RAYMOND JAMES *Trust*

Beyond taxes: 5 reasons a trust is necessary

Learn how a trust can be used to protect, control and maximize the assets in your estate.

Before the Tax Cuts and Jobs Act, the federal estate, gift and generation skipping tax exemption was $5 million (or $5.49 million as adjusted for inflation). Once the legislation was enacted, the exemption increased to $11.18 million, and is at $12.06 million in 2022. This increase will expire at the end of 2025, at which point the tax exemption amount will revert to $5 million (a number that will be adjusted for inflation). While this legislation can provide a great advantage in estate planning, it does not address many of the reasons people traditionally use trusts.

Taxes are rarely the only reason, and usually not the most important reason, people have comprehensive estate plans. You should work with an experienced trust consultant to ensure your assets are protected and distributed as intended upon your death.

RECENT HISTORY

The Tax Cuts and Jobs Act of 2017 set the exemption amount for estate, gift and generation skipping tax purposes at $11.18 million – an amount that increased to $12.06 million in 2022 – with a top tax rate remaining at 40%. Under portability and with the proper planning, this bill allows couples to have a combined gift and estate tax exemption amount of about $24.12 million. This means that any unused amount a spouse, for example, didn't gift away is available for their surviving spouse to pass on free of federal estate taxes upon their death.

Both the House and Senate have acknowledged that additional wealth transfer legislation is up for debate, so now is a good time to get your estate in order. While the status of these exemptions has changed, most of the tax laws pertaining to trusts and other estate planning strategies remained intact with the recent legislation. If you use these tools now, plans already in place may predate, or "grandfather," any new legislation in the future.

TRUST ISSUES

There are many more reasons to utilize a trust than simply to minimize the impact of taxes. This paper specifically details trust strategies that address:

Trust planning can be complex, but it also can be very effective at meeting specific goals and helping provide confidence throughout your lifetime.

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1 MAINTAINING CONTROL

One key reason to utilize a trust as part of your estate plan is to retain control of your assets – particularly in light of any family strife that could ensue over who gets what assets now and/or when you pass away.

For example, we've all heard stories about stepchildren and a surviving spouse going to court over a wealthy widower's estate. This is one of the problems inherent in today's second and third marriages, and why it's so important to set up specific trusts to ensure that both your spouse and your children are protected.

One such trust is the marital/bypass trust. This trust, which becomes irrevocable upon a grantor's passing, maps out your inheritance plan, cannot be changed by a surviving spouse and eliminates the possibility of any undue influence from your children, subsequent spouses or external parties. Even if your surviving spouse remarries and decides to leave their own assets to their second spouse, the bypass trust would still pass assets intact to your children as intended.

Another key consideration in estate planning is the prospect of leaving all or a portion of your assets to a young child – or even a young adult child not ready for the responsibility. This is a circumstance in which a trust, administered by an appointed trustee, can be particularly advantageous to ensure your assets are not mismanaged or lost precipitously.

In any situation where influence may play a role, you may wish to protect the assets you intend to leave in a trust. The umbrella protection of a trust also can help ensure that your assets are controlled and managed by a trustee of your choosing, rather than by the child, who may be influenced by others.

2 PROTECTING ASSETS AND AVOIDING TAXES

Greedy relatives aren't the only ones from whom you need to protect your assets. Litigation, malpractice claims, creditors and divorce are examples of potential scenarios that must be considered when creating your estate plan. The options for asset protection planning through the use of trusts should be a part of every estate planning conversation. The most important time to take action to establish asset protection is before it is needed; otherwise, you risk having the planning considered a fraudulent transfer.

Perhaps the most obvious reason to utilize trusts in estate planning is to help minimize estate and gift tax liabilities. If your estate is valued at more than $12.06 million (the federal estate tax exemption amount for an individual in 2021), the balance is subject to estate tax at rates as high as 40% or more. Proper planning through the use of certain types of irrevocable trusts can allow you to transfer assets that can then grow outside of your estate and thus avoid estate taxes.

A trust can help you minimize state transfer taxes as well. Some states have particularly high estate tax rates or low exemption amounts. Regardless of the size of your estate, it's important to work with an estate planner familiar with your state's laws and tax rates to determine if a trust would be an effective tool to help minimize your state estate tax liability.

A trust may be useful when planning for the eventual transfer and distribution of a retirement plan, such as an IRA or 401(k). By structuring a trust as the beneficiary of a retirement plan, you may be able to minimize the impact of individual income taxes on plan distributions, as well as plan for the ongoing management and control of these assets once you pass away. Once you choose a trust as the beneficiary, it's imperative to name it in the beneficiary designation to ensure it's properly funded.

An irrevocable trust can be an effective tool to "freeze" valuations of assets or business interests. By transferring assets to an irrevocable trust, you may be able to shelter any resulting growth from future federal and state taxes, depending on the trustee and state in which you domicile the trust.

STATES WITH ESTATE AND/OR INHERITANCE TAXES IN 2022

State	Type of Tax	Exempted Amount	Top Tax Rate
Connecticut	Estate	$9.1 million	12%
District of Columbia	Estate	$4 million	16%
Hawaii	Estate	$5.49 million	20%
Illinois	Estate	$4 million	16%
Iowa	Inheritance	See disclosure*	15%
Kentucky	Inheritance	See disclosure*	16%
Maine	Estate	$6.01 million	12%
Maryland	Estate	$5 million	16%
	Inheritance	See disclosure*	10%
Massachusetts	Estate	$1 million	16%
Minnesota	Estate	$3 million	16%
Nebraska	Inheritance	See disclosure*	18%
New Jersey	Inheritance	See disclosure*	16%
New York	Estate	$6.11 million	16%
Oregon	Estate	$1 million	16%
Pennsylvania	Inheritance	See disclosure*	15%
Rhode Island	Estate	$1.649 million	16%
Vermont	Estate	$5 million	16%
Washington	Estate	$2.2 million	20%

PLANNING TIP: FAMILY VACATION HOME

When real estate prices are low and the gift tax exclusion is at a high, it could be a good time to consider gifting a family vacation home to your children. You can do so by transferring it to a qualified personal residence trust (QPRT) for a specified term of years. The present-day value of the house, appreciating at the IRS' assumed rate of investment return and based on assumed mortality rates after the term of the QPRT has expired, will constitute the taxable gift that counts toward your lifetime gift exclusion. If you are still alive when the QPRT term is up, your heirs will receive ownership without incurring gift or estate tax consequences. If you pass away before the term is up, the house will be included in your estate.

*Exempted amounts are shown for state estate taxes only. Inheritance taxes are levied on the posthumous transfer of assets based on the relationship to the descendant; different rates and exemptions apply depending on the relationship.

3 PLANNING FOR A DISABILITY

Given today's longer life spans, you may wish to develop a plan for the possibility that you may experience a disability in later years that impairs your ability to manage financial affairs. This is one reason a person may transfer assets to a revocable trust and name himself as both beneficiary and trustee. The trust document would include language detailing specific criteria to establish diminished capacity, at which point your pre-appointed successor trustee would take over management of trust assets.

A special needs trust, also known as a supplemental needs trust, is designed to preserve eligibility for government benefit programs for a disabled beneficiary – such as a child. This irrevocable trust enables you to leave assets to help meet the future supplemental needs of someone with a mental or physical disability. Without such a trust, ownership of assets totaling anywhere from $2,000 to $5,000, depending on the disabled individual's particular situation, would disqualify that disabled beneficiary from receiving most federal needs-based assistance, such as Medicaid and Supplemental Security Income.

A special needs trust can be funded with a variety of assets, including cash, stocks, mutual funds, insurance and property. Once a trust is established for a beneficiary, the designated trustee has full discretion to distribute trust assets as he or she sees fit – with the guiding purpose of enhancing the life of the beneficiary.

Because a special needs trust is managed by a separate trustee, the beneficiary does not have any legal rights to the trust assets. This structure offers three advantages: (1) the beneficiary may qualify for government benefits, (2) the beneficiary still receives the beneficial use of his or her inheritance, and (3) trust assets are protected from lawsuits and creditors.

DID YOU KNOW?

A special needs trustee may authorize distributions from the trust for a wide variety of expenses designed to enhance the beneficiary's life, such as:

- Medical expenses not covered by government programs, such as vision or dental care, medications, durable medical equipment, therapy or home care
- Household items such as a television and DVDs
- Vacation, hobby or entertainment expenses
- Membership dues and subscriptions
- Transportation expenses
- Legal expenses
- Insurance policies or burial expenses

4 PHILANTHROPIC GIVING

Currently, you may gift up to $16,000 ($32,000 for couples) per year to any number of individuals without triggering gift taxes. Gifts in excess of this amount are applied against your lifetime gift tax exemption. If you utilize any lifetime gift tax exemption during your lifetime, simply put, it would conversely reduce the federal estate tax exemption available to the person making the gift by that amount.

For larger gifts, you may wish to consider using a trust to help you retain control and use of your current assets, while leaving the remaining balance for the charitable organization(s) of your choice. Another advantage for today's estate planning strategies is the current low interest rate environment, which can reduce the taxable value of transferred assets.

For example, consider establishing a charitable lead annuity trust (CLAT), which is designed to generate a larger tax deduction in a low interest rate environment. You may fund a CLAT with cash, investments and even life insurance. Over the term of the trust, the CLAT will provide a fixed annuity payment to the charitable organization of your choice, including a donor advised fund, while continuing to earn interest. At the end of the term, the remaining balance in the trust is transferred to your beneficiaries (not the charity). Due to the current low discount rate used in calculating the amount of the lead payments to the charity, your individual beneficiaries may receive a significantly higher amount at the end of the trust term. For most CLATs, you may take a one-time income tax deduction in the year the trust is funded.

While it may appear that provisions of the Tax Cuts and Jobs Act have hampered tax-advantaged philanthropic strategies for some, charitable tax deductions remain as viable as ever. Carefully consider the role of a trust to take full advantage of today's transfer strategies when planning philanthropic gifts.

MAKING GIFTS DURING YOUR LIFETIME OFFERS SEVERAL ADVANTAGES

- The assets you transfer while you are still alive are removed from your estate.
- Any future appreciation that could be earned by these assets is also removed from your estate.
- Any future income shifted to beneficiaries in a lower income tax bracket will enable them to keep more of the income generated.
- The transferred assets, and their subsequent appreciation, may be protected from potential creditors, lawsuits or divorce proceedings.
- Transferring assets while living allows you to ensure distribution goes according to your desires.

5 UNDERSTANDING A LIVING TRUST

A living trust provides instructions on how to manage your affairs during your lifetime, incapacity and at death. Since a living trust can only control the assets you put into it, it's crucial to fund it through the active retitling of assets, which also allows you to avoid probate. Once placed in the trust, your assets can be managed by a trustee for the benefit of your heirs.

If you utilize a revocable living trust, also called an inter vivos trust, you may transfer ownership of some or all of your property to yourself in your capacity as trustee, so you don't give up any control over those assets. Upon your death, the successor trustee will transfer your property and assets directly to your beneficiaries. Under the umbrella of a trust, you may name the people or organizations you want to inherit your assets upon your death. You also have the right to change those choices at any time, as well as revoke the trust if you wish.

A revocable living trust is ideal for assets located in more than one state in order to eliminate the potential for multi-state probates. Given that a living trust is not subject to probate, you avoid both the costs and the delays associated with these court proceedings. It is also private, so details of your assets cannot be accessed publicly.

CONCLUSION

The exemption amounts established by the Tax Cuts and Jobs Act have temporarily changed the estate planning landscape. This makes it particularly important to rely on the analysis and guidance of an experienced advisor, especially when it comes to the use of a trust.

In addition to tax planning, trusts can be used to help you retain control and management of assets, protect your estate, plan for a disability, maximize your philanthropic goals and avoid probate.

Work with an experienced financial advisor and trust consultant to maximize today's tax laws for your particular situation to help ensure your assets are maximized, protected and distributed as intended upon your death.

WORK WITH A TRUST CONSULTANT

Consider the five key reasons to own a trust

Assess your potential need for one or more trusts using the enclosed checklist

Implement trust strategies within the context of your overall financial and estate plan

Changes in tax laws or regulations may occur at any time and could substantially impact your situation. Raymond James financial advisors do not render advice on tax or legal matters. You should discuss any tax or legal matters with the appropriate professional.

ESTATE PLANNING CHECKLIST

Please rate the following as to how important they are to you:

H = high concern **S** = some concern
L = low concern **N/A** = no concern or not applicable

YOUR CONCERNS	LEVEL OF CONCERN			
	H	S	L	N/A
Desire to get affairs in order and create a comprehensive plan to manage affairs in case of death or disability	☐	☐	☐	☐
Providing for and protecting children	☐	☐	☐	☐
Providing for and protecting grandchildren	☐	☐	☐	☐
Disinheriting any children or descendants	☐	☐	☐	☐
Providing for charities during lifetime and at the time of death	☐	☐	☐	☐
Planning for the transfer and survival of a family business	☐	☐	☐	☐
Avoiding or reducing your estate taxes	☐	☐	☐	☐
Avoiding probate	☐	☐	☐	☐
Reducing administrative costs at time of your death	☐	☐	☐	☐
Avoiding a guardianship (“living probate”) in case of a disability	☐	☐	☐	☐
Avoiding will contests or other disputes upon death	☐	☐	☐	☐
Protecting assets from lawsuits or creditors	☐	☐	☐	☐
Preserving the privacy of affairs in case of disability or at time of death from business competitors, predators, dishonest persons and curiosity seekers	☐	☐	☐	☐
Planning for a child with disabilities or special needs, such as medical or learning disabilities	☐	☐	☐	☐
Protecting children’s inheritance from the possibility of failed marriages	☐	☐	☐	☐
Ensuring that your death shall not be unnecessarily prolonged by artificial means or measures	☐	☐	☐	☐

LIFE WELL PLANNED.

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