## **James E. De Martino, Attorney**

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