Halliday Private Trust
Integrated Trust Solutions for Clients

Trust Connection

A Monthly Report of Trust News and Information
June 2016

Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

Generation Skipping without Skipping a Generation

Generation skipping transfer tax can be confusing, but understanding generation skipping enables another level of planning that can save families millions, even billions, of dollars. Generation skipping is simpler than most people realize, and it does not even involve skipping a generation.

Generation skipping transfer tax is a “transfer tax” as its name states, but a common misunderstanding is that “generation skipping” is about skipping a tax, not skipping people or leaving people out of the plan. For example, a spouse can be a beneficiary of her spouse’s generation skipping trust, as can their children.

There are many other misunderstandings about generation skipping transfer tax, including that these trusts are perpetual, which can be true, but is not a requirement; it just enhances the potential benefits. People often mistakenly believe that because a generation skipping trust is irrevocable it is inflexible and thus unable to adjust to the changing needs of future generations. Generation skipping transfer tax is often also misperceived as expensive, yet it is actually cheaper to generation skip, at least for the first $5 million or so. And after that, the tax is the same as the estate tax. Understanding generation skipping transfer tax and taking advantage of it can dramatically enhance a client’s estate planning.

Virtually all irrevocable trusts have the possibility of skipping a generation. This is because any irrevocable trust with standard beneficiary language like “issue per stirpes” creates the possibility that the assets will pass further down the family tree than one generation. As a result, whether generation skipping is intended or not, it can occur, and so the executor or trustee should be aware of and take advantage of it, even when not intended or planned for. Sadly, many non-professional trustees and executors are not advised or aware enough to catch what could happen, as opposed to what is explicitly stated. But beyond the constant possibility of an accidental skip, there is reason to plan to skip, on purpose, in virtually every family estate plan. Here’s why.

Irrevocable trusts can make the income and assets of the trust available to the beneficiaries of the trust and yet, with proper planning, the beneficiary will not be treated as the “owner” of the trust. This results in a fundamental layer of both creditor protection and estate tax protection that can be very powerful. Here are a few family scenarios in which this may be desirable:

- In a second marriage, the first spouse to die desires to leave any monies not needed by the surviving spouse to the children of a previous marriage
- When one’s children are enjoying financial success and may not need the inheritance, it can be available to them in an emergency but pass with fewer taxes to the next generation if not needed

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A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

- Michael F. Fleming, Esq.
- Sean S. Mohammadi

725 Glen Cove Avenue
Glen Head, NY 11545

14 Corporate Woods Blvd.
Albany, NY 12211

211 Main Street
Cooperstown, NY 13326

1819 Main Street, Suite 300
Sarasota, FL 34236

- Children who are in professions or positions that may draw claims of liability, to have their inheritance asset protected
- When children may not be able to handle the money due to disabilities, addictions, poor choices, etc.

By taking advantage of the generation skipping transfer tax exemption, a well-designed plan fully funded at about $5 million could save more than $2 million. So what is the trade-off? How restrictive does the trust have to be in order not to treat the beneficiary as the owner of the trust?

First, the beneficiary may have access to any or all of the income of the trust for any reason. Having the right to income does not make one the owner of the underlying assets. Second, the beneficiary or beneficiaries can have as much, or all, of the principal (assets) as they need. Some sort of filter mechanism has to be in place to determine that need, which usually includes one of three things: language that defines the reasons permitted for distribution (e.g. health, education, support), approval of an adverse party, or use of an independent trustee (i.e. a corporate trustee). Third, the beneficiaries can be given to adjust the rights and interests of the future beneficiaries, for example, by cutting out a wayward grandchild or increasing the share of a grandchild subject to a disability. This last power must be done within a predefined class of beneficiaries but can be very broad, such as "among my descendants." While being subject to these powers is not the same as receiving the money outright, the powers combined can appear quite generous and yet be restrictive enough to provide the creditor protection as well as estate tax protection.

A particular type of marital trust that has risen to prominence in this area as well is the QTIP (Qualified Terminable Interest Property) trust. QTIP trusts are particularly useful in the new era of portability of the estate tax exemption between spouses and carry the added advantage that they can likewise be used to claim the generation skipping transfer tax exemption of the first spouse, which is not portable, while still delaying the portability decision until the death of the first spouse.

Summary

The generation skipping transfer tax exemption is worth pursuing if it can give an acceptable level of access to beneficiaries and provide the creditor protection and estate tax protection benefits worth potentially millions of dollars in savings. Often misunderstood due to the name of the tax, generation skipping definitely does NOT have to involve skipping a generation. See your estate planning professional to see how designing your estate plan to take full advantage of the generation skipping transfer tax may benefit you.