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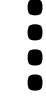

Maximizing Wealth: The Importance of Coordinating Financial Assets with the Estate Plan

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Objectives

- Clarify estate planning essentials: Revocable Trust, Will, Powers of Attorney

- Review various financial assets and how different types of assets are best coordinated with an estate plan.

- Identify techniques to ensure effective coordination of financial assets.

- Identify tax considerations related to coordinating financial assets and estate planning.

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MAXIMIZING WEALTH

Strategies to Maximize Wealth

- Optimize Tax Efficiency
  - Tax Minimization
  - Tax Deferral
  - Tax Leveraging Strategies
- Clear Financial Goals
- Budgeting
- Save and Invest – Invest Strategically
- Diversify Income Streams
- Reduce Debt (sometimes)
- Asset Protection
- Professional Advice – Use a Team
- Continuous Self - Education

Why Estate Planning Helps Maximize Wealth

- Asset Protection
- Tax Minimization
- Probate Avoidance
- Business Succession Planning
- Asset Allocation & Management
- Incapacity Planning
- Health care and Long-Term Care Planning
- Family Harmony
- Legacy Preservation
- Professional Team of Advisors

ESTATE PLANNING ESSENTIALS

Trust

What is a Trust?

A trust, in general, is an arrangement whereby a party called a trustee holds, invests, administers, and distributes property for the benefit of or to the creator of the trust, his or her spouse if one, his or her children and descendants, if any, or other beneficiaries. The trust is a fiduciary arrangement whereby the settlor provides detailed directions regarding the management of the settlor's property.

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Revocable Trust

What is a Revocable Trust?

A revocable trust is a type of trust that can be revoked, changed, or amended at any time by the person who created the trust. A revocable trust can be contrasted with an irrevocable trust which cannot be changed without following specific statutory procedures or obtaining a court order. The person who creates a revocable trust is typically referred to as a settlor or a grantor and often acts as trustee while alive and with capacity.

Purposes of A Revocable Trust

- Avoiding Probate
- Privacy (Trust doesn't have to be named after the settlor.)
- Incapacity Planning
- Control and Flexibility
- Continuity
- Estate Tax Planning
- Less Administration Expense at Death (if deceased cares since he/she/hers/they is deceased)

Doesn't Portability Eliminate Need for a Trust?

- Portability allows a surviving spouse to have more than his/her own exemption by allowing the surviving spouse to use any unused portion of the deceased spouse's exemption; however, there are limitations on the use of portability.

  - Portability is only available to married couples.
  - Asset protection and control over disposition is lost when assets are given directly to spouse.
  - If $13m of assets are placed in credit shelter type trust for surviving spouse and the assets grow to $26m by the time the surviving spouse dies, the entire $26m will avoid estate taxes while the ported exemption value will remain at $13m (or amount at time of death of first spouse).
  - Portability doesn't work for GST.

  - The tax laws MIGHT change.

Estate Plan Implementation Is Important

- Retitle Assets to Trust but verify there is no contractual TOD that will prevail over the trust.

- Funding the Trust Matters. This is the best incapacity planning and avoids probate at death.

- Consider All Beneficiary Designations. Should trust be named as beneficiary? If trust is not beneficiary, should an asset that passes outside of the trust be part of a trust beneficiary's share?
  - Decision Needs to Be Intentional.
  - Tax Considerations May come into play.

- Coordinate all Estate Planning Related Documents.

- Coordinate Business Interests and Agreements.

The Pourover Will

- A pour-over will is a complement to a revocable trust. Generally, best practices involves funding the revocable trust during life of the settlor; however, this doesn't always happen. Pour-over will picks up any assets not titled in trust and "pours them over" to the trust.

- Pour-over will serves as a back-up to a trust that fails be establishing a trust that is the same as any trust that may have failed.

- Pour-over will results in privacy with respect to assets transferred to trust during life and only assets not transferred to trust have to be identified in probate.

- If all assets are transferred to trust during settlor's life and all beneficiary designations are coordinated, pour-over will may not come into play.

Financial Power of Attorney

What is a Financial Power of Attorney?

- A financial power of attorney authorizes another person to make financial decisions for you. The person creating the financial power of attorney is referred to as the **principal**. The person named to make decisions for you is called an **attorney-in-fact**.

- Different states may use different terms.

Creating a Financial Power of Attorney

How is a Financial Power of Attorney Created?

- State laws vary but generally, a POA is created in a written document in which a principal names an attorney-in-fact to act.

- POA must be in writing and witnessed, notarized or both.

- Many states have statutory forms. Such a form might be helpful in terms of third-party acceptance but the person completing may not understand the powers granted/not granted.

- Many financial institutions request clients to sign their specific form.
  - Doing so can unintentionally result in a revocation of an earlier power of attorney.
  - State laws now require financial institutions to accept the client's valid power of attorney.

When Does an Agent's Authority Begin?

- A "durable" power of attorney takes effect immediately – so exercise care.
- A "springing power" of attorney takes effect upon principal incapacity … but this can defeat the simplicity of the document.
- A specific date can be specified.

Authority of the Attorney-in-Fact

- The typical power of attorney provides fairly broad powers.
- Many statutes have certain powers that must be specifically stated despite the broad power grant.
- “Hot Powers” to consider carefully include gifting; creating, amending or revoking a trust; designating beneficiaries (often used to interfere with testamentary intent); power to sever joint tenancy and survivor rights.
- A power of attorney can provide for limited powers.
- A broad grant can be given to one person and a limited one to another.

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Other Comments on POA

- Power of attorney ends upon death.
- Financial POA typically does not have power over health care decisions.
- There can be gift and estate tax concerns (e.g. inclusion in attorney-in-fact estate).
- Give careful consideration to who is named as attorney-in-fact.
- Consider co-agents for accountability.
- A broad grant can be given to one person and a limited one to another.

Health Care Directives

- Terminology varies from state to state.
- Generally:
  - Power of Attorney for Health Care
  - Declaration or Right to Die Will
  - Medical End-of Life Sustaining Order
  - Mental Health Directives
  - Supported Decisionmaking
- Right to Die provisions can be incorporated into power of attorney for health care, resulting in more protections for patient.

Health Care Powers of Attorney

- Health care power of attorney is typically effective when principal is incapable of making health care decisions (can be temporary) or incapacitated.
- Attorney-in-fact (surrogate) should be someone principal trusts. The person appointed should know what the principal wants.
- Co-attorneys-in-fact can be considered but care should be exercised.
- Supplemental guidelines can be provided.

Uniform Health Care Decisions Act

- This is a new act approved by Uniform Law Commission in 2023.
- Capacity standards are clearer and someone declared incompetent can challenge the same.
- Provisions consider the modern family in designating default surrogates.
- Options related to decision-making are expanded and consider medical disagreements on certain issues.
- Mental health provisions can be included.
- More details for end of life preferences can be specified.

DUE DILIGENCE IN ESTATE PLANNING

Generally and Regarding Financial Assets

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Why Does Due Diligence Matter?

- Due diligence means: Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and not ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.
- Estate planning involves navigating a complex web of laws, regulations, taxes, family issues, and legal requirements.
- Due Diligence results in a more accurate and complete estate plan. By having all information necessary, the professional serving the client is able to facilitate IMPLEMENTATION.
- Due diligence is a fiduciary responsibility related to the estate planning process.
- Having all information facilitates anticipating contingencies and creating the flexibility needed related to the same.

Obtain Non-Asset Information

- Obtain:
  - Family Information
  - Premarital Agreement
  - Details of Marriage – when/where/states and countries of residence
  - Details About Children/Grandchildren
  - Disabilities in Family
  - Artificial Reproductive Technology

- Obtain:
  - List of Advisors
  - Religious Preferences
  - Current Estate Planning Documents
  - Pets
  - Intra-Family Relationships
  - Family Business
  - Family Philosophy
  - Health Issues
  - Citizenship status – US/Elsewhere

Due Diligence Regarding Asset Information

- Request Detailed Financial Information

- Obtain:
  - Tax Returns
  - Gift Tax Returns
  - Bank Accounts
  - Unique Personal Assets (artwork, guns, collections)
  - Investment Accounts
  - Closely Held Businesses
  - Life Insurance Details
  - Annuities
  - IRAs
  - Employment Agreements
  - Benefits Information
  - Real Estate
  - Inheritances
  - 529 Accounts
  - ABLE Accounts
  - Existing Trusts
  - Obligations to a Former Spouse
  - Long-Term Care Insurance
  - Assets in Another State or Country
  - Cryptocurrency

Determining Client Objectives is Part of Due Diligence

- Common objectives:
  - Incapacity Planning for Client and/or spouse.
  - Ensuring that client (and spouse if there is one) have sufficient assets and estate structure to care for client as long as client lives.
  - Provide for support and Security of Surviving Spouse.
  - Provide for support and Security of Minor Children and Adult Incapacitated Children.
  - Provide for Education of Grandchildren.
  - Create Incentives for Family Members to Achieve Certain Goals During Life.
  - Philanthropy.
  - Business Succession.

Common Objectives (cont.)

- Common objectives:
  - Control Disposition of Assets.
  - Asset Protection for client and/or beneficiaries from divorcing spouses and other creditors.
  - Privacy.
  - Avoid Probate.
  - Address Special Needs (not necessarily via a special needs trust).
  - Efficiency and Ease of Administration.
  - Involving Beneficiaries in Philanthropy.
  - Involving Family Members in Business.
  - Assisting Children with Wealth Related Concepts.

Assess Possible Deterrents to Estate Planning

- Estate planning involves discussing incapacity, death, family, money, and taxes. It is hard.
- Estate planning can be expensive while the results are intangible.
- Good estate planning can be detailed and complex.
- There may be family challenges.
- For clients with minor children, there may be difficulty in deciding on a guardian for children.
- Confronting death now can get in the way of finalizing the plan.

ASSET TRANSFER COORDINATION IN ESTATE PLANNING

Different Assets Pass Differently

- Different Assets Pass Differently
  - Assets that are not titled in trust and do not name a beneficiary will pass via probate.
    - Real Estate without a TOD.
    - Business Interests.
    - Bank Accounts without a POD.
    - Personal Property.
    - Intellectual Property.
  - Some assets pass by contractual designation.
    - A life insurance policy passes by beneficiary designation. If no beneficiary is designated, the policy will control the recipient of the proceeds.
    - Retirement accounts pass by beneficiary designation. If no beneficiary is designated, the account agreement will control how the proceeds pass.
    - Annuities are a contractual asset.
  - Some assets pass by operation of law (joint tenancy, tenancy by entirety).
  - If assets are titled in trust, disposition is controlled by the trust; HOWEVER, be sure that the trust controls by verifying there are no beneficiary designations. Contractual designations override trust titling.

Common Asset Transfers in Estate Planning

- Transfer to a Trust
- Joint Tenancy
- Tenancy in Common
- Tenancy By the Entireties
- Transfer on Death
- Beneficiary Designation

Fund Revocable Trusts

- Best estate planning practices involve funding revocable trusts.
  - Incapacity Planning (a family POA typically wants to be with an ill family member rather than running around transferring assets to trust).
    - Conservatorship is avoided.
  - Probate avoidance.
  - A TOD designation can avoid probate but doesn't necessarily provide incapacity planning.
  - A trust can provide for beneficiary succession. A beneficiary designation can do so but it can get complicated and financial institutions push back.

Coordinate Assets – Big Picture

- In working with a client regarding estate planning, consider which assets will pass through a probate or trust and those that will pass by beneficiary designation.

- Consider: Client in second marriage has $5m. He has an IRA with $1m currently. He wants second spouse to receive half of his gross estate. He names spouse as beneficiary of the IRA. He creates a trust providing for spouse to receive ½ of his “estate”.
  - Does spouse receive $2.5m or $3.5m?
  - Plan must specify whether assets that pass outside of a trust or will are part of the estate for purposes of the instrument.

Assist Clients With Asset Titling

- Collaboration with all advisors is key!
- Provide specific and detailed instructions.
- Provide the client all that is needed to accomplish retitling.
  - Exact titling.
  - Certification of Trust.
  - Trust Set Pages.
- Plan a six month to one year follow up meeting at the time the plan is finalized. An all advisor meeting is best practices.

Considerations Regarding Assets

- Estate Inclusion – Whose estate will an asset be included in?
- Estate Shifts – Asset might be shifted to the estate of another. Any shift should be intentional rather than unforeseen.
- Income Taxation – Income in Respect of a Decedent (IRD) is included in an estate and retains its taxable characteristic when passed to beneficiary (deferred compensation, IRAs, unpaid compensation)
- Apportionment of Tax Liabilities – Some trusts pay all expenses and taxes off the top of the trust assets. Make sure this is intended if there are assets that pass outside to the trust to a beneficiary who is not a recipient of trust assets.
- Desired Benefits – What are client goals regarding passing a particular asset?

COORDINATING ASSETS

Business, Real Estate, Investment Accounts

2024 Important Numbers

- Lifetime Exclusion $13,610,000
- Annual Exclusion $18,000
- Gifts to Non-citizen spouses $180,000
- §6166 estate tax deferral $1,850,000
- Trust taxable income maximum rate applies at $15,200
- 7520 rate October 2023 5.4%

Business Interests

- For any business owner, the business is an important asset to be coordinated with the estate plan.

- Business succession and asset protection concerning the business should be part of any estate planning discussion.

- Client might have founder stock. Care must be exercised to avoid compromising a 1202 exemption related to the stock. Consideration should be given to maximizing the benefits of 1202 by strategies such as “1202 stacking”.

- Client may have a buy-sell agreement that impacts the estate plan in terms of how ownership interest can be owned/transferred. Consider the *Connelly* case:
  - Question Before the Supreme Court: Should the proceeds of a life insurance policy taken out by a closely held corporation on a shareholder in order to facilitate the redemption of the shareholder’s stock be considered a corporate asset when calculating the value of the shareholder’s shares for purposes of the federal estate tax?

Business Interests (cont.)

- Client may have employment and other agreements with business that should be coordinated with estate planning.

    - Create beneficiary designation for any proceeds that could be paid to client after death as a result of employment agreement, deferred compensation agreement, restriction agreement, or other business related agreement.

- Asset protection planning should be incorporated to safeguard the business as well as non-business assets.
    - Legal structure is an important aspect of protecting the business. Is there a restructure that should be considered to mitigate exposure of various assets by segregating the same (e.g. is there real estate held in an operating business?)
    - Does business have adequate insurance? Liability, key person, business interruption, cyber liability, employment practices.

Business Interests (cont.)

- Has a tax efficient strategy been developed that creates flexibility with respect to succession planning.

- *Estate of Cecil v. Commissioner*, T.C.M. 2023-24 – Tax affecting is permitted for S corporations.

- Valuation is an important consideration in business succession planning.
  - CCA 202152018 Release Date: 12/30/2021 – Appraisal was not valid as it did not consider pending merger.
  - Baty v. Commissioner (U.S. Tax Court Docket No. 12216-21) – Mean of high/low of publicly traded company was acceptable valuation method.

Real Estate

- Residential Properties, commercial properties, rental properties, land, and vacation homes should all be coordinated with the estate plan.

  - Review ownership structure.
  - Non-residential real estate should generally be held in an LLC that is then owned by the trust.
  - Different LLCs should be used for different types of properties. A holding company with disregarded subsidiary LLC's may often be the best approach for both tax and asset protection purposes.
  - Real estate held in another state should be part of a structure that will avoid ancillary probate.
  - Verify that there is no TOD. Note that there is an insurable interest issue that exists regarding real estate that passes by TOD.

Investment Accounts (agency type)

- Consider holding investment accounts in LLC, which is then held in trust.
  - This approach adds a layer of asset protection and privacy to the investment account.

- Consider using a directed trust. A directed trust allows for the bifurcation of traditional duties of the trustee. A directed trust might appoint an investment advisor or investment advisor committee.

- For a client with significant investment assets, consider a family office/family management company using a Lender Bagel structure so that investment fees are deductible.
  - This approach has been common since the passage of the TCJA. The continuing usefulness of the approach will be in part dependent on whether the TCJA sunsets.

Consider a Family Management Company

- A family management company can be used for a family with multiple trusts and/or entities.
- Asset protection can be achieved.
- Management company must qualify as a trade or business.
- Use of a management company can make otherwise non-deductible expenses deductible.
  - Various entities can pay management fees to management company.
  - Management company pays legal and accounting for family members that might otherwise be non-deductible.
  - As long as entity qualifies as a trade or business, expenses are deductible.
- Management company creates a way to involve family members in the business (although for the philanthropic family, the non-profit entities might be the place to start).
- This approach can be done in conjunction with a family office.

Family Limited Partnership or LLC

- A family entity may be formed for one or more individuals who contribute assets to the entity.

- One of the primary purposes of forming an entity and contributing assets to the same is to provide asset protection for family wealth.
  - Assets transferred to entity can be shielded from potential creditors, lawsuits, and claims.
  - It is not necessary for a family to have significant wealth to achieve asset protection from wrapping entities around assets.
  - Generally, investment accounts can and should have an LLC wrapped around the account.

- A family entity facilitates estate planning by bringing family assets into one or more entities. Depending on the assets transferred to the family entity, there may be discount opportunities in transferring assets into the entity.

- To the extent desirable, interests in the family entity can be transferred to family members over time. Estate freezes can be achieved by transferring high growth assets to family members.

Family Limited Partnership or LLC (cont.)

- Family entity interests may be eligible for discounting due to restrictions on transferability, lack of control, and lack of marketability.

- Senior family member can retain a fair amount of control in a properly designed structure.

- Family entities require excellent documentation created by someone familiar with the rules for asset protection planning and strategies related to the objectives of the family business.

- Family entity must typically have non-tax purposes to withstand IRS scrutiny.

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ASSETS WITH CONTRACTUAL DESIGNATIONS

Common Contractual Assets

- Life Insurance
- Annuities
- Qualified Retirement Plans
- Business Related Agreements
- Marital Agreements (for current or previous marriage)
- Trusts
- Incentive Compensation Plans, Split Dollar Plans, Options

Contractual Designations and Powers of Attorney

- An attorney-in-fact can use a power of attorney to change the testamentary plan of the client.
- Example: Client has four children. Client purchased four annuities: one for each child. Client's oldest child is attorney-in-fact and makes withdrawals from the annuities for her siblings while letting her own grow.
- If attorney-in-fact has the power to change beneficiaries, he or she could change the beneficiary of an IRA or life insurance policy so that the assets would be distributed in a fashion other than intended.
- Financial advisors can be instrumental ensuring client's estate plan remains in order.

IRAs

- Types of IRAs

  - **Traditional IRA** – Contributions are typically tax deductible. When withdrawals are made, distributions are taxed as ordinary income. (There are some exceptions if non-deductible contributions were made.)

  - **ROTH-IRA** – Contributions are made with after-tax dollars; however, the funds grow tax-free and qualified withdrawals are tax-free.

  - **Rollover IRA** – A rollover is a traditional IRA created to be the recipient of a rollover from an employer sponsored plan. Tax status depends on tax status of original plan.

  - **Inherited IRA** – Taxation of inherited IRA depends on relationship to original account holder.

IRA Beneficiary Designations

- Understand the minimum required distribution and qualified designated beneficiary rules. Factors:
  - Did account owner die after 2019?
  - What is relationship of beneficiary to account owner?
  - Is beneficiary account owner's spouse?
  - Is beneficiary disabled or chronically ill?
  - Did account owner die before or after required beginning date?
- IRAs pass by beneficiary designation. Ownership cannot be transferred.
- Name a primary beneficiary and a successor beneficiary. Be aware of the difference between a successor beneficiary and a contingent beneficiary.
- Name beneficiaries of legal age.
- Understand eligible designated beneficiary and designated beneficiary

IRA Beneficiary Designations (cont.)

- Designated Beneficiary will typically be subject to a 10 year rule.

- Some beneficiaries may be subject to 5 year rule (non-individual beneficiary or non-qualifying trust).

- Trusts can be named as a beneficiary but typically the trust should be a specially designed retirement plan trust.
  - Trusts make sense when asset protection is a concern or controlling distributions to beneficiaries prevails over tax considerations.
  - Conduit trust may be better vehicle for spouse than direct rollover after SECURE Act 2.0.

- SECURE ACT 2.0 eliminated RMDs for 401k accounts. RMDs are required for those inheriting a ROTH-IRA.

Life Insurance is a Contract - Ownership

- Life Insurance Ownership:
  - Owner of life insurance typically has control of policy including right to change beneficiary and re-design policy.
  - Ownership of policy can affect its tax treatment. If policy owner and insured are different individuals, death benefit may be included in owner's estate for estate tax purposes. If designed intentionally and strategically, this can be a positive. If unintentionally, the result can be disastrous.
  - Plan for a successor owner.
  - Avoid the Goodman Triangle. Owner = A; Insured = B; Beneficiary = C. B dies. A has made a gift to C.
  - Ownership affects income taxes, estate taxes, and asset protection.

Life Insurance – Beneficiary Designations

- Exercise Care with Life Insurance Beneficiary Designations:
  - Name a successor beneficiary when the primary beneficiary is an individual.
  - Avoid naming a minor child as a beneficiary.
  - Avoid naming a disabled individual as a beneficiary.
  - Avoid naming a financially struggling individual as a beneficiary.
  - If policy is owned by an insurance trust, trust should be named as the beneficiary of such policy.
  - Change beneficiary after divorce from or death of a spouse.

Life Insurance Valuation

- Dematteo v. Comm'r, Tax Ct. Dkt. No. 3634-21 (July 21, 2022)
- Taxpayers made a gift of life insurance and had a well-known appraisal firm value the policies which was done based on the secondary market for life insurance. But the tax Regs require use of the interpolated terminal reserve value plus unexpired premiums. Reg. § 25.2512-6(a).
- Insurance valuations should probably include a Form 712 and an analysis of those numbers by an insurance expert.
- Insurance valuation regulations are old and should be updated.

Annuities - Parties

- Annuities are a contract between the owner and a company that provides annuities whereby owner makes payments or a series of payments to the company, which guarantees a stream of income.
- Parties to An Annuity:
  - Owner
  - Annuitant
  - Beneficiary
- Annuities operate on the terms of the contract.

Considerations With Annuities

- Beneficiary Designations Should Match Testamentary Plan.
- Not all Annuities are Tax Equal.
- Avoid making Minors owners or beneficiaries.
- Do consider and name a beneficiary.
- Annuities have creditor protection.
- Don’t use revocable trust as an owner. Tax deferred status may be affected.
- Income tax can be triggered in many ways.

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COORDINATING REGARDING CHARITABLE DESIRES

Some charitable strategies work for tax purposes even with no charitable interest

Charitable Planning

- Outright gift, during life or at death, is easy and simple. If a direct gift is desirable, consider lifetime gifts for income tax purposes.

- Gifts at death reduce estate tax exposure for the client with such exposure.

- An alternate to an outright gift at death can be a provision in a trust that includes distribution of a percentage of income to charities. This creates an income tax deduction from the trust income, which is subject to income taxes at very low threshold.

- Gifts to charities can be provided in a way that such gifts can be a “charitable drain” to reduce the size of an over-performing trust where there are concerns about beneficiaries receiving too much.

Charitable Planning (cont.)

- Donor-advised funds. Monitor new regulations. DAFs are simple and allow donor to continue to “advise”.
- Life Insurance Policy – Charity can be named as a beneficiary of a life insurance policy.
- Private Foundation
  - A private foundation is a type of 501(c)(3) that is primarily funded by a family desiring to manage their own philanthropic activities.
  - Private foundations can make grants to other non-profit organizations, conduct charitable programs or engage in activities that further their charitable mission.
  - Private foundations have limitations on contributions that are not as beneficial as public charities.
  - Private foundations have a minimum distribution requirement.
  - Private foundations cannot engage in prohibited transactions.
  - Self inurement rules prohibit self dealing.

Charitable Planning (cont)

- Charitable Trusts. There are various types of charitable trusts such as charitable remainder trusts and charitable lead trusts.
    - Such trusts are split interest trusts.
    - Trust can provide value to donor or beneficiaries as well as charity.
    - Various tax benefits can be obtained.
- Retirement Accounts.
    - Naming a Trust as a Beneficiary of a retirement account has tax benefits.
    - Qualified Charitable Distributions are a direct transfer of a distribution up to $100,000 per year from an IRA to a charity.
- Charitable Gift Annuities
    - Gift is made to charity in return for lifetime fixed payments.

STRATEGIES IN HIGH INTEREST RATE ENVIRONMENT

GRATS

- A "grantor retained annuity trust" (GRAT) is a trust in which the grantor retains the right to receive fixed annuity payments, payable at least annually, for a term of years (an annuity interest). At the end of the term, the remaining trust principal is distributed to the remainder beneficiaries (such as the grantor's descendants) or held in further trust for their benefit.
- With higher interest rates, the current asset value is less. The higher the interest rate and the longer the term, the lower the present value. On the one hand, when doing estate planning strategies, the interest may be higher but the asset is transferred at a much lower value.
- Most GRATs are short-term so interest rates should not be a big factor in using.
- Consider rolling GRATs, re-GRATting, and decreasing GRATs

QPRTS

- A residence can be transferred to a "qualified personal residence trust," or "QPRT." A QPRT is a trust to which one transfers a personal residence and retains the right to use the residence for a term of years, after which ownership passes to the remaindermen (e.g., children or a trust for their benefit).

- With higher interest rates, dust off the QPRTs.

- Example: The taxable gift for a transfer of a $2 million residence to a 10-year QPRT by a person age 60 is **$1.334 million** (at a 7520 rate of 2.8 percent). If the residence appreciates by 4 percent per year, it will be worth $2.96 million at the end of the 10-year term. If the rate is 6%, then the gift is reduced to **$981,000**. If the grantor is 70 rather than 60, then at 2.8% the gift would be $1.11 million and at 6% it would be down to $817,000.

Remainder Purchase Marital Trust

- A "remainder purchase marital trust," or "RPM Trust," involves a transfer to a trust for the grantor's spouse's benefit that is designed to qualify for the gift tax marital deduction and that will not be subject to estate tax at the spouse's death. As a result, the trust property passes to the grantor's children free of gift and estate taxes.

- The structure of an RPM Trust is as follows: One spouse (H) transfers assets to a trust in which the other spouse (W) has an interest (*e.g.*, an annuity or income interest) for a specified term or life, after which the trust assets pass to a trust for the children. At the time the RPM Trust is funded, the children's trust pays for its remainder interest. The spouse's interest qualifies for the gift tax marital deduction and the interest of the children's trust is not a gift because it is paid for.

- There are various structures for these trusts.

- This idea comes from David Handler!

Charitable Remainder Trust

- A charitable remainder trust (CRT) is an irrevocable trust (inter vivos or testamentary) that pays a stated amount each year to one or more individuals for a specified term of years (not exceeding 20), or for the life or lives of the individual or individuals. At the end of the term, the remaining trust property is distributed to charity.
- CRTs work better when interest rates are higher.
- To ensure that a CRT is a legitimate charitable giving vehicle, IRS guidelines require that the present value of the charitable beneficiaries' remainder interest be at least 10% of the trust assets' value when contributed. Calculating the remainder interest's present value is complicated, but it generally involves estimating the present value of annual payouts from the trust and subtracting that amount from the value of the contributed assets.

Why CRTs work better with higher rates

- The computation is affected by several factors, including the length of the trust term (or the beneficiaries' ages, if payouts are made for life), the size of annual payouts and an IRS prescribed Section 7520 rate. If you need to increase the value of the remainder interest to meet the 10% threshold, you may be able to do so by shortening the trust term or reducing the payout percentage.

- In addition, the higher the Sec. 7520 rate at the time of the contribution, the lower the present value of the payouts and, therefore, the larger the remainder interest. In recent years, however, rock-bottom interest rates made it difficult, if not impossible, for many CRTs to qualify. As interest rates rise, it becomes easier to meet the 10% threshold and to increase annual payouts or the trust term without disqualifying the trust.

THANK YOU

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