Annual Exclusion Gifting

By

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Have you considered passing some assets to your children or grandchildren while you are still alive, but have misgivings about giving them control of those assets at an early age? Gifts to children or grandchildren can be a good way to reduce a taxable estate if it is projected that your estate will exceed the estate and gift tax excluded amount. You can give a child or grandchild $14,000 (in 2013) a year without incurring taxes on the gift. If the gift is an interest in a closely held entity, it is possible to leverage the gift. A "Crummey" trust provides a way to take advantage of the annual gift tax exclusion while keeping the money in a trust until the child or grandchild is old enough to control and manage it. As important, any increase in value through investment of the trust principal and accretion in the value of the underlying gift will be out of your estate and will add to the value of the trust.

Most of you are familiar with custodial accounts for children, where a parent or someone else retains custody of the child's account. The problem with these accounts is that a child, upon reaching the age of majority (18 or 21, depending on the state) has the right to the assets. You may not want an 18-year-old getting substantial assets at that age.

By putting money for a child into a trust rather than a custodial account, you can decide the amounts of, and the timing of, the child's receipt of assets. However, in order for the gift to qualify for the annual exclusion amount, the child must have a "present interest" in the money. A mere promise to give someone money later does not count as a present interest, and will not qualify for the annual exclusion.

A "Crummey" trust (named for the court case that approved this type of trust) allows you to put money into a trust and receive a gift tax exclusion. The trust includes a provision that gives the beneficiary, or the guardian of the beneficiary, a window (usually 30 days) to withdraw the amount gifted to the trust. After the window of opportunity has passed the beneficiary can no longer withdraw the money and it becomes a part of the trust principal. The beneficiary, or in the case of a minor, the legal guardian, must be notified in writing of the gift and his or her right to withdraw the gift in order for the gift tax exclusion to be recognized. While there is the risk that the beneficiary will withdraw the money right away, they might well understand that any such withdrawals could mean that he or she should not count on any more gifts from you. Once the money is in the trust, you control how much the beneficiary can receive and when.

A few key implications and costs should be understood and evaluated. The "Crummey" trust is an irrevocable trust, meaning that once the gift is made the donor no longer has ownership and control of the

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asset gifted. An attorney having knowledge in trusts must be retained to draft the trust. The trust is taxed at trust rates, which while similar to those for individuals, have compressed brackets and can potentially result in higher income taxes. The trust has its own taxpayer identification number and files its own income tax returns each year (IRS Form 1041). The trust is treated as an asset of the child for financial aid purposes when the child applies to college. Finally, it is best that neither the donor nor the donor's spouse acts as a trustee, to avoid the trust assets from being included in the donor's gross taxable estate.

At Platinum Peak Advisors, we can work with your attorney to implement effective intergenerational gifting strategies.

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