The Many Ways to Structure a Gift Transfer

by Terri Getman, JD, CLU, ChFC, RICP AEP(Distinguished)

The combination of depressed market values and the historically high gift/estate exemption of $13,610,000 (2024 indexed) opens the door to significant wealth transfer planning opportunities for high net worth individuals and their families. While making a gift of an amount equal to a large part of, or all of, the exemption will produce better results than sporadic modest gifting it's not for everyone. In fact, a survey conducted by the AICPA revealed that less than 10% of clients worth $10 million or more have used **part** of their exemption.

It is not surprising that many individuals fail to make lifetime gifts in excess of the $18,000 (2024 indexed) annual exclusion. Many individuals, including wealthy individuals, are reluctant to give up control of assets because of a fear that they may need access to the funds for financial emergencies. Given the opportunity that currently exists to make large gifts between now and 2026 when the doubling of the exemption is set to expire we thought our readers might be interested in learning about the multiple ways to structure a gift. Following are the structures you might want to consider with your clients.

1

Gift Structure #1: Outright Gift to Individual(s)

The place to start is to determine how much of the $13,610,000 (2024 indexed) exemption remains. If the donor can make additional tax-free gifts, the next question to ask is whether he/she would be willing to make gifts of up to the unused exemption amount if the donor and spouse would have no access to the funds regardless of a reversal in financial situation. If the donor is willing to totally part with control the property can be structured to pass outright to another individual, such as a child, or in trust for a child/ grandchildren's benefit.

2

Gift Structure #2: Gift to a Discretionary Trust for the Benefit of Spouse and Children

If the donor is not willing to part with total control, then the next question to ask is whether he/ she would be willing to make gifts into a trust for the spouse (and children) of up to the unused exemption amount if the spouse and children may receive distributions at the discretion of the trustee. Upon the death of the spouse, the property will be held for the exclusive benefit of the children. A gift to a trust with discretionary distribution provisions to the donor's spouse will qualify as a completed gift and avoid inclusion in the taxable estate of both the donor and spouse.

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Gift Structure #3: Gift to a Discretionary Trust for the Benefit of Spouse with Possibility of Reversion to Donor

Where the discretionary trust with ultimate distribution to children is not an acceptable option, then the next question to ask the donor is whether he/she would be willing to make gifts into a trust for the spouse (and children) of up to the unused exemption amount if the spouse and children may receive distributions at the discretion of the trustee. Furthermore, upon the death of the spouse prior to the "donor," the spouse can decide whether all or any portion of the assets in the trust revert into a new trust created by the spouse for the benefit of the "donor" with an independent trustee determining the extent of the distribution.

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Gift Structure #4: Gift to a Trust Where Donor is a Beneficiary in a Self-Settled Asset Protection State

Where the above structure is not an acceptable option, ask the donor whether he/she would be willing to make gifts into a trust in a state that has enacted self-settled asset protection statutes where the donor and spouse are beneficiaries. Some of the states that have self-settled trust legislation include Alaska, Nevada, South Dakota, and Delaware. With this option it's important that the donor be told that the IRS could determine that the assets in the trust could be included in the donor's estate as a transfer with retained interest.

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Gift Structure #5: Series of Annual Exclusion Gifts

If your client is still reluctant to make a significant gift transfer to take advantage of the large exemption opportunity, acknowledge that making large gifts is not for everyone. Shift your effort to finding out whether your wealthy clients are willing to take advantage of the annual exclusion gifts of $18,000 (2024 indexed) per donor per donee. Over a period of time annual exclusion gifts can result in significant estate tax savings.

Annual exclusion gifts can be made in trust where the donee has the ability to take withdrawals, even if the time period for taking the withdrawal is limited. A properly structured and implemented "Crummey Trust" is one which qualifies for annual exclusion gifts. Where life insurance premiums are greater than the annual exclusion gifts there are techniques such as split dollar, private financing and premium financing where the gift of the premium can be discounted.

How DBS Can Help

Of course, all the above arrangements can be used to acquire life insurance on the donor. To learn more about any of the above trusts and how they can be used to acquire life insurance, call DBS's in house advanced case design resource, Terri Getman, J.D.,* CLU, ChFC, RICP, AEP (Distinguished) at 800-869-1327 extension 230.