

## **It's Never Too Early To Make Gifts To Your Minor Children**

Estate planning is a lifelong process. The sooner you start, often the better results you can obtain for your beneficiaries. Making annual gifts to your children is one long-term strategy for removing assets from your estate and minimizing estate taxes. You can use the annual gift tax exclusion of \$10,000 indexed to inflation per donee (\$20,000 if spouses agree to split gifts) to transfer large amounts of wealth to the next generation over your lifetime. And if you transfer appreciable assets, such as stock, the impact of the gift is even greater. So, making gifts to your minor children makes sense.

But, a gift must be a present interest to qualify for the annual gift tax exclusion. When making a gift to a minor child, you probably will want someone other than the minor to initially control the asset. There are several ways to ensure a minor does not have complete control over a gift and still qualify it for the annual gift tax exclusion.

### **Uniform Transfer To Minors Act**

One option is to make a gift to a minor child under the Uniform Transfer to Minors Act (UTMA). Under UTMA, an adult (usually someone other than you) is authorized to act as a custodian on the minor's behalf until he or she reaches the age of majority or the age specified by state law, generally 21. For income tax purposes, your child is the taxpayer for the gifted assets. But remember, if your child is under age 14, the "kiddie tax" rules apply. This means that unearned income your child receives above \$1,400 in 1999, assuming your child does not itemize deductions, is taxed at your income tax rate. The Internal Revenue Code's (IRC's) rationale for allowing this type of gift to be considered a present interest is that the assets become your child's as soon as he or she is capable of receiving them.

### **Minor's Trusts**

The main disadvantage of gifts made under UTMA is that the assets come under the control of your child as soon as he or she reaches the age of majority, generally 21. This can be overcome through different planning techniques, including the use of trusts.

A special minor's trust, which is provided for in the IRC, also qualifies for the annual gift tax exclusion if the trust assets in effect belong to your child. The trust must therefore provide that the assets may be available for your child's use or benefit while he or she is under age 21. If your child dies before that age, the assets must be able to pass as part of his or her estate. In addition, your child must have the right to receive the assets at age 21. However, an additional provision can be added allowing your child to withdraw the assets only for a short period of time after reaching age 21. If he or she decides not to withdraw the assets within that window (an inaction that, you may explain to your child, may make you more eager to make additional gifts in the future), then the right of withdrawal expires. At that time, the trust becomes irrevocable, and the trust assets are out of your child's reach until the trust provides that the assets will become available to him or her.

### **Crummey Trusts**

You can also use withdrawal rights to qualify a gift for the annual gift tax exclusion at the time assets are initially placed in the trust. Through a right of withdrawal trust, often called a Crummey Trust, even a minor child can be given a right of withdrawal for a 30-day period or longer. If your child or his or her

guardian does not exercise the right, then the right expires. The terms of the trust may provide that the trust is otherwise irrevocable and may delay your child's access to the trust assets for quite some time after he or she reaches age 21.

For a Crummey trust, the gift tax exclusion amount is \$10,000 per child (indexed for inflation). However, any expiration or lapse of a right of withdrawal of an amount in excess of the greater of \$5,000 or 5% of the trust can have adverse estate or gift tax consequences to the beneficiary. Special "hanging" withdrawal powers may avoid this tax problem by allowing the excess withdrawal right to continue into future years until the right lapses.

(A Crummey trust is not limited to gifts to minors and can be used to make gifts to trusts with beneficiaries of any age where you want to delay the beneficiary's access to the trust property.)

### **Now Is The Time**

When done properly, gifts to your minor children can defer your child's control of and access to the property, while helping you achieve your estate planning goals. If you think any of the methods of gifting assets to your children discussed in this article may be appropriate for your estate plan, please call us to discuss the details. We would be glad to answer any questions you have and help you develop a gifting strategy that works to the advantage of you and your beneficiaries.

### **Nontrust Gifts To a Minor**

Besides the various trust methods available to transfer gifts to a minor, there are several ways to make gifts to children without using a trust. You can make an outright gift to the minor. This is the most common and simplest method. Another tax-smart method that offers you a bit more control is to give a fractional interest in art, real estate or a business. A third option that allows you more control is to transfer an asset (other than a bank or broker's street-name account) to the child and yourself as joint tenants. Taxable gifts are another way to transfer assets to the next generation. Such gifts will use all or part of your applicable exclusion amount (the \$650,000 that a person may currently give or bequeath tax free) and may generate a current gift tax if the taxable gift exceeds your unused applicable exclusion amount.