

CHAPTER EIGHT

Special Types of Gifts

Making gifts to Minors:

What choices for completing transfers to minors?

1) Guardianship (a state law proceeding).

The Texas Estates Code enables guardianship proceedings. But, subject to certain de minimis rules permitting greater flexibility for a parent acting on behalf of a minor with respect to the minor's assets. P.2.

Uniform Transfers to Minors Act, cont. P.2

2) TUTMA – Uniform Transfers to Minors Act. See Tex. Prop. Code (at p. 33 in text).

Income tax aspects? Who reports the income for FIT purposes? See p. 3.

What happens to the TUTMA property when minor reaches age 21? (or 18)? See p. 3 re possible transfer of assets into a Section 2503(e) trust (as permitted under the Texas Property Code). *continued*

Uniform Transfers to Minors Act

P.2

At what age does “minority” end for TUTMA?
What assets can be held in an TUTMA account?
Who should be the custodian? What are the estate tax risks for the donor/custodian?
See Rev. Rul. 74-556 (p.3) re split gifts; spouse (who agreed to gift splitting) is successor trustee but is not a transferor for estate tax purposes; the other spouse was the sole donor; cf., any community property concerns?

Section 2503(c) Minor's “Present Interest” Trust

P. 5. Code §2503(c) provides (in gift tax context) for present interest treatment of a trust transfer when certain distributions can be delayed until age 21. What restrictions or requirements on income distributions?

How extend this trust after age 21? Provide a lapsing “right of withdrawal”? Similar treatment to a Crummey power (i.e., economic access is available to beneficiary)?

Educational or Medical Expense Payments P.6

Code §2503(e) – exclusion for amounts paid (directly) for (a) educational expense (e.g., for younger generation) and (b) medical expenses (e.g., for older generation).

Educational expense must be for tuition (and ?), but not for room and board.

Is prepaid tuition for multiple grandchildren & years ok? Yes, see PLR 200602002, p. 6.

What about the cost (paid directly) of nursery school for a grandchild?

Section 529 College Tuition Plans

p.8

Why is this gift provision numbered under Code §529? Answer: Plan is a “tax exempt” entity.

Tax treatment: No income inclusion to the beneficiary – Code §529(c)(1) & (3) – if ultimately for distribution & distributed for the beneficiary’s higher educational expenses.

Gift of a present (not a future) interest – Code §529(c)(2) specifies this gift tax treatment.

Can accelerate contributions for five years with the annual donee exclusion - Code §529(c)(2)(B).

Net Gifts, p.9

Donee Assumes Debt

Purpose for a “net gift” transaction? Donor does not want to pay gift tax (or does not want to sell property to have cash to pay the gift tax).

But, the donor has the legal burden to pay the tax – Code §2502(c). Rev. Rul. 75-72 (p. 10).

For gift tax purposes the effect is to reduce the gift amount by the gift tax liability – thus, producing an “interrelated computation.”

& see Rev. Rul. 81-223, p. 12, re computation – tax is only on the actual gift tax amount (i.e., must use the unified credit).

Next slide

Net Gifts, continued

What Federal income tax treatment? p.13

What if the debt (gift tax or other debt, e.g., a mortgage) assumed by the donee is in excess of the income tax basis of the transferred asset?

How determine amount of the gain (i.e., what tax basis allocation process)? Cf., §1011(b).

If the transferee of the net gift is a trust, note the applicability of the grantor trust rules while the tax debt remains outstanding, p.14. How deal with this gross income inclusion risk?

Net Gifts, continued

Consider the computation of the gift tax amount when multiple taxable gifts are made by donor during the same year – i.e., is a “proportionate” or a “stacking” approach to be utilized?

Who controls the dispute issues with the IRS when the IRS is auditing the net gift transaction (p.9)?

- Whose pays the tax penalties (if any)?
- Who has the right to contest the gift tax audit, particularly the valuation issues?

Family Residence Transfers

p.15

Code §2036(a)(1) & retained life interest risk –
how eliminate this risk in a purported sale?

See Maxwell case (p.15) - how not to manage
this residence transfer/sale arrangement?

1) Sale for arm's length price? Income tax?

But, §121 enables a gross income exclusion.

2) Rental amount set at arm's length (& paid)?

3) Payment of mortgage debt to the seller?

4) Whose responsibility for repairs to the

house & the real estate taxes/insurance?

Family Residence Transfers

p.23

Other residence transfer options:

- 1) Interest-free loan to enable the purchase of a residence by the child.
- 2) Transfer a (vertical) fractional interest (e.g., to obtain a valuation discount on the gift)?
- 3) Rent-free use of all/part of the residence?
- 4) Use a Qualified Personal Residence Trust QPRT (see p. 22 and Chapter 15).

Family Debt Forgiveness Arrangements

p.23

What gift tax effects when a “purported” sale is made on credit terms to the grandchildren who have no significant net worth (& no credit)?

See Rev. Rul. 77-299, p. 24 (when the annual donee exclusion was \$3,000) – an intention to forgive all the debt existed at inception and the entire amount was an immediate gift transfer.

What income tax effects of an “installment sale” of the property by grandparent to grandchild?

Alternative approach: Transfer proportionate or fractional interests in a property each year?

Intra-Family Interest Free Loans

p.26

Has a gift been made through the interest-free loan of money to a relative? See Code §7872.

1) An immediate gift, or 2) a deferred gift?

Cf., demand loan or a term loan? See Code §7872(d)(2) – what is the timing of the gift for federal gift tax purposes; & cf., income tax.

What about de minimis loans, particularly for the federal income tax effects when made to family members? §7872(c)(2).

Loans of Family Property (i.e., not cash) p.27

1) Loan of tangible property, e.g., vacation home or boat? Gift or income to recipient?

2) Services provided by a parent to the child? E.g., (a) investment advice or (b) child care help provided by parent?

3) Credit assistance ? I.e., when loan guarantee is provided by a parent (enabling a reduction in the child's interest rate on a home mortgage loan made by a bank – because then a lower credit risk to bank)? PLR 9113009, p. 28.

