

July 17, 2023 – Wealth Planning Commentary

I'm gifting my assets away...sort of

We are in the middle of the 'historic wealth transfer'. According to the NY Times, Baby boomers are expected to transfer \$16 trillion of wealth to younger generations over the next ten years. Some clients hesitate to gift assets and are concerned about a potential loss of control and access to income. Other clients know that gifting sooner rather than later is an effective strategy but are unsure of how much, if anything, they should give their children. Fortunately, several flexible planning strategies are available to help accommodate these concerns.

Individuals who want some level of control over trust assets and receive trust income may consider an Intentionally Defective Grantor Trust (IDGT). The assets within the trust are inside the estate for income tax purposes but outside the estate for estate tax purposes. The grantor pays taxes on the income and cap gains, and appreciation of the assets within the trust grows outside of their estate.

Income generated in an IDGT is generally discretionary income. The grantor or grantor's spouse may receive trust income under the discretion of a non-adverse party. A non-adverse party is an individual or corporate trustee who lacks significant beneficial interest in the trust. A SLAT, which is a variation of the IDGT, allows the spouse of the grantor to access income and principal during their lifetime. The grantor may indirectly access the income and principal from the trust through their spouse. However, the risk is that the couple divorces, and the beneficiary spouse gains control of the income. If the grantor requires unrestricted access to the assets within the trust, the IDGT is likely not the solution.

The IDGT also offers the grantor some control, but not access, to the assets through the power of substitution. The grantor may gift assets initially and then later swap them for other assets of equal value. This may be a good strategy to maximize the advantage of the step up in basis at death or to regain full control of a specific asset. Grantors who want some control over the assets may also consider gifting LLC ownership to an IDGT.

Another flexible gifting strategy that may also avoid taxation is the sale of assets to an IDGT. The grantor sells, rather than gifts, assets to an IDGT in return for a promissory note. This is also known as an incomplete gift, and it is not subject to gift tax. The trust owes the grantor the money for the assets. The goal is for the loaned assets to grow significantly and repay the loan over time. The net balance after the loan repayment is essentially a tax-free gift. If the grantor wishes to cancel the gift to the trust, the loan is called, and the assets usually revert to the grantor. It's as if the gift was never made.

What if you want to take advantage of the gift exclusion but are unsure of who should receive the assets, how much to give, and when to make the assets and income accessible? The grantor of an irrevocable trust cannot change the trust terms or the beneficiary. Here is where a trust protector is valuable. [A trust protector is an independent third-party](#) that acts as a representative of the trust's creator. The trust protector is empowered to take specific actions to ensure that the trustee is administering in accordance with the terms of the trust. The creator of the trust decides the protectors' powers, including replacing a trustee, amending the terms of the trust, changing beneficiaries and the amount of distributions, changing investment managers, dissolving the trust and returning the property to the grantor.

A limited power of appointment is also a great option to add flexibility to a trust. The power allows a surviving spouse, or other beneficiary, to give the decedent's assets to a select group of people identified in the power of attorney. A typical example is enabling a surviving spouse to give the assets to some or any of the decedent's surviving children but not to anyone else.

Clients that gifted assets to a trust without flexibility and want to make changes could have an option to re-state the terms of the trust. The grantor may have the ability to "decant" and pour the irrevocable trust assets from an existing trust to a new irrevocable trust with altered terms. The process requires a good attorney that ideally specializes in the laws of the state of the current trust and the re-stated trust.

Please contact your Wealth Manager to learn more about flexible gifting strategies.

Disclosures

Investment advisory services offered through Robertson Stephens Wealth Management, LLC ("Robertson Stephens"), an SEC-registered investment advisor. Registration does not imply any specific level of skill or training and does not constitute an endorsement of the firm by the Commission. This material is for general informational purposes only and should not be construed as investment, tax or legal advice. Please consult with your Advisor prior to making any Investment decisions. This material is an investment advisory publication intended for investment advisory clients and prospective clients only. Robertson Stephens only transacts business in states in which it is properly registered or is excluded or exempted from registration. A copy of Robertson Stephens' current written disclosure brochure filed with the SEC which discusses, among other things, Robertson Stephens' business practices, services and fees, is available through the SEC's website at: www.adviserinfo.sec.gov. © 2023 Robertson Stephens Wealth Management, LLC. All rights reserved. Robertson Stephens is a registered trademark of Robertson Stephens Wealth Management, LLC in the United States and elsewhere.