

## DYNASTY TRUSTS IN THE CROSS-HAIRS

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A dynasty trust is a trust that provides for an existence that may span many generations. Once upon a time, the rule against perpetuities limited the term of a trust to 2 or 3 generations at most. Now, many states have no limits on the term of a trust, or have very long limits (such as Florida). For transfer tax planning purposes, if the trust is exempt from generation skipping tax by reason of the allocation of the grantor's GST exemption, the trust assets can be held to benefit many generations without being subject to estate or generation skipping taxes as each generation dies off and new beneficiaries arise.

President Obama's 2012 budget includes a provision that would limit the GST exemption benefits to a maximum of 90 years. 90 years is still a long time to be exempt from transfer taxes, but it still is a lot shorter than "forever."

The proposal does not apply to existing trusts – that's a good thing. Further, with the House of Representatives in the control of the Republicans, it is unlikely that this provision will make it into law in the near future.

However, like a bad penny, once these type of proposals are out there, they tend to show up again and again. This doesn't mean it will ever pass - just that it will be hanging out there like the Sword of Damocles waiting for the winds of political fortune to shift so as to improve its chances of passage.

Just another reason to giving strong consideration to making gifts during 2011 and 2012 under the favorable gift-giving transfer tax environment.

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