

GIFTING BETWEEN SPOUSES CONTINUED

By Matthew T. Harrod

<http://www.woodatter.com/>

My last blog on gifting between spouses discussed an irrevocable trust that allows spouses to gift into irrevocable trusts while still maintaining control and allowing the assets to grow income tax free and pass estate and gift tax free to the beneficiaries. However, doing so is not as easy as it sounds.

The type of assets that may hold are cash, stocks, bonds, insurance, real property and business interests to name a few. The amount that may be transferred into the trusts though is the tricky part. The IRS has a rule, called the 5 and 5 rule, which states that when an annual exclusion gift is placed into an irrevocable trust for a spouse, a portion of the transfer will be included in the spouse's estate if the transfer is greater than \$5,000 or 5% of the value of the trust property.

Taking the 5 and 5 rule into account, if the trust has no asset in it, then \$5,000 will be the limit for transferring assets into the trust until such a time arises that 5% of the value of the trust becomes greater than \$5,000. At that point, then the amount that may be transferred per year will be 5% of the trust assets until you reach the annual gift exclusion amount (currently \$13,000 per year in 2010). You can transfer \$260,000 in year one into the trust tax free by filing a gift tax return and borrowing against your lifetime gift exemption (\$1,000,000). By doing this, 5% of \$260,000 is \$13,000 and you may then transfer the maximum amount per year. This second technique is super charging the trust and dramatically increases the amount that passes to your beneficiaries completely tax free. By creating these trusts, you are creating a second estate tax exemption above and beyond the exemption that the IRS currently allows.

To discuss the benefits of these trusts, please [contact an estate planning attorney](#).