Gifting in 2012: Strategies for the Reluctant Donor

By James F. McDonough, Jr. on September 10, 2012

Clients are reluctant to transfer assets to the next generation, in part, due to the financial turmoil of the past few years. This reluctance is the result of the inherent conflict between financial security and gifting. Clients may not be comfortable with giving assets away in the face of rising health care costs and possible future financial shocks.

There are, however, strategies for the reluctant donor to consider.

Qualified Personal Residence Trust (QPRT) – this technique allows a donor to retain the right to reside in the property for a period of years of his or her choosing (the QPRT Term"). After the end of the QPRT Term, the donor may lease the property from the trust. Most clients like this technique because they can act as trustees.

Grantor Retained Annuity Trusts (GRAT) – GRATS offer the senior generation an opportunity to retain an income stream while potentially transferring appreciation to the next generation. In today's market, a financial portfolio might offer an opportunity to retain income in the form of an annuity and transfer all future appreciation as the markets grind higher.

Note: The QPRT and GRAT strategies suffer from mortality risk. If the grantor should die before expiration of the chosen term, the property comes back into the estate.

Spousal Access Trust – this type of trust provides the spouse with access to funds, including income and principal, without inclusion in the estates of the donor or the spouse. There is a variation of this technique using a QTIP trust that is employed in states that do not match the federal exclusion. New Jersey is a state that "de-coupled" from the federal exclusion in 2001 leaving the state exclusion at $675,000.

Discretionary Trust – This type of trust is created by the donor for his or her own benefit where he or she remains eligible to receive distributions from a trust established in an asset protection jurisdiction. Currently, there are thirteen such states.

Donative Promise – this technique is, in essence, a gift without parting with the assets. This is sure to be a favorite among some donors because it allows for reporting the transfer (gift) today and use the exclusion. This technique has received a lot of attention in recent professional publications and may become the rage.

Intentionally Defective Grantor Trusts – A transfer of securities in exchange for a Note for less than the entire value of the transfer permits the return of cash (from portfolio income) to the client while utilizing the exclusion this year.

There are other alternatives available; however, the ones mentioned offer substantial opportunity for those hesitant to make outright transfers or wanting to retain an income stream.