INSIGHT ON ESTATE PLANNING

Take Full Advantage Of Your Annual Gift Tax Exclusion

You Can Relax If Your Estate Plan Includes A SPA Trust

Have You Named Successor Fiduciaries?

ESTATE PLANNING PITFALL

You Don't Have A Residuary Clause In Your Will

YEAR END 2021

1875 Century Park East • Suite 2000
Los Angeles, CA 90067
T: (310) 553-8844 • F: (310) 553-5165
www.weinstocklaw.com

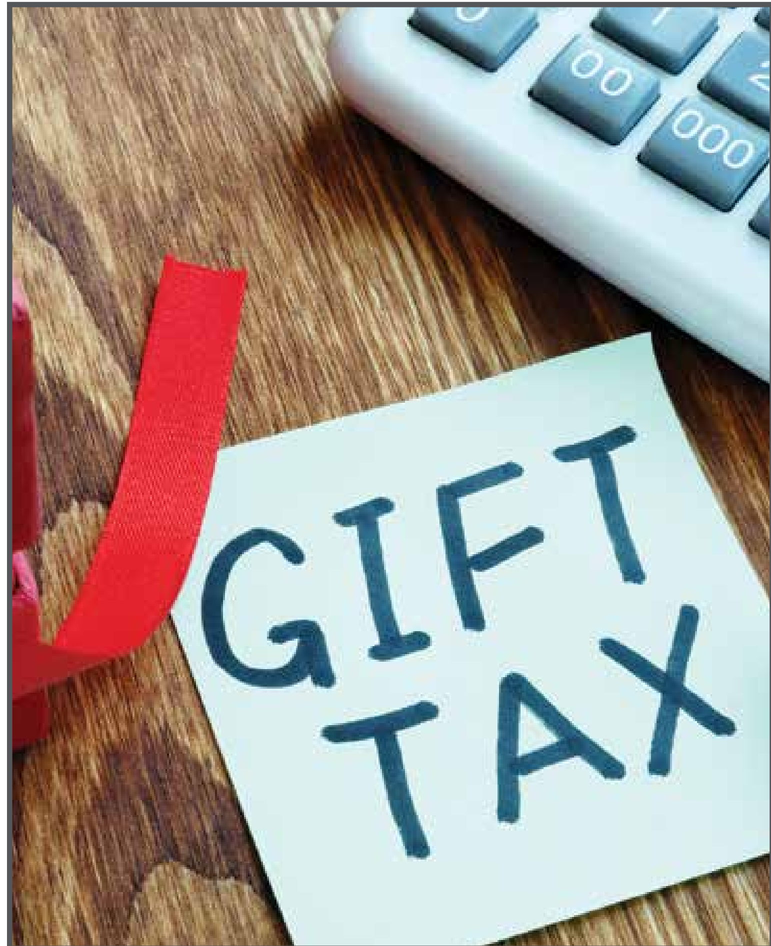
PRESERVING YOUR LEGACY

We welcome the opportunity to discuss your needs and help you meet your estate planning and wealth transfer objectives.

Please call us at (310) 553-8844 to let us know how we can be of assistance.

Take Full Advantage Of Your Annual Gift Tax Exclusion

Did you know that one of the most effective estate-tax-saving techniques is also one of the simplest and most convenient? By making maximum use of the annual gift tax exclusion, you can pass substantial amounts of assets to the younger generations without any gift tax.



In fact, by giving the maximum gifts in December 2021 and again in January 2022, you can reduce your estate by six figures if you're being generous to multiple beneficiaries.

Maximizing Your Gifts

Despite a common misconception, federal gift tax applies to the giver of a gift, not to the recipient. But gifts can generally be structured so that they're — at least to the degree possible — sheltered from gift tax. More specifically, by the annual gift tax exclusion and, if necessary, the unified gift and estate tax exemption for amounts above the exclusion. (Using the unified exemption during your lifetime, however, erodes the available estate tax shelter.)

For 2021, the annual gift tax exclusion is $15,000 per recipient. That amount will increase to $16,000 for 2022. Accordingly, you can give each family member up to $15,000 a year without owing any gift tax. For instance, if you have three adult children and seven grandchildren, you may give each one up to $15,000 in December, for a total of $150,000. Then you can turn around and give each one $16,000 in January, for $160,000 more — a grand total of $310,000.

Furthermore, the annual gift exclusion is available to each taxpayer. If you're married and your spouse consents to a joint gift, also called a "split gift," the exclusion amount is effectively doubled to $30,000 per recipient ($32,000 in 2022). Bear in mind that doing this triggers IRS reporting responsibilities (see "Do you have to file a gift tax return?" on page 3). Going back to the previous example of maximizing gifts to a total of 10 family members, a couple could gift up to $300,000 in December 2021, and $320,000 in January 2022, for a total of $620,000, all gift tax free.

Coordinating With The Lifetime Exemption

The lifetime gift tax exemption is part and parcel of the unified gift and estate tax exemption. It can shelter from tax gifts above the annual gift tax exclusion. Under current law, the exemption effectively shelters $10 million from tax, indexed for inflation. The inflation-indexed amount of $11.7 million in 2021 is increasing to $12.06 million in 2022.

However, as mentioned above, if you tap your lifetime gift tax exemption, it erodes the exemption amount available for your estate. For instance, suppose you give $850,000 to family members in 2021, with $150,000 sheltered by the annual gift tax exclusion. As a result, the available exemption able to shelter your estate in 2021 is reduced to $11 million ($11.7 million - $700,000).

Despite a common misconception, federal gift tax applies to the giver of a gift, not to the recipient.

Exceptions To The Rules

Be aware that certain gifts are exempt from gift tax, thereby preserving both the full annual gift tax exclusion and unified exemption. This includes gifts:

- From one spouse to the other,
- To a qualified charitable organization,
- Made directly to a healthcare provider for medical reasons, and
- Made directly to an educational institution for a student's tuition.

Do You Have To File A Gift Tax Return?

If the total value of your gifts doesn't exceed the annual gift tax exclusion limit, you don't have to file a gift tax return (Form 709). However, to establish the value of gifts of property with the IRS, you can file Form 709.

The bottom line: A gift tax return is required if you exceed the annual exclusion amount, or you give joint gifts with your spouse. Unfortunately, you can't file a "joint" gift tax return. In other words, each spouse must file an individual gift tax return for the year in which they both make gifts.

The deadline for the gift tax return is April 15 of the year following the year of the gift, the same as the due date for income tax returns. Accordingly, for gifts made in 2021, you must file your return by April 15, 2022, or October 17, 2022, if your gift tax return has been extended.

For example, you might pay the tuition of a grandchild's upcoming school year directly to the college. The gifts don't count against the annual gift tax exclusion.

Planning Your Gifting Strategy

The annual gift tax exclusion remains a powerful tool in your estate planning toolbox. Contact your estate planning advisor for help developing a gifting strategy that works best for your specific situation. •

You Can Relax If Your Estate Plan Includes A SPA Trust

During times of economic and tax law uncertainty, the more flexible your estate plan, the better. As some parts of the country are rebounding economically from effects of the COVID-19 pandemic, other areas continue to struggle. In addition, there's the possibility of major tax law changes on the horizon that could greatly affect your estate plan.

Because of this uncertainty, it's worth your while to consider all the strategies that can build flexibility into your plan. One strategy to consider is the special power of appointment (SPA) trust.

A Trust With A Twist

A SPA trust — sometimes referred to as a SPAT — is essentially an irrevocable trust, but as the creator or "settlor" of the trust, you grant a special power of appointment to a trusted individual. This person (the so called "appointer") acts in a nonfiduciary capacity to direct the trustee to make distributions to you (or to anyone else other than the appointer or his or her creditors or estate).

A properly designed SPA trust allows you to remove significant amounts of wealth from your estate, taking advantage of the current gift tax exemption, while retaining the ability to access the trust's assets — via the appointer — should your needs change in the future. In addition, because you aren't a beneficiary of a SPA trust, it won't be classified as a self-settled trust, making it possible to enjoy asset protection that's superior to that available through a domestic asset protection trust (DAPT).

SPA Trusts Vs. DAPTs

Typically, self-settled trusts aren't protected against claims by your creditors. But around one-third of the states have statutes that authorize DAPTs. These trusts shield assets against many creditors' claims, even though the settlor retains an interest in the trust assets as a beneficiary. There's some risk involved with DAPTs, however, because their effectiveness in protecting assets isn't well established, particularly for nonresident settlors who live in non-DAPT states.

With a SPA trust, you have no beneficial interest in the trust assets. So long as you don't retain any improper control over the trust, and distributions to you are entirely within the appointer's discretion, the assets should be protected against creditors' claims in all 50 states.

SPA trusts aren't risk-free, however. Conceivably, a creditor could argue that frequent distributions from the trust to you make you a *de facto* beneficiary. One way to avoid such a challenge may be for the appointer to direct distributions to your spouse, rather than you, making it more difficult to argue that you're a *de facto* beneficiary.

Another risk is that a creditor might challenge a gift to the trust as a fraudulent transfer. (See "Be aware of fraudulent transfer laws" below.)

SPA Trust Plus LLC

For certain types of assets — particularly business interests — holding these assets in a limited liability company (LLC) owned by a SPA trust can provide significant benefits. Typically, the trust would own the LLC

as a nonmanaging member, while you would be appointed as the LLC's manager. The LLC provides an extra layer of protection for the underlying assets, while you retain control over the business.

Because you don't own the LLC (it's owned by the trust), the assets are protected against the claims of your creditors (subject to fraudulent transfer laws). You can even receive management fees from the LLC, which, if reasonable, would be characterized as payment for services rather than distributions from the trust.

Be Aware Of Fraudulent Transfer Laws

Before you transfer assets — whether it's to a trust, another entity or an individual — be sure to familiarize yourself with the fraudulent transfer laws in your state. If a creditor successfully challenges a transfer as fraudulent, it can defeat the purpose of a SPA trust or other asset protection strategy.

To avoid running afoul of the fraudulent transfer laws before you give away assets — either directly or in trust — determine whether any current or potential creditors are likely to challenge the gift as a fraudulent transfer. And analyze your financial situation to be sure that you aren't insolvent and won't render yourself insolvent by making the gift.

Is A SPA Trust Right For You?

Because a SPA trust is irrevocable, you may be apprehensive of losing control of the trust's assets during uncertain times. However, at the same time, if you hold the assets outside of such a trust, they can be exposed to creditors' claims or gift or estate taxes. Your estate planning advisor can help you determine if a SPA trust is right for you. •

Have You Named Successor Fiduciaries?

It's generally not enough to appoint an executor to handle your estate after your death or name a trustee to administer a trust. Choosing qualified people to fulfill these duties requires forethought and in-depth analysis, but it's only half the battle. For greater protection, consider choosing a "successor fiduciary" who can step in at a moment's notice and take over, if needed.

A Fiduciary's Role

A fiduciary is an individual (or entity) authorized to act on your behalf regarding a range of financial and legal matters. He or she must put your best interests, and those of your family, first. Thus, a fiduciary has an ethical and legal obligation to act in good faith. This responsibility extends to the operation of trusts and estates.

A *successor* fiduciary is someone who assumes the role of fiduciary if the original fiduciary is no longer able to fulfill his or her duties. This can also apply to a trustee who manages assets "poured over" from a trust into an estate.

If you don't make the necessary provisions, a successor fiduciary may have to be appointed by a court. Thus, it's best to name one in your will or trust documents. Typically, this person is a relative, family friend or a trusted financial professional. In some cases, the successor fiduciary is a financial institution.

Character Counts

The attributes valued in selecting an initial fiduciary are basically the same for a successor fiduciary. Some relevant characteristics are sound judgment and experience, knowledge of family history, investment expertise, a sense of impartiality, and recordkeeping abilities. Avoid naming anyone with potential conflicts of interest.

In any event, don't just dump this into the lap of someone who isn't expecting it or won't be able to meet your expectations. The job comes with some strings attached. Depending on the circumstances, a successor fiduciary may face difficult decisions involving beneficiaries and might have to contend with intrafamily disputes.

Furthermore, a successor fiduciary must be aware that he or she may be held liable for breach of duties, including failing to address the actions (or lack of action) by the predecessor fiduciary. This may require reviews of investment and real estate transactions, tax returns, financial and retirement

plan statements, and other accounts. It's critical for the successor fiduciary to determine if assets have been prudently managed.

Preparing An Account Summary

One of the key duties of a fiduciary is preparing an account summary of assets, income and expenses. The fiduciary must maintain accurate records and make informed decisions. Transparency is essential. In some cases, the account summary may have to be presented in court, where interested parties can either agree to it or object.

After the account summary has been approved, beneficiaries can no longer contest the financial decisions made by the fiduciary during the applicable period. Nevertheless, a successor fiduciary can still be held responsible for various transgressions. For example, if a successor subsequently discovers mistakes, fraud or "manifest errors" under the predecessor's watch, the successor should move to reopen the account. Otherwise, the successor could be held liable for any losses.

If a successor fiduciary discovers misconduct by a predecessor fiduciary, a claim may be made on the predecessor's bond. The bond is an insurance policy ensuring that the fiduciary fulfills his or her duties to

the beneficiaries. A beneficiary or a successor fiduciary can seek damages from the bonding company if losses are attributable to fiduciary misconduct.

Finally, a successor fiduciary must be aware of the statute of limitations regarding certain transactions. Generally, for errors or misconduct by a predecessor, the statute of limitations begins to run when a successor fiduciary knows — or should have known — about a potential breach.

Choose Wisely

Choosing successor fiduciaries shouldn't be taken lightly. Carefully consider your alternatives and appoint successor fiduciaries that measure up to the strict standards required by law. Your estate planning advisor can help you make informed choices. •

ESTATE PLANNING PITFALL

You Don't Have A Residuary Clause In Your Will

You may spell out specific bequests in your will, such as giving your grandchild your prized collectibles or dividing up jewelry among nieces, nephews and other family members. But what about the rest of the "stuff" that's left over? It can be covered by a standard "residuary clause" in your will.

As the name implies, a residuary clause is a provision in a will that passes the residue of an estate to designated beneficiaries. Consider it a safety net that catches all your possessions that aren't covered by specific gifts. For example, you might bequeath the residue of your estate to your spouse or, if your spouse predeceases you, to be divided evenly among your children.

Generally, the bulk of an estate is distributed according to the residuary clause included in the deceased's will.

Most important, a residuary clause ensures that all the assets that aren't otherwise addressed in your estate — including those assets that are known and unknown — will pass according to your wishes. If you don't have a residuary clause and list only specific gifts, you run the risk that you may forget

or inadvertently omit a valuable asset or the designated recipient of a gift may predecease you. In either event, the unnamed items will pass under intestacy laws of the applicable jurisdiction.

Finally, if you fail to include a residuary clause in your will, complications may arise if beneficiaries haven't been properly designated on insurance policies or listed for retirement accounts. Note that if you have a residuary clause that distributes all remaining assets to a trust, you'll need to be sure that the trust has the necessary provisions.

PRESERVING YOUR LEGACY

For over 60 years, the attorneys and staff of Weinstock Manion have focused on providing personalized, high-quality legal counsel in the following practice areas to individuals, business principals, beneficiaries, fiduciaries, and charitable organizations, in a wide range of industries, including real estate, entertainment, and sports:

- Estate Planning
- Wealth Transfer Planning
- Estate and Trust Administration
- Estate and Trust Litigation
- Business Succession Planning
- Charitable Planning and Family Foundations

Comprehensive Estate Planning Services

Working with our clients' other trusted advisors, our team of specialized attorneys and paralegals create and implement comprehensive, creative and practical estate plans with the goals of maximizing wealth transfer in accordance with our clients' wishes and reducing taxation.

Estate and trust administration can have significant financial consequences for both current and future beneficiaries. In an effort to minimize income and estate taxes while maximizing estate and trust income for beneficiaries, our process involves extensive collaboration between our estate planning, taxation and transactional attorneys.

Weinstock Manion's litigators represent both fiduciaries and beneficiaries in estate and trust disputes. Our litigators are skilled at handling claims for breach of fiduciary duty, beneficiary disputes, disputes regarding the validity of wills and trusts, undue influence and all aspects of conservatorships and guardianships.

For many clients, ensuring the future of their family business through a well-structured succession plan is an essential component of their estate plan. Our team of transactional, tax and estate planning attorneys work with our clients' other trusted advisors to develop plans for retirement, management transition and liquidity events.

Supporting charitable causes is important to many of our clients. We help our clients support the causes they are passionate about in a tax-efficient manner through thoughtful charitable planning, including the creation of family foundations.

At Weinstock Manion we understand that significant wealth can lead to complex personal and financial issues that may result in family conflict. Our goal is to help implement wealth transfer plans that minimize potential conflicts while promoting enduring legacies for generations to come.

We invite you to explore our team and services, and to contact us to learn more about how we may collaborate to preserve your legacy.