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MAKING TAX FREE INTER VIVOS GIFTS TO GRANDCHILDREN

Clients often express their desire to "do something for the grandchildren." Even if the client does not have apparent Generation Skipping Transfer Tax ("GST") concerns, it is a good idea to review all GST exempt gift-giving options.

GST taxes apply to all transfers after October 22, 1986 to certain donees called "skip persons."***1*** With respect to any donee of a gift, a skip person is an individual assigned to a generation more than one generation below that of the transferor.***2*** Grandchildren are "skip persons." The GST tax's flat rate is equal to the highest estate and gift tax rate in effect at the time of the transfer (46% in 2006). Its exemption is equal to the federal estate tax exemption. Thus, in 2006, every individual has a GST tax exemption of $2,000,000.00.***3*** An inter vivos direct skip is a transfer of an interest in property made to a skip person that is subject to the gift tax. As a point of departure to our discussion, GST tax is not imposed on any "direct skip" that is an otherwise non-taxable gift.***4*** A gift to grandchildren is subject not only to transfer taxes, but, in addition, to GST taxes. Assume, for example, that the donor makes a gift of $3,000,000.00 in 2006. He gives $1,000,000.00 to his son and $2,000,000.00 to his grandchild. The donor will incur gift taxes, as the current gift tax exemption is $1,000,000.00. In addition, the $2,000,000.00 to the grandchild is a GST taxable gift. The donor may elect to allocate his total GST exemption of $2,000,000.00 to the gift, rather than saving

the exemption for future gifts or for his estate. In such case, no GST tax is payable at the time of the gift over and above the gift tax imposed on the $3,000,000.00 gift.

The mysteries of GST taxes are not the subject of this brief exploration; it is, rather, the avoidance of the imposition of the tax on life-time gift giving to grandchildren that concerns us. Since, unfortunately, a general transfer tax exemption is not always co-extensive with a GST tax exemption, a review of the differences and similarities between the exemptions is useful.***5***

THE ANNUAL EXCLUSION GIFT

IRC §2503(b) provides that a donor may make gifts of present interest in property and in certain amounts to any person, including a grandchild, during any calendar year free of transfer taxes. The statute fixes a formula, on the base amount of $10,000.00 set in 1998, tied to a cost-of-living adjustment, to arrive at the precise amount constituting a tax free gift in any given year. The formula will yield a sum equal to a multiple of $1,000.00 and amounts to $12,000.00 in 2006.***6*** If grandpa gives to each of his grandchildren an outright gift in 2006, he has made a "direct skip" type of transfer as defined in IRC §2611. Fortunately, if grandpa limits his gift to $12,000.00 per grandchild, he has made a GST tax exempt gift.***7*** No gift tax return need be filed. If grandma decides to "split" the gift, that is to say, join in the gift, the couple may give $24,000.00 to each of the grandchildren, even though the entire gift was paid out of grandpa's separate assets. At least one spouse must file a gift tax return Form 709, in accordance with IRC §2513. Each spouse must be a citizen of the US at the time the

gift is made and the consent of the spouse must be indicated on the return. If the gift is not in cash, valuation evidence must be appended to the return.

In accordance with IRC §6075(b), the return cannot be filed prior to January 1st of the year following the year of the gift and the return may not be filed later than April 15th of the year the return is due.

The fiduciary of a deceased spouse's estate may consent to split a gift made in the year of death with the surviving spouse, as may the guardian of an incompetent spouse.***8*** Of course, if the gift is to come out of the assets of an incompetent spouse, the guardian must secure consent from the Court pursuant to N.Y. Mental Hygiene Law § 81.21. Counsel should suggest the inclusion of a power to consent to split gifts in any powers of attorney to be prepared for the married client.

UNIFORM TRANSFERS TO MINORS ACT GIFTS

One of the simplest forms of a trust to create for the benefit of a person under the age of 21, is the establishment of an account pursuant to the Uniform Transfers to Minors Act ("UTMA"). Previously, such an account had to be paid when the beneficiary reached the age of 18, but the Estates Powers and Trusts Law***9*** now provides that the beneficiary is entitled to the proceeds at age 21. Any interest in property, not just cash, may be given pursuant to the statute. A donor may convey an interest in real property by executing a deed to A as custodian for B under the UTMA.

The creator of the account names a custodian, and, preferably, a successor custodian, so as to avoid the need to appoint a successor upon the death or incapacity

of the original custodian. One or more successors may be appointed, to serve in the order named. The donor will often neglect to name a successor custodian. One should be aware of EPTL §7-6.7, which permits an "obligor," e.g. a bank or brokerage house holding the property for the custodian, to name a successor custodian. If the property is worth less than $50,000.00, the property may be paid by the obligor to an adult member of the minor's family.

While the custodian is a fiduciary pursuant to EPTL §7-6.12, he has unfettered power over the custodial property in accordance with EPTL §7-6.13. Counsel should insure that the property not be included in grandparent's estate by instructing the client not to name himself as the custodian. Naming the child's parent is also not a good idea. Parent's use of the property to discharge his duty of support may have undesirable income tax consequences.

The custodian may use the property for the benefit of the minor, without regard to the resources and support available to the minor. A fourteen year old minor, or any interested person on his behalf, may seek a court order to have the custodian pay to the minor, or expend on his behalf, so much of the custodial property as the court considers advisable under the circumstances.***10***

It should be kept in mind that the custodial property is an asset belonging to the minor, deemed an "available" resource. In In re Smith,***11***, upon an Article 78 proceeding, the court confirmed a determination by social service agencies which denied petitioner-mother food stamps, as she would have been disqualified had she

disclosed the existence of the mutual funds contained in her five year old daughter's UTMA account.

UTMA accounts are established for a single, minor, beneficiary and any gift not exceeding the annual exclusion amount will qualify for the annual gift tax exemption, as well as for the GST gift tax annual exemption, as such gift satisfies the "separate share" requirement of IRC Reg. §26.2654-1(a). This separate share requirement is the underpinning of securing a GST tax annual exemption.

An even simpler device to transfer property to a grandchild, the beneficiary designation on a totten-trust account, IRA, insurance policy, or, pursuant to recent amendments to the EPTL***12***, a security, is not pertinent to our discussion. "By operation of law" transfers are not completed inter-vivos gifts, but are testamentary in nature, as the owner retains the right to change the beneficiary at any time without the consent of the beneficiary.

GIFTS TO MINORS TRUSTS

Although the annual gift tax exemption is only available for a gift of "present interest," a notable exception of this principle is the Gift to Minors Trust pursuant to IRC §2503(c). A transfer in trust for the benefit of an individual who has not attained the age of 21 on the date of the transfer shall not be considered a gift of a future interest. To be tax-free, the gift may, of course, not exceed the exempt amount set forth in IRC §2503(b).

There are two (2) basic requirements for a Section 2503(c) trust: **1)** The trust's principal and accumulated income must be paid to the beneficiary when he/she reaches the age of 21 and **2)** Should the minor die prior to distribution of income and principal, all trust assets must be paid to the beneficiary's estate or must be subject to a general power of appointment exercisable by the beneficiary.***13*** It is important not to be fanciful in drafting the trust. A provision to pay the trust to the beneficiary's "heirs at law," if he were to die before reaching the age of 21, will disqualify the trust, as his heirs at law may not be equivalent to his estate.***14***

The trust must provide that income and principal may be expended for the minor's benefit until the beneficiary reaches the age of 21.***15*** If the trust provides that the beneficiary has the right to demand the trust property for a reasonable period of time upon reaching the age of 21, the trust will qualify. Thereafter, the trust may continue, until, by the terms of the trust instrument, the property is paid to the beneficiary.

IRC Reg. §25.2503-4(b)(1) provides that there may be "no substantial restriction"***16*** on the exercise of the Trustee's discretion. The Trustee's discretion to spend income and principal for the benefit of the beneficiaries must be unfettered. Accordingly, grandparents cannot restrict the trust to a dear to the heart purpose: the education of their grandchildren.

Rev. Rul. 69-345, 1969-1 C.B. 226, addresses the range of permissible restrictions by comparing it to the powers of a guardian under state law.***17*** Some directions which limit the Trustee's discretion to provide for the support, care, education, comfort and welfare were deemed to be broad enough not to offend the statute.***18***

Similarly, a trust for the education, comfort and support is permitted.***19*** The better practice is to provide the broadest discretion to the Trustee.

Clearly, the requirement that the trust property pass to the beneficiary at age 21, and, if the beneficiary dies before that time, that his estate is the irrevocable owner of the property, or that it is subject to the beneficiary's general power of appointment, will dictate that an IRC §2503(c) trust can have only one beneficiary. Compliance with that rule, however, will also insure compliance with the requirement of the GST annual gift tax exemption that a separate share be maintained for the donee grandchild.***20***

If grandma names the custodial parent as Trustee, the Trustee's power to apply the property to discharge the parent's duty of support of the beneficiary may result in the property being taxed in the estate of the Trustee/parent. Similarly, if grandma is the Trustee, her unlimited power over income and principal may lead to inclusion of the property in grandma's estate under IRC §§ 2036 or 2038. It is best to appoint a friend or other relative as Trustee.

The trust is a separate tax payer for income tax purposes. An outright gift of money, even if derived from taxable income earned by the donor, is not income taxable to the donee, as it is after tax income. When this same after tax income is given to a trust, it earns income that is distributed to a trust beneficiary. The distribution to the beneficiary will be reported as a deduction in the trust's fiduciary income tax return, but is taxable income to the beneficiary. Remember the Kiddie tax. If children under the age of fourteen have unearned income in excess of $1,700.00 per year in 2006, their parents' highest income tax rate will apply. On May 17, 2006, the Kiddie tax was

extended by the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. 109-222) to children under the age of 18, retroactive to January 1st of 2006. Of course, if the grandparent is inclined to paying income tax on the trust, the trust may be structured as a grantor trust.***21***

Finally, unless the trust is made to continue after the beneficiary reaches the age of 21, the beneficiary may depart, climb on a surf board, never to be seen again.

THE MANDATORY INCOME TRUST

The "present interest" requirement for the annual exclusion under IRC §2503(b)(1) can be met with a "mandatory income trust," also known as a "Section 2503(b) income trust." A somewhat obscure instrument which secures the annual gift tax exclusion, it requires that all income be paid to the beneficiary. The income interest is the "present interest" required by the statute.***22*** The income, alone, is eligible for the gift tax exemption. The trust may also provide that an annuity- or uni-trust interest be paid to the beneficiary, as approved by Private Letter Ruling.***23*** In the case of an annuity interest, the beneficiary must be entitled, each consecutive year, to a fixed percentage of the initial principal funding the trust. A uni-trust interest is a fixed percentage to be paid out of the trust property, as revalued each year. If the income generated is insufficient to satisfy the uni-trust amount, the balance is taken from the principal. In fashioning a mandatory income trust, the income interest must be able to be valued for gift tax purposes.

The income beneficiary must have the immediate, unrestricted, use, possession or enjoyment of the property.***24*** Thus, the Trustee is prohibited from accumulating the income. A direction in the trust that the income be accumulated and paid to the beneficiary at age 21 will disqualify the gift as an annual exclusion gift.***25*** There may be no direction that the income be paid when a specific event takes place, or that the Trustee has discretion to divert the income for any reason. The income may be paid to the beneficiary directly, to a custodian under the Uniform Transfers to Minors Act, or to the beneficiary's legal guardian.

Unfortunately, as stated, only the income interest qualifies for the gift tax exemption. The remainder interest, being a gift of future interest, does not. Thus a taxable gift takes place at the creation of the trust, incurring potential GST gift taxes. However, by manipulating the duration of the trust, the remainder interest is devalued for gift tax purposes. The valuation of the factors is determined in accordance with IRC §7520. The longer the term of the trust, the lower the value of the remainder interest. As the beneficiary must be entitled to the remainder interest, all growth of the remainder inures to him.

As the income interest must be valued, it is important to include the required valuation disclosure on the gift tax return. The statute provides that the statute of limitations for assessment of gift taxes is three years.***26*** Failure to disclose may result in tolling the statute. Gift tax regulations set forth the necessary information to be supplied.***27***

As with the gifts to minors trust we examined earlier, the income only trust may have only one beneficiary. This separate share requirement will insure that the gift tax exclusion is also available for a GST exemption.***28***

THE CRUMMEY TRUST

Some of the advantages of the standard IRC §2503 trust are the lack of flexibility in purpose and the termination when the beneficiary reaches the age of 21.

Grantors often desire to carefully circumscribe the trust's purposes under the discretion of the Trustee. An ingenious solution is the so-called "Crummey" trust. Grantor creates a trust to be the recipient of annual exclusion gifts. The grantor then makes an annual exclusion gift, notifying the donee of his right to withdraw the gift within a limited amount of time, typically at least 30 days. If the beneficiary declines to take the gift, it becomes an irrevocable part of the trust property, to be enjoyed in the future. Thus, we have obviated the present interest requirement of the annual exclusion statute. In short, the donor has given a gift of future interest. Each year the donor may make a new annual exclusion gift that will ultimately be added to the future interest.

In Crummey v. Commissioner, ***29*** this method for obtaining the annual exclusion was sanctioned and has remained permissible in spite of challenges by the IRS.

A gift of insurance premiums to the trust is standard. Donor creates the trust in which he authorizes, but does not direct, the Trustee to pay annual premiums on life insurance, usually on donor's life. The trust owns the policy, and, properly, the Trustee

should have purchased the policy. The donor's transfer, within three years of his death, of an existing policy in which he had "incidents of ownership," will cause the policy proceeds to be taxable in his estate.***30***

The annual withdrawal power must be real, actually exercisable. As the donor is making the annual exclusion gift(s), he sends out a letter to each beneficiary notifying him of the right to withdraw the gift(s), a so-called "Crummey Notice." The IRS has attempted to challenge the bona fides of the exclusion, time and time again, on the grounds that the Crummey notices were not timely sent; that there were insufficient funds to draw from, or that the persons with right to withdraw were not "interested" in the trust. In Technical Advice Memorandum ("Tech. Adv. Mem.") 9628004 (Apr. 1, 1996), the exclusions failed because the donees were not given proper advance notice of their rights to withdraw the gift; the withdrawal rights expired before the funding of the trust and the Crummey power holders had no other right to the trust property other than withdrawal rights. In short, adding beneficiaries to the trust who have "naked powers" to withdraw, but no vested remainder interests will doom the annual exclusion.

Caution is the watchword in the drafting and administration of a Crummey trust. There may be no "prearranged understanding" that the withdrawal right will not be exercised and/or that doing so would result in undesirable consequences.***31***

Care should be taken that the Trustee, often a family member and beneficiary of the trust, does not have rights over the trust property which may be deemed so extensive as to constitute a general power of appointment, causing the trust property to be taxable in the Trustee's estate. This will not occur if the Trustee/ beneficiary is

granted discretion to distribute trust property according to an ascertainable standard, such as the beneficiary's "health, maintenance and support."***32***

Other concerns which should be kept in mind when drafting a Crummey trust are beyond the scope of this article. ***33***

Our attention is once more directed to qualifying the gift to the grandchild/beneficiary of the trust for the annual exclusion. As we have seen, in order to secure a GST annual exclusion, there must be a separate share for each grandchild; a share the grandchild is irrevocably entitled to. No distributions of income or principal may be made to persons other than the skip person.***34*** Should grandchild die before the trust terminates, the property must be payable to grandchild's estate.***35***

Clearly, the standard Crummey trust will not do. The IRS has determined the annual GST exclusion was applicable where grandmother created separate trusts for the benefit of her four grandchildren.***36*** The trusts contained Crummey withdrawal powers for each beneficiary authorizing the donee to withdraw each year the annual addition to the trust.

For the grandparent who is blessed with a number of grandchildren, the requirements for a GST exempt Crummey trust are not easily met. It is permissible to have one trust agreement that provides explicitly that each of the grandchildren has a completely separate sub-account in the trust. The Trustee may not have discretion to transfer property between accounts. Each sub-account beneficiary must be irrevocably entitled to the account. Each sub-account must have its own tax ID number and separate fiduciary income tax returns must be filed for each account.

One may also combine any of the previously discussed trusts with the Crummey trust. When, e.g., the IRC §2503(c) minor's trust would ordinarily end at 21, the trust could provide that if the beneficiary declines to withdraw the trust property at reaching 21, the trust will continue. The trust is then converted into a Crummey trust with the annual additions and concomitant withdrawal powers.

GIFTS TO 529 PLANS

In addition to the foregoing methods of gifting, grandparents may use their annual exclusion by making cash contributions to an account earmarked for the tuition for higher education established for the exclusive benefit of designated beneficiaries, a so-called Qualified Tuition or 529 Plan. There are two basic types of qualified tuition programs, the prepaid tuition program and the college savings program.

A "designated beneficiary" means that beneficiary originally designated at the commencement of the contributions by the donor to the Plan, or, if the donor changed the beneficiary designation, the new beneficiary. Beneficiaries may be changed, provided the new beneficiary is a "member of the family" of the original beneficiary.***37*** Effective January 1, 1998, a "member of the family" is the spouse of the beneficiary; a son or daughter or other descendant of the original beneficiary; step-son or step-daughter; brother or sister; step-brother or step-sister; father or mother or other ancestor; step-father or step-mother; niece or nephew; aunt or uncle; son- or daughter-in-law; father-, mother-, brother-, or sister-in-law; and, until 2010, first cousins.***38*** The account holder's ability to change beneficiaries provides desired control. The donor

may also terminate the plan and withdraw the funds and use them for another purpose. This will occasion income tax penalties.

Neither the donor nor the beneficiary may directly or indirectly direct the investment of any contributions. None of the trust assets may be used as security for a loan.***39*** Although the statute specifically requires cash contributions, redemption by the donor of U.S. Savings Bonds to fund the Plan is permitted.

The Plans are managed by private investment companies. Contributions are generally invested in mutual funds. A contributor may select among various investment strategies and the donor need not invest in the 529 Plan sponsored by the state of his domicile.

A Plan may pay for "qualified higher education expenses." Tuition, fees, books, supplies and equipment required for enrollment or attendance at an eligible educational institution, as well as room and board expenses, are included in such expenses. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") provides that the maximum room and board expenses allowance is the amount applicable to the student in calculating costs of attendance for Federal financial aid programs under Section 472 of the Higher Education Act of 1965, or, in the case of a student living in housing owned or operated by an eligible educational institution, the actual amount charged the student by the educational institution.

Qualified higher education expenses include expenses for accredited post-secondary educational institutions offering a bachelors degree; associate's degree; a graduate-level or professional degree, or other post-secondary credentials. Certain

post-secondary vocational schools are also eligible educational institutions. The institution must be approved by the IRS. Officers and employees of qualified institution programs are required to report contributions to- and distributions from- program accounts. To the extent that approved expenses are offset by grants or tuition assistance, they cannot be reimbursed by the gift into the Plan.

If the Plan is in compliance, the gift is treated as a completed gift of a present interest and thus qualifies for the annual exclusion for gift tax purposes.***40*** Although completed gifts, contributions to a qualified tuition program, or 529 Plan, will not qualify under the unlimited IRC §2503(e) gift tax exclusion for money used to pay educational expenses.

The annual contribution will be eligible for the present-interest exclusion permitted by IRC §2503(b), provided that the total annual gift per donee does not exceed the applicable exclusion amount for the year of the gift. ($12,000.00 per donee in 2006). A program shall not be treated as a qualified tuition program unless it requires separate accounting for each designated beneficiary.***41*** The "separate account requirement" of the programs also insures a GST tax exemption.

Although the 529 Plan contribution is an annual exclusion eligible gift, the gift may exceed the applicable annual exclusion, if the donor elects to spread the gift over a maximum of five years, as if made ratably. For example, a $30,000.00 contribution to a qualified Plan, could be treated as five annual contributions of $6,000.00 each, and the donor could make up the difference between that amount and the applicable annual exclusion amount in other transfers to the beneficiary.***42*** Should the donor die, say,

after two years, having made a gift exceeding two years worth of applicable annual exclusion amounts, the balance (three years worth) will be includible in his estate. Under the rule that the donor may spread his contribution over five years, he could contribute $60,000.00 every five years, or, should his spouse split the gift, double that amount, assuming no other annual exclusion gifts are made.

Qualified tuition programs or 529 Plans were once limited to state programs and now include prepaid tuition programs that are established and maintained by eligible private institutions that satisfy IRC §529 requirements.***43***

Another bonus of the plan: EGTRRA provides that accumulated earnings in the Plan may be withdrawn without income tax.***44*** In addition, New York residents who contribute to a tuition savings account sponsored by New York State College Choice Tuition Program are entitled to an income tax deduction of $5,000.00 for contributions.***45***

GIFTS OF EDUCATIONAL AND MEDICAL EXPENSES

In addition to the annual exclusion, a donor is also entitled to unlimited gifts without incurring gift taxes by paying an educational organization for tuition.***46*** Payments must be made directly to the educational organization, "for the education and training" of an individual.***47*** The educational institution must maintain a regular faculty and curriculum and have an enrolled body of students in attendance.***48*** Only tuition qualifies for the exemption. Books and supplies are not included. The gift must be made directly to the educational organization and cannot be a gift in trust which

provides for the education of the grandchild.***49*** A gift made to reimburse an individual for amounts he or she paid for education will not qualify for the IRC §2503(e) exemption. A recent Internal Revenue Ruling, which, as we know, cannot be used as precedent, but is nevertheless mighty persuasive, has determined that a grandparent who enters into a written agreement with a school to pre-pay each of his or her grandchildren's tuition through grade 12, was entitled to the exclusion.***50*** It should be emphasized that grandparent's commitment to pre-pay tuition must be separate with respect to each grandchild in order for the Generation Skipping Transfer tax exemption to apply.***51***

The statute also permits an exclusion from gift tax for medical expenses. Again, in order to qualify for the exemption, payment must be made directly to the medical providers and may not be made to reimburse an individual for medical expenses. The IRC §2503(e) gift tax exemption for the payment of medical expenses will only apply to expenses for diagnosis, cure, mitigation, treatment, prevention of disease, as well as to pay for premiums for medical insurance.***52*** The statute specifically excludes cosmetic surgery. If medical expenses are reimbursed by insurance, the gift will not qualify either.

As with tuition payments, grandparents, who wish to insure that medical payments made to pay for their grandchildren's medical expenses qualify for the unlimited IRC §2503(e) exemption, must take care to make separate payments for each grandchild in order to obtain the GST tax exemption.***53***

It should be readily apparent, that if the donor employs both the IRC §2503(e) exemption and the 529 Plan, education can be amply paid for without incurring GST gift taxes.

CONCLUSION

The annual gift tax exclusion continues to be an excellent way of transferring wealth to the next generation. As we have seen, there are opportunities for grandparents who wish to extend their generosity to grandchildren to employ the exclusion. They must, however, be vigilant to insure that the gift to the grandchild beneficiary is distinctly separate from that given to any other donee. Inadvertent co-mingling of donated assets, or the possibility of doing so, will disqualify the gift as a GST tax exempt annual exclusion gift.

Our discussion was intended as an overview. Once counsel has elected a particular instrumentality to effectuate an inter vivos GST tax free gift to grandchildren, a more thorough exploration is advisable.

FOOTNOTES:

1. I.R.C. § 2601 (2006).

2. Treas. Reg. § 26.2612-1(d)(1).

3. I.R.C. § 2631(a).

4. Id. § 2642(c)(1).

5. Although, the amount of the exclusion is closely intertwined with the instrumentality of the gift, they are, of course, conceptually different.

6. I.R.C. § 2503(b)(2).

7. Id. § 2642(c)(1).

8. Treas. Reg. § 25.2513-2(c).

9. N.Y. EST. POWERS & TRUSTS LAW ("EPTL") § 7-6.20 (McKinney 2006).

10. Id. § 7-6.14.

11. 767 N.Y.S.2d 751 (2003).

12. N.Y. EPTL § 13-4.1.

13. I.R.C. § 2514(c)

14. Ross v. Comm'r, 71 T.C. 897, 900-01 (1979), aff'd, 652 F.2d 1365 (9th Cir. 1981).

15. Rev. Rul. 74-43, 1974-1.

16. Cf. Ross v. United States, 348 F.2d 577 (5th Cir. 1965).

17. Id. at 581.

18. Rev. Rul. 67-20, 1967-2 C.B. 349.

19. Heidrich v. Comm'r, 55 T.C. 746 (1971); See also Craig v. Comm'r 30 T.C.M. (CCH) 1098 (1971).

20. Treas. Reg. § 26.2654-1(a).

21. I.R.C. § 671.

22. Id. § 25.2503-3(c), Example 4.

23. I.R.S. Priv. Ltr. Rul. 86-37-084 (June 17, 1986).

24. Treas. Reg § 25.2503-3(b).

25. Comm'r v. Disston, 325 U.S. 442 (1945).

26. I.R.C. § 6501(a).

27. Treas. Reg. § 301.6501(c)-1(f).

28. Id. § 26.2654-1(a).

29. 297 F.2d 82 (9th Cir. 1968).

30. I.R.C. § 2035.

31. I.R.S. Tech. Adv. Mem. 96-28-004 (Apr. 1, 1996).

32. Treas. Reg. §§ 25.2511-1(g)(2), 25.2514-1(c)(2), 20.2041-1(c)(2).

33. See, e.g., Sebastian V. Grassi, Jr., Key Issues to Consider When Drafting Life Insurance Trusts, Estate Planning, Aug. 2004, Vol. 31, No. 8.

34. Treas. Reg. § 26.2654-1(a).

35. I.R.C. § 2642(c)(2).

36. I.R.S. Priv. Ltr. Rul. 200114026 (Jan. 5, 2001).

37. I.R.C. § 529(c)(3)(C).

38. Id.

39. I.R.C. § 529(b)(1)(B)(5).

40. I.R.C. § 529(c)(2)(A).

41. I.R.C. § 529(b)(1)(B)(3).

42. I.R.C. § 529(c)(2)(B).

43. I.R.C. § 529(b)(1).

44. I.R.C. § 529(a).

45. N.Y. TAX LAW § 612(c)(32) (McKinney 2006).

46. I.R.C. § 2503(e).

47. Treas. Reg. § 25.2503-6.

48. I.R.C. § 170(b)(1)(A)(ii).

49. See, Treas. Reg. § 25.2503-6, Example 2.

50. Priv. Ltr. Rul. 200602002. But see Blanche Lark Christerson, Private Wealth Management, Duetsche Bank, Tax Topics, Jan. 27, 2006, for possible income tax consequences to the parents whose duty of support may be discharged by the arrangement, pursuant to Treas. Reg. § 1.662(a)-4.

51. Treas. Reg. § 26.2654-1(a).

52. I.R.C. § 213(d).

53. Id. § 2642(c)(1).

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