The Ten Levels of Estate Planning

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INTRODUCTION

There are essentially six general strategies for reducing estate taxes. A comprehensive estate plan for persons with a taxable estate must incorporate one or more of these strategies.

This article discusses 10 strategies (i.e., 10 levels of estate planning) for reducing estate taxes — six general strategies (which are discussed in Sections 1-6, below), and four additional strategies (which are discussed in Sections 7-10, below).

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The first level (strategy) of estate planning is for a married couple to fully use their estate tax applicable exclusion amount, and to defer estate taxes by using the unlimited marital deduction. The second level (strategy) of estate planning is to make gifts of property without paying gift tax and without using the grantor's $1 million lifetime gift tax exemption amount. The third level (strategy) of estate planning is to leverage cash gifts through the purchase of life insurance in irrevocable trusts. The fourth level (strategy) of estate planning is to use techniques that reduce or shift the value of assets. The fifth level (strategy) of estate planning is to make gifts at little or no gift tax cost while retaining an income stream from the gifted property. The sixth level (strategy) of estate planning is to implement programs that take advantage of the income, gift and estate tax deductions for transfers to charity. The seventh level (strategy) of estate planning is how to keep the family in the family-owned business. The eighth level (strategy) of estate planning is to stretch out IRA distributions. The ninth level (strategy) of estate planning is to "super" stretch IRA distributions. The tenth level (strategy) of estate planning is the use of estate planning techniques that are effective even if the federal estate tax is permanently repealed.

Estate planning specialists know that there are two estate tax systems — one for informed taxpayers and one for uninformed taxpayers. The less a taxpayer knows, potentially the more the IRS takes. This article is intended to help put taxpayers in the informed camp — to introduce them to the strategies mentioned above so that they can become a tax-reducer instead of a tax-payer.

For simplicity's sake, the examples and illustrations in this article assume that both spouses die in 2008 and, therefore, the $2 million estate tax exemption amount (for 2008) applies to each spouse.

SECTION 1 — LEVEL ONE ESTATE PLANNING

The Revocable Living Trust

Situation

No estate planning is in place for the client (sometimes referred to as the "grantor"), or the client's present
planning is outdated or inadequate.

**Objectives**

1. Defer all estate taxes until the death of the grantor's surviving spouse (if the surviving spouse is a U.S. citizen) through the use of the federal estate tax marital deduction. 3

2. For married couples, take advantage of each spouse's estate tax exemption amount.

3. Avoid the delays, publicity and cost (approximately 2%-5%) of probate in the event of death or disability.

4. Make certain that the grantor's property has, goes to whom the grantor wants, when the grantor wants, and how the grantor wants.

5. Prevent the intentional or unintentional disinheretance of the grantor's children and grandchildren by the surviving spouse, especially if there are children from different marriages.

6. Protect the grantor's heirs from their possible inability to plan, their potential disability, their creditors, and their potential predators.

7. Decide who will manage the grantor's estate (e.g., personal representatives, trustees, attorneys-in-fact, etc.) and be responsible for the distribution of the assets.

8. Designate a patient advocate/health care agent and state the grantor's intent regarding artificial life support.

9. Designate on a separate list who is to receive items of personal property such as jewelry.

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**Tools & Techniques**

1. Establish and fund a Revocable Living Trust for the grantor.

2. Prepare a Pour Over Will for the grantor.


4. Prepare a Durable Power of Attorney for Health Care/Living Will for the grantor.

**The Advantages of a Revocable Living Trust**

A revocable living trust is a trust created during the grantor's lifetime in which the grantor retains the right to revoke, change its terms, and regain possession of the property in the trust. The grantor is typically the trustee of the revocable living trust during the grantor's lifetime. With proper coordination, a married couple can, through the use of revocable living trusts, leave up to $4 million estate-tax-free to their heirs (in 2008).

A revocable living trust will minimize administration and probate costs arising at the grantor's death, since property titled in the name of the trust avoids probate.

Placing property in a revocable living trust also avoids the necessity of a court-supervised conservatorship (i.e., guardianship of the grantor's assets/estate) in the event of the grantor's mental incompetence or physical incapacity.

Upon the grantor's death, the revocable living trust sets forth how the trust property is to be distributed to the grantor's spouse, children and grandchildren. The trust can also protect the grantor's heirs from potential creditors, including divorced spouses.

**Disadvantages of a Revocable Living Trust**

There are no disadvantages to a revocable living trust, since the grantor maintains total control over his/her
assets, and all documents are amendable and revocable.

**Common Mistakes in Designing a Revocable Living Trust**

Common mistakes (i.e., issues that are sometimes ignored) in designing a living trust, include the following:

1. Should the marital trust be a qualified terminable interest property (“QTIP”) trust so that the surviving spouse cannot intentionally or unintentionally disinherit his/her step-children (i.e., the grantor’s children from a different marriage)?

2. Should the family (i.e., credit shelter) trust allow income to be “sprinkled” to children and grandchildren? If not, the opportunity to shift income to lower tax brackets is lost.

3. Should the trust agreement permit the trustee to postpone distributions to beneficiaries (beyond their required distribution dates) for good cause? If not, it may be impossible to protect trust assets from the beneficiaries’ creditors, including divorced spouses.

4. Should the marital and family trusts give the surviving spouse a testamentary limited power to appoint trust property among children and grandchildren? If not, considerable flexibility to reduce the income and estate taxes of the children may be lost.

5. Another common mistake is the grantor’s failure to properly fund his or her revocable living trust (through asset transfers and change of beneficiary designations). And, even if the trust is funded, there may be assets that pass outside of the trust, such as joint assets and assets with beneficiary designations that do not name the trust as the beneficiary. Assets that pass outside of the grantor’s revocable living trust can create an imbalance in the grantor’s estate plan, and possible inequalities among the grantor’s heirs.

Thus, all of these common mistakes can create post mortem frustrations for the grantor’s surviving spouse and/or heirs.

**Death Tax Issues and a Revocable Living Trust**

A revocable living trust becomes irrevocable at death. Often, a married couple will each establish a revocable living trust so that the trust property is divided into two parts at the first death. The estate tax exemption amount is placed in a family (i.e., credit shelter) trust (Trust B in the Revocable Living Trust Diagram in the Appendix). The balance of the trust property is placed in a marital trust (Trust A in the Revocable Living Trust Diagram in the Appendix). No taxes are due at the death of the first spouse because the estate tax exemption amount applies to the family trust; and if the surviving spouse is a U.S. citizen, the unlimited marital deduction applies to the marital trust. However, if the surviving spouse is not a U.S. citizen, special rules apply concerning the marital trust and the taxation of distributions to the surviving spouse.

Upon the death of the surviving spouse, the assets in the family trust pass estate-tax-free to the children under the terms established in the trust. The assets in the marital trust are taxable, but only to the extent they exceed the surviving spouse's estate tax exemption amount. Thus, a married couple can leave $4 million (in 2008) to their children federal estate tax free!

**The Federal Transfer Tax System**

Every U.S. taxpayer is given a tax credit at death, which protects a portion of his/her assets from federal estate taxes. This credit is referred to as the estate tax applicable exclusion amount (the “estate tax exemption”). Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (“2001 Tax Act”), the exemption for estate taxes increased to $1 million in 2002 and then gradually increases to $3.5 million by 2009. The 2001 Tax Act repeals the federal estate tax and generation-skipping transfer tax for only one year in 2010. In 2011, the federal estate and generation-skipping transfer taxes are reinstated, generally as they existed before the 2001 Tax Act.  

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4 Because of the Congressional Budget Act of 1974, all provisions of the 2001 Tax Act “sunset” (i.e., expire) on December 31, 2010, and the estate and gift tax rules in effect in 2001 are reinstated, with a $1 million exemption amount. In other words, unless Congress acts before 2011 to extend the provisions of the 2001 Tax Act, the estate and gift tax structure in effect prior to the 2001 Tax Act will return.

Gifting during lifetime is treated differently than bequests at death. The federal gift tax applicable exclusion amount (the “gift tax exemption”) increased to $1 million in 2002 and remains indefinitely at that amount.
In 2010, the top gift tax rate will be the top income tax rate. The estate tax exemption available at death is reduced by the amount of the gift tax exemption that was used by the decedent for taxable gifts made during his/her lifetime. The phase in of the rates and exemptions are detailed in the Estate and Gift Tax Table in the Appendix. In addition, the law provides an unlimited marital deduction which allows married persons to leave any amount of property to their surviving spouse (if a U.S. citizen) free from federal estate and gift taxes. The unlimited marital deduction was not affected by the 2001 Tax Act.

In 2010, the federal estate tax is repealed. The present rules, which provide for a step-up in income tax basis to fair market value for property acquired from a decedent, are also repealed. For 2010, a carryover income tax basis generally replaces the step-up basis for property acquired from a decedent. However, each decedent's estate generally is permitted to retain the step-up in income tax basis for up to $1.3 million of assets transferred. In addition, the step-up in income tax basis is available for an additional $3 million of property transferred to a surviving spouse.

SECTION 2 — LEVEL TWO ESTATE PLANNING

Annual Exclusion Gifts and Tax-Free Gifts

Situation
The grantor's estate is projected to be larger than the estate tax exemption (double for married couples) at time of death.

Objectives
(1) Remove property from the grantor's gross estate without having to pay any gift tax, and without having to use the grantor's lifetime $1 million gift tax exemption amount.

(2) Take advantage of the federal gift tax annual exclusion of $12,000 ($24,000 for married couples) per donee (i.e., the recipient of the gift), as indexed for inflation.

(3) Equalize estate sizes between married couples in order to create an estate for the "less wealthy" spouse, and to minimize federal estate taxes.

Tools & Techniques
(1) Outright gifts of property.

(2) Gifts to Minor's and Grandchildren Trusts.

(3) Gifts to Internal Revenue Code §529 Accounts.

(4) Direct Payment of Tuition and Medical Expenses.

(5) Inter vivos QTIP Trust.

Disadvantages
(1) The grantor (also referred to as a "donor" as concerns gift making) must part with dominion and control over the gifted property.

(2) The gift of property must be of a "present interest," and not of a "future" interest.

(3) There are complex rules concerning a donor acting as the trustee of gifted property that is held in a trust.

(4) A donor can not act as custodian of the gifted property that is held in a Uniform Transfers to Minors Account.

(5) Gifts to a non-U.S. citizen spouse are subject to special limitations.

Outright Gifts
The simplest and most common form of gift is the outright transfer of property to another person, such as a
gift of cash. Each year an individual can make a gift (pursuant to the Internal Revenue Code's gift tax annual exclusion rules) of $12,000 ($24,000 for married couples) per donee, as indexed for inflation, gift tax free. In addition to making annual exclusion gifts, spouses who are U.S. citizens can also gift unlimited amounts of property to one another, provided the gift qualifies for the gift tax marital deduction. Intra-spoous gifts are generally made to provide the "less wealthy" spouse with enough property to fully use the "less wealthy" spouse's estate tax exemption when that spouse dies. This technique is known as "estate equalization." However, a spouse who is not a U.S. citizen can not receive unlimited gifts of property from his/her spouse; and the annual amount that can be given gift tax-free to the non-U.S. citizen spouse is limited to $128,000 per year (for 2008), indexed for inflation.

**Gifts to Minor's and Grandchildren Trusts**

A donor can make gifts for the benefit of a minor through the use of certain trusts. A §2503(c) trust permits the gifted property to be held in trust until the minor attains age 21. A properly structured §2642(c) trust permits gifted property to be held in trust for the benefit of a grandchild (or more remote descendant) of any age. Both types of trust are "exempt" from the confiscatory federal generation-skipping transfer ("GST") tax. 5

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**Section 529 Accounts**

Section 529 accounts are an excellent way to save for a child/grandchild’s college, graduate school and professional school expenses (tuition, room, board and books). A 529 account receives special tax benefits, such as tax-deferred growth, tax-free distributions for certain "higher" education expenses, exemption from the GST tax, and special gift tax annual exclusion front-end loading. For example, up to five years of the gift tax annual exclusion amount (currently $60,000 or $120,000 for a married couple) can be given at one time and then "amortized" over five years. A 529 account funded by a grandparent can help to ensure that there are sufficient funds available for a grandchild's college education.

**Direct Payment of Tuition or Medical Expenses**

In addition to gift tax annual exclusion gifts, intra-spoous gifts, and 529 accounts, discussed above, a donor can also make annual "qualified transfers" of unlimited amounts, gift tax free, for another individual's tuition expenses (but not for room, board or books) and/or unreimbursed medical expenses. However, the "qualified transfers" must be paid directly to the educational institution/medical provider (and not to reimburse the individual). Qualified tuition payments can be used in conjunction with a §529 account to help pay for a grandchild's college education.

**Inter Vivos QTIP Trust**

An irrevocable inter vivos QTIP trust allows a couple to take advantage of the donee-spouse's applicable exclusion amount and GST exemption without depriving the donor-spouse of the income from the property if the donor-spouse turns out to be the surviving spouse. It also allows the donor-spouse to take advantage of the donee-spouse's estate tax exemption amount (should the donee-spouse predecease the donor-spouse) without having to either transfer such amount outright to the donee-spouse (thereby losing control over the funds), or to gift such amount and elect to split the gift (thereby losing enjoyment over the funds gifted). Thus, an inter vivos QTIP trust can: (1) create an estate for the less wealthy spouse; (2) make full use of the donee-spouse's estate tax exemption amount and GST exemption; (3) equalize the spouses' estates; (4) create a GST tax exempt trust (using the donor's GST tax exemption and making a reverse QTIP election to the inter vivos QTIP trust) without the donor incurring any gift tax; (5) protect a spendthrift donee-spouse and provide asset protection for that spouse; (6) protect the inheritance of the donor-spouse's children if the donee-spouse is their step-parent; (7) create a "supercharged credit shelter trust" 6 for the benefit of the surviving donor-spouse (and ultimately for the benefit of the trust's remainder beneficiaries), (7) be an alternative to a grantor retained annuity trust ("GRAT") for owners of a closely held business who are married, and (8) with proper planning, permit assets to be fractionalized, discounted, and excluded from the donor-spouse's estate. 7 An inter vivos QTIP trust can also be used in conjunction with divorce settlements, ensuring the soon-to-be-ex-donee-spouse an income stream (taxable to the ex-donee spouse under §682 if the income constitutes a property settlement), while preserving the trust corpus for the benefit of the donor-spouse's selected beneficiaries. In multiple-marriage situations, the donor-spouse could establish an inter vivos QTIP trust for each donee-spouse and use the donee-spouse's estate tax exemption amount and GST exemption to ultimately benefit the descendants of the donor-spouse. The donor-spouse could also retain a successive life estate in the trusts that he or she has established for these spouses.
SECTION 3 — LEVEL THREE ESTATE PLANNING

The Irrevocable Life Insurance Trust

Situation

The grantor’s estate is projected to be larger than the estate tax exemption (double for married couples) at time of death.

Objectives

1. Remove life insurance proceeds from the grantor-insured’s gross estate while still providing benefits to the surviving spouse and the grantor’s descendants.

2. Use the grantor’s gift tax annual exclusion amount per donee ($12,000/$24,000 for married couples in 2008), as indexed for inflation.

3. Leverage the grantor’s gift tax annual exclusion through the purchase of life insurance, including second-to-die life insurance.

4. Use the tax-free life insurance death benefit to provide liquidity to the grantor-insured’s estate through the purchase of assets from his/her estate or loans to the estate.

Tools & Techniques

1. Irrevocable Life Insurance Trust (“ILIT”).

2. Dynasty Trust.

Disadvantages

1. The grantor-insured cannot act as the trustee of an ILIT.

2. The trust is irrevocable and, therefore, cannot be amended or revoked.

3. The grantor cannot directly reach the trust property (i.e., life insurance cash values) during lifetime. However, the trustee can use cash values for the benefit of the grantor’s spouse and descendants during grantor’s lifetime. Moreover, the grantor can give a special power holder, such as the grantor’s spouse, the ability to appoint trust property back to the grantor.

The Crummey Trust

An ILIT that is structured as a Crummey Trust is a popular device for making gifts in trust that qualify for the gift tax annual exclusion. Most other forms of gifts in trust that qualify for the gift tax annual exclusion require an immediate or at least a very early (i.e., age 21) distribution of the trust assets to the beneficiary. The Crummey Trust, which takes its name from a court case upholding this type of trust and supporting its tax benefits, does not have such requirements.

Each time a contribution/gift is made to a Crummey Trust, a right to withdraw the contribution/gift from the trust is available to the trust beneficiaries. The right of withdrawal is for a limited period of time, typically 15 to 30 days. If the right of withdrawal is not exercised by the beneficiary within the limited time period, the...
contribution/gift remains in the trust for management and investment by the trustee.

Because the right of withdrawal is typically not exercised (since to do so would defeat the grantor's ability to effectively fund the trust for the benefit of the beneficiaries), the trustee may use the trust funds (income and/or principal) for some purpose desired by both the grantor and the beneficiaries. Paying premiums on insurance on the life of the grantor-insured is the typical use. When the grantor-insured dies, the life insurance proceeds are used to provide benefits to the surviving spouse, children and/or grandchildren. Properly structured, the life insurance proceeds are not taxed in the estate of the grantor-insured nor the estate of the grantor's spouse. Moreover, when both spouses have died, the life insurance proceeds can then be used to help pay the federal estate tax that may be due. This is accomplished by having the Crummey Trust purchase assets from, or loan money to, the estates of the grantor and/or the grantor's spouse as allowed in the Crummey Trust document.

The main advantage of an ILIT is the reduction of the grantor-insured's gross estate by the annual gifts to the trust and the exclusion of the life insurance proceeds from the grantor-insured's estate for federal estate tax purposes. As long as the grantor-insured establishes an irrevocable trust and retains no “incidents of ownership” over the life insurance policy, and no powers over the trust that could be construed as ownership or cause the life insurance to be includible in the grantor-insured's estate for federal estate tax purposes, the life insurance proceeds received by the trust will be excluded from the grantor-insured's estate.

If an existing life insurance policy is transferred to the trust, the grantor-insured must survive at least three years from the transfer of the policy to the trust. Otherwise, the insurance proceeds will be included in the grantor-insured's estate for federal estate tax purposes. This three-year rule can be avoided for a new policy by having the trust apply for the policy as the initial owner, or by having the insured sell the policy, for its fair market value, to a wholly owned grantor trust (for income tax purposes).

In funding the Crummey Trust, the vehicle of choice is invariably life insurance because: (i) life insurance increases substantially in size upon the grantor-insured's death — generally, both federal income and estate tax free; (ii) life insurance can usually be funded with gifts qualifying for the gift tax annual exclusion; (iii) the cash value of a permanent life insurance policy permits funding flexibility since the cash values can be used to pay the premiums (or buy paid up additions) after a period of years; and (iv) the life insurance proceeds can eventually be used to provide liquidity to help pay the grantor-insured's estate taxes.

In essence, the ILIT allows death taxes to be paid for the estate rather than from the estate.

**Generation-Skipping Transfer Taxes**

The confiscatory GST tax applies to lifetime or death time transfers to a member of a generation more than one generation younger than the donor, such as the donor's grandchildren or great grandchildren. The GST tax is in addition to the federal gift or estate tax. The GST tax attempts to prevent the long-term accumulation of wealth that is designed to avoid the federal estate tax. However, there is an exemption against the GST tax. The GST exemption is the same as the estate tax exemption, and the GST tax rate is the same as the highest estate tax rate (see Estate and Gift Tax Table, below). In 2010, the GST tax is repealed. However, under the “sunset” provision of the 2001 Tax Act, on January 1, 2011, the GST tax is reinstated with a $1 million exemption (as adjusted for inflation) and a flat 55% tax rate.

**Dynasty Trust — Leveraging the GST Exemption**

A Crummey Trust funded with life insurance can leverage a grantor's GST exemption. For example, a married couple can gift up to $4 million to a Crummey Trust using the $12,000/$24,000 annual gift tax exclusion per beneficiary and/or the $1 million/$2 million gift/GST tax exemption. The trustee could in turn use these gifts to purchase a second-to-die life insurance policy on the grantors.

Assume a $5 million policy is purchased. Upon the death of the surviving spouse, the following benefits would be realized:

1. The entire life insurance death proceeds received by the Crummey Trust would generally be received income-tax-free under §101(a).

2. The entire life insurance death proceeds would be estate-tax-free because the grantors did not possess any “incidents of ownership” in the policy.

3. The children and grandchildren would receive the income from the trust and any principal needed for their health, education, maintenance and support.

4. There would be no GST tax because the grantors' GST exemption ($2 million/$4 million in
(5) Upon the death of the children, the property (including any appreciation) would pass estate-tax-free to the grandchildren and perhaps even the great grandchildren.

(6) The assets in the Crummey Trust would generally be outside the reach of the beneficiaries' creditors, including divorced spouses.

SECTION 4 — LEVEL FOUR ESTATE PLANNING
Family Limited Liability Company and Valuation Discounts

Situation
There is a projected estate tax liability for the grantor's estate that exceeds the life insurance inside irrevocable trusts.

Objectives

(1) Use the grantor-donor's gift tax exemption to make lifetime gifts. Gifts can be of real estate, closely held stock, or publicly traded stocks and bonds. Thus, the future appreciation on the gifted property is effectively removed from the grantor-donor's estate.

(2) Take advantage of valuation discounts (for lack of control and marketability). For example, with a 30% discount, $2,857,143 of gifted assets is "reduced" to $2,000,000 for gift tax purposes.

(3) Permit the grantor-donor to maintain control over the gifted property.

(4) Have the grantor-donor shift income to children and/or grandchildren who may be in lower income tax brackets.

Tools & Techniques

(1) Family Limited Liability Company ("FLLC"). 10

(2) Valuation discounts.

10 In some states a family limited partnership ("FLP") instead of a FLLC may be preferable to accomplish the same results.

Disadvantages

(1) Transfers to a FLLC are irrevocable.

(2) The grantor-donor loses the income allocated to the donee members.

(3) The grantor-donor's heirs lose stepped-up basis on appreciated property transferred to the FLLC.

Family Limited Liability Company
A FLLC is typically established as follows, and will provide the following benefits:

(1) A donor (and the donor's spouse) transfer marketable securities or assets (e.g., building or equipment) to a FLLC. The donor may use multiple FLLCs to further limit liability (i.e., one FLLC for real estate, and another for marketable securities).

(2) Regardless of the assets transferred to the FLLC, the IRS and the courts require the FLLC to have a business purpose; otherwise the IRS may attack the FLLC as a "sham."

(3) The donor (and the donor's spouse) initially own 100% of the FLLC's membership interests.

(4) The donor (and the donor's spouse) make gifts of their FLLC membership interests to children.
and/or grandchildren (or trusts for their benefit) so afterward the donor (and his or her spouse) each end up owning only 26% of the FLLC (collectively, 52%).

(5) The Tax Court recognizes a minority discount from the full value of the membership interests gifted to children and grandchildren because such interests do not have any control over the FLLC and lack marketability. Discounts of 25% to 45% are typical, but must be determined by a qualified appraiser. Larger discounts are likely to result in greater scrutiny by the IRS.

(6) The FLLC can lease equipment or buildings to the donor's corporation, or to any other person or entity.

(7) Since the donor and the donor's spouse collectively own 52% of the FLLC, they can "control" the FLLC.

(8) The FLLC's profits are allocated to the members in proportion to their ownership interests even if not distributed. If the members are in a lower tax bracket than the donor, an income tax savings will result.

(9) Only the value of the donor's 26% membership interest is included in his or her gross estate — despite the fact that he or she "controlled" the FLLC (along with his/her spouse).

(10) The initial assets transferred to the FLLC, plus any after-tax earnings and appreciation thereon, are removed from the donor's gross estate (except to the extent of the donor's 26% membership interest).

(11) Assets in the FLLC are generally difficult for the creditors of a member to reach.

(12) The donor's ILIT be made a member. Thus, the FLLC's cash flow can be used to pay life insurance premiums without having to use any of the donor's $12,000 annual gift tax exclusion.

SECTION 5 — LEVEL FIVE ESTATE PLANNING
Qualified Personal Residence Trust, Grantor Retained Annuity Trust, and Charitable Remainder Trust

Situation
There is a further need to make gifts when the grantor's gift tax exemption has already been used for other transfers.

Objectives
(1) Remove property from the grantor's estate.
(2) Permit grantor (and grantor's spouse) to continue using the property or the property's income for a fixed term.
(3) Make substantial gifts at little or no gift tax cost.
(4) Freeze the value of the property transferred.
(5) Permit the grantor to maintain control over the property during the fixed term.

Tools & Techniques
(1) Qualified Personal Residence Trust ("QPRT").
(2) Grantor Retained Annuity Trust ("GRAT").
(3) Charitable Remainder Trust ("CRT").

Disadvantages
(1) The trust is irrevocable.
(2) The grantor loses access to property at end of the trust’s fixed term.

(3) The grantor’s heirs do not obtain a stepped-up income tax basis on appreciated property contributed to the trust.

(4) If grantor dies during the trust’s fixed term, some (or all) of the property in trust is included in the grantor’s estate.

**Qualified Personal Residence Trust**

A QPRT provides the following benefits:

(1) The grantor’s residence (or second home) is transferred to a trust, but the grantor retains the right to use the residence for a specified number of years.

(2) After the fixed term ends, the residence passes to the beneficiaries named in the QPRT, usually the grantor's children.

(3) The creation of the QPRT involves a gift to the grantor's children of only the remainder interest in the residence. IRS valuation tables are used to compute the value of the grantor's right to remain in the residence for a certain number of years, and the value of that retained interest is subtracted from the value of the residence. For example, assume a vacation home owned by a grantor age 70 is worth $1,000,000 and the IRS’s assumed interest rate is 6.0%. If the grantor establishes a 10-year QPRT, with the grantor’s children as the remainder beneficiaries, the total value of the grantor's retained interest is $631,550. Thus, the taxable gift is only $368,450 ($1,000,000 - $631,550). This taxable gift can be offset by the grantor’s $1,000,000 gift tax exemption. Assuming the grantor survives the 10-year term, and the residence appreciates 6% per year to $1,790,848, the potential estate tax savings at a 45% tax rate will be $640,079!

(4) The longer the term for the grantor’s retained interest, the smaller the gift to the grantor’s children and/or grandchildren. However, if the grantor does not survive the fixed term, the residence is included in the grantor’s gross estate just as if the QPRT had not been created.

(5) If the grantor wants to continue using the residence after the fixed term expires, the grantor can lease it from his or her children at fair market rental rates, which saves more estate tax by removing additional funds from the grantor’s estate. While the rent would be taxable income to the children (if the trust is not a “grantor” trust for income tax purposes), the net effect is that the grantor is transferring assets (i.e., rent) to his/her children at lower income tax rates rather than much higher estate and gift tax rates. However, if the trust is a “grantor” trust for income tax purposes, the rent will not be taxable income to the children, and will not be taxable income to the grantor — it's as if the rent is a tax free “gift” to the children from the grantor. The tax-free rent can be used by the “grantor” trust to acquire and pay for an insurance policy on the grantor's life — a potential double tax benefit! 11

(6) A QPRT works best for a residence and/or second home that the grantor expects to hold for the foreseeable future or replace if sold.

(7) A common hedge against death during the QPRT term is to insure the grantor's life for an amount equal to the estimated estate tax on the value of the residence. An insurance policy held by an ILIT is an ideal hedging strategy.

11 See, Section 14.1 of Grassi, Jr., *A Practical Guide to Drafting Irrevocable Life Insurance Trusts*, for additional discussion of this technique.

**Grantor Retained Annuity Trust**

A GRAT provides the following benefits:

(1) Typically, either Subchapter S stock that pays significant dividends, or a partnership/limited liability company (“LLC”) interest with good cash flow, is transferred by the grantor to a GRAT. However, virtually any appreciating investment asset can be used. Generally speaking, it is
preferable to have a separate GRAT for each asset, so that the failure of an asset to appreciate (i.e., an “unsuccessful” asset) does not offset (i.e., net out) the appreciation (and resulting estate tax savings) of a “successful” asset.

(2) The GRAT pays the grantor a fixed payment (an annuity), at least annually, for a fixed term of years.

(3) After the fixed term ends, the trust property (plus the appreciation thereon) passes to the beneficiaries named in the GRAT, usually the grantor’s children. The property can pass outright to the children or to a trust for their benefit. Alternatively, the property can pass to an ILIT, which can use the property to acquire a policy of insurance on the grantor’s life. Or, the property can pass to an intentionally defective grantor trust (“IDGT”), which is discussed in Section 8, below, as “seed” money to fund an installment sale of assets by the grantor to the IDGT. Both alternate techniques can provide a double tax benefit!

(4) Only the value of the GRAT remainder interest is subject to gift tax. The value of the remainder interest and, therefore, the value of the gift, can be reduced by a longer GRAT term, a larger annuity, an older grantor, or a lower assumed interest rate (published monthly by the IRS).

(5) For example, if a 65-year-old were to transfer $1,000,000 to a GRAT with a term of 10 years, and retained a 10% annuity interest ($100,000 per year) during the term of the trust, the taxable gift (assuming the IRS’s interest rate is 6% for the month of the gift) will only be $335,600. The reason for the reduced gift is that the children are not receiving the trust property for 10 years. This taxable gift can be offset by the grantor’s $1 million gift tax exemption amount.

(6) If the grantor does not survive the fixed term, some or all of the property in the GRAT is included in the grantor’s gross estate. If the grantor is married, the property included in the grantor’s estate can be left to the grantor’s spouse in a manner that qualifies for the estate tax marital deduction, thereby avoiding (i.e., deferring) the payment of estate taxes that might otherwise be due at the grantor’s death.

(7) A common hedge against death during the GRAT term is to insure the grantor’s life for an amount equal to the estimated estate tax on the value of the property in the GRAT. An insurance policy held by an ILIT is an ideal hedging strategy.

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12 See, Section 14.3 of Grassi, Jr., A Practical Guide to Drafting Irrevocable Life Insurance Trusts, for additional discussion of this technique.

Charitable Remainder Trust

A CRT enables an individual to make a deferred gift to charity, usually of appreciated assets such as marketable securities, real estate or closely held C corporation stock, while retaining a right to payments from the CRT. Since the CRT is a tax-exempt entity, when it sells the appreciated assets it does not pay any capital gains tax. This results in increased cash flow to the grantor (and the grantor’s spouse). Moreover, the grantor is entitled to an immediate charitable income tax deduction resulting in reduced taxes. Finally, upon the death of the grantor (and the grantor’s spouse), the assets in the CRT pass to the designated charity estate-tax-free!

The CRT can be a unitrust or an annuity trust. A unitrust provides for the grantor to receive a variable payout of a set percentage (at least 5% but not more than 50%) of the CRT’s annually revalued principal, whereas the annuity trust provides for the grantor to receive a fixed payout of a set percentage (at least 5% but not more than 50%) of the initial value of the CRT principal. Either type of CRT can require that payments be made for the lives of the grantor and one or more persons, such as the grantor’s spouse.

The grantor (and the grantor’s spouse) can act as the trustee(s) of the CRT, and can control and manage the trust corpus. If non-marketable assets (i.e., land or closely-held business interests) are contributed to the CRT, an independent co-trustee is required. In managing the trust assets, the trustee can not be obligated to a pre-existing contract to sell trust assets.

Property with verbal pre-existing contracts might also be viewed as obligating the trustee(s) to sell, and are generally not appropriate assets for a CRT. The trustee(s) of the CRT have a fiduciary responsibility to manage the trust assets not only for the benefit of the income beneficiaries (grantor(s)), but also the charitable
remainder beneficiaries. It is also best to allow time to pass before selling highly appreciated assets and diversifying them into higher income producing assets.

The grantor's income tax deduction is the present value of the remainder interest passing to charity (which must be at least 10% of the initial fair market value of the trust's assets), and is based on the age of the grantor (and the grantor's spouse), the selected payout, the amount contributed to the CRT and the IRS's assumed rate of return (published monthly). For example, an older grantor and a smaller payout will result in a larger charitable income tax deduction, and vice-versa. Upon the death of the surviving spouse, assuming there are no other income beneficiaries, the balance in the CRT passes to the designated charity free of estate tax because of the unlimited charitable estate tax deduction. Thus, at first blush, it would appear that the grantor's children are being disinherited. However, simultaneous with the creation of the CRT, the grantor will usually establish an ILIT for the benefit of the grantor's children. This is sometimes called a "Wealth Replacement Trust."

A married grantor will typically use a second-to-die life insurance policy in his/her Wealth Replacement Trust. The grantor will use the tax savings from the charitable income tax deduction and the increased cash flow resulting from the use of the CRT to make gifts to the Wealth Replacement Trust, thereby providing for the "replacement" of the property eventually passing to charity.

SECTION 6 — LEVEL SIX ESTATE PLANNING
The Zero Estate Tax Plan
Situation
Desire to disinherit the IRS, and to choose children and charity over Congress.

Objectives

(1) Prevent the grantor from being an involuntary philanthropist (i.e., paying estate taxes and letting Congress control those funds), and instead have the grantor become a voluntary philanthropist (i.e., not paying estate taxes and letting the heirs control those funds).

(2) Make the grantor's entire estate available to the surviving spouse during his or her lifetime.

(3) Provide the grantor's children and grandchildren with a desired minimum inheritance.

Tools & Techniques

(1) Use a Crummey/Dynasty Trust funded with a second-to-die life insurance policy to provide the grantor's children and grandchildren with desired inheritance — generally, federal income and estate-tax-free. Sometimes called a “Wealth Replacement Trust.”

(2) Use a Living Trust (with QTIP provisions) to provide for the grantor's surviving spouse.

(3) Upon the death of surviving spouse, that portion of the estate over the couple's combined estate tax exemption passes to a private (family) foundation (or a donor advised fund or a Charitable Lead Annuity Trust) — estate tax free! If a private family foundation is used, the grantor's heirs will manage the foundation, and can receive reasonable compensation from the foundation. If a donor advised fund is used, the children will make recommendations concerning distributions/grants from the fund.

Disadvantages

(1) Grantor-insured cannot act as the trustee of an ILIT.

(2) A Crummey/Dynasty Trust is irrevocable and, therefore, cannot be amended or revoked.

(3) The grantor cannot directly reach trust property (i.e., life insurance cash values) during lifetime. However, the trustee can use cash values for the benefit of the grantor's descendants during grantor's lifetime. Moreover, grantor can give certain individuals, such as a special power holder, 13 the power to appoint trust property back to grantor.

13 See, Section 11.1 of Grassi, Jr., A Practical Guide to Drafting Irrevocable Life Insurance Trusts, for a
The Zero Estate Tax Plan is an approach to estate planning that results in no federal or state death taxes being paid. The concept is best understood by way of example. The diagrams that appear in the Appendix were derived from an handout that appeared in the September 1994 edition of Life Association News by Thomas F. Commoto, Esq. For simplicity's sake, assume a married couple, both age 60, with a $10 million estate, a 45% estate tax bracket, and no growth or depletion of their estate. Also assume that the estate tax exemption is $2 million per spouse.

Diagram I illustrates the standard Marital-Family Trust (described above in the Level One Planning section). Diagram II illustrates how the children can receive the same $7.3 million they inherit in Diagram I, but with no estate taxes being paid. By gifting $600,000 ($50,000 per year for 12 years) to a Crummey/Dynasty Trust (described above in the Level Two Planning section) funded with a $3.3 million second-to-die life insurance policy, it is possible to leave the children $7.3 million while leaving charity $5.4 million. The unlimited estate tax deduction for charitable bequests leaves the IRS out of the picture.

In Diagram III, by increasing the gift to the Crummey/Dynasty Trust to $1.2 million ($100,000 per year for 12 years), the entire $10 million passes to the children, while $4.8 million goes to charity and, most importantly, no estate taxes are due.

In summary, by implementing the Zero Estate Tax Plan (Diagram III versus Diagram I), the children receive $10 million instead of $7.3 million; charity receives $4.8 million instead of nothing; and the IRS receives nothing instead of $3.3 million! Moreover, the $7.3 million the children receive in Diagram I will be taxed again at their deaths, whereas the $6 million in the Crummey/Dynasty Trust illustrated in Diagram III will not be taxed in the estates of the children and possibly even the grandchildren.

The Charity of Choice: The Private Family Foundation

While the Zero Estate Tax Plan works with any qualified charity, the charity of choice for a wealthy grantor is the grantor's own private family foundation. In the context of the Zero Estate Tax Plan, upon the death of the surviving spouse, the private family foundation would receive that portion of the estate in excess of the $2 million estate tax exemption amount (double for married couples). The foundation would carry the name of the grantor's and would be managed (in perpetuity) by the grantor's descendants. The private family foundation is required to make only minimum disbursements (i.e., 5% of its value) each year to qualified charities. As such, the foundation will likely grow in value over the years. As directors of the foundation, the grantor's descendants will learn to be altruistic and philanthropic, and will enjoy the self esteem and public recognition that comes from benefiting charity. Finally, the directors are entitled to reasonable and customary salaries for carrying out the administrative duties of the foundation.

Charitable Lead Annuity Trust

A Charitable Lead Annuity Trust ("CLAT") is somewhat the opposite of the CRT discussed above. While a CLAT can be established during lifetime (an "Inter Vivos CLAT"), it is more often established upon death through a Will or Revocable Living Trust (a "Testamentary CLAT"). A Testamentary CLAT eliminates potential income tax consequences to the donor and allows for a step-up in income tax basis for the benefit of the CLAT remainder beneficiaries. A CLAT pays a fixed-dollar amount to the grantor's private family foundation or to one or more public charities for a set term of years. When the term of the CLAT ends, the remaining assets (i.e., the remainder interest) are then distributed to members of the grantor's family (usually the grantor's children).

Since the charity receives an income stream, only the value of the CLAT remainder interest is included in the grantor's taxable estate. The value of the remainder interest is based upon the term of the CLAT, the amount payable each year to charity, and the monthly IRS prescribed interest rate. For example, assume a married couple with a $10 million estate leaves their children their $4 million estate tax exemption, and leaves the remaining $6 million to a CLAT. If the CLAT pays the couple's favorite charity (or private family foundation) an 8% annuity (i.e., $480,000 per year) for 20 years, and assuming the IRS's prescribed interest rate is 6%, the taxable estate, after the estate tax exemption, would only be $494,448. This technique gained prominence when used by Jacqueline Kennedy Onassis in her Last Will and Testament.

Since the grantor's assets receive a full stepped-up income tax basis on the grantor's death (partial in 2010), there is no capital gain to the CLAT upon the sale of the assets. Moreover, if the CLAT earns more than it pays out to the charitable beneficiary, the future growth in the value of the CLAT passes to the grantor's family without further estate or gift taxes. Therefore, a CLAT works particularly well for assets expected to appreciate significantly.

A Testamentary CLAT can be used to achieve a zero estate tax. However, the drawback to using a CLAT to
obtain a zero estate tax is that the grantor's children may have to wait 20 years or longer after their parents' deaths to receive their inheritance. One solution is for the parents to make lifetime gifts of cash to an ILIT funded with a second-to-die life insurance policy. Upon the death of the surviving parent, the ILIT can then provide the children with income and principal to maintain their standard of living until the term of the CLAT ends.

It should be noted that if the grantor's grandchildren are the beneficiaries when the term of the CLAT ends, the transfer will be subject to the GST tax that is discussed above. Nonetheless, a CLAT should always be considered by charitably inclined persons looking to reduce or even eliminate estate taxes.

SECTION 7 — LEVEL SEVEN ESTATE PLANNING

Keeping the Family Business in the Family
The most valuable asset in a business owner's estate is often the business itself. If the business owner's objective is to pass the family business down to those children who are active in the business, then special techniques are required.  

Assume that a father is the sole owner of a corporation and that his wife is not interested in continuing the business after his death. Assume also that there are three children, but that only one of them is active in the business. How can the father pass the family business down to the active child, and still treat his three children equally at the death of the surviving spouse?

The simplest way to accomplish the father's objectives would be for the father and the active child to enter into a buy-sell agreement. The buy-sell agreement would provide that upon the death, disability or retirement of the father, the active child would purchase all of the father's stock at the price and terms set forth in the buy-sell agreement. To fund the obligation, the active child will own a life insurance policy on the father's life. The business can help the active child to pay the premiums on this policy with an annual bonus. Upon the father's death, the life insurance proceeds used to purchase the father's stock can then be used to help provide income to the surviving spouse, to pay estate taxes upon the death of the surviving spouse, and to provide an inheritance for the non-active children.

To minimize the cost to the active child of purchasing the business, and to freeze the value of the business, the father could begin gifting stock to the child. The stock can be gifted outright or in trust, through the use of a FLLC, or through the use of a GRAT. Moreover, these gifts can be made with the father and mother's $12,000/$24,000 annual gift tax exclusion, and/or with their unused $1 million/$2 million gift tax exemption amount. As long as the gifted stock represents a minority interest or lacks marketability, the gift should qualify for a valuation discount.

Finally, while gifting the business to the active child makes for good tax planning, it does not treat the non-active children equally. In such a case, it is often recommended that an ILIT for the benefit of the non-active children be used as an "estate equalization" device.

SECTION 8 — LEVEL EIGHT ESTATE PLANNING

"Stretch" IRAs
When an IRA account owner dies, the assets in his/her IRA will usually be subject to federal and state income taxes, and federal and state estate taxes. Substantial sums (i.e., 70% to 75% of the IRA assets) can be lost to these taxes if the IRA's beneficiary designation has not been carefully planned. The IRA account owner's objective should be to postpone (i.e., to stretch out), for as long as possible, the distribution of funds from the IRA (provided such funds are not needed to live on). This allows IRA assets to grow income tax deferred, thereby taking full advantage of the power of income-tax-free compounding.

Usually, naming the IRA owner's spouse as primary beneficiary affords the greatest flexibility in prolonging the distribution period after the owner's death. This is because, upon the IRA owner's death, the spouse can elect to roll the IRA into his/her own IRA (or into a Qualified Domestic Individual Retirement Trust, if the spouse is not a U.S. citizen) — both income and estate tax free. The spouse can then select new beneficiaries for the rollover IRA, such as his/her children and/or grandchildren. The surviving spouse can then defer distributions from the rollover IRA until he/she reaches age 70 1/2. Thereafter, required minimum distributions ("RMDs") must be taken based on the spouse's life expectancy using the new (and improved) Uniform Table.
Upon the death of the surviving spouse, the children/grandchildren can withdraw the balance in the IRA over their life expectancies. This approach makes it possible for the children/grandchildren to continue enjoying income-tax-deferred compounding for years after the surviving spouse's death.

The “stretch” IRA described above — deceased spouse to surviving spouse, surviving spouse to children/grandchildren — is usually the most effective (and popular) way to defer income taxes and thereby create wealth. However, there must be sufficient liquid assets in the surviving spouse's estate outside of the IRA with which to pay the estate tax that will be due on the IRA assets at the surviving spouse's death. Otherwise, the assets in the IRA will have to be liquidated and distributed to the beneficiaries to pay the estate tax. In such case, the income tax deferral will be lost. Frequently, funds with which to pay the estate tax on IRA assets are provided through gifts to fund an ILIT.

SECTION 9 — LEVEL NINE ESTATE PLANNING

“Super Stretch” IRAs

A corollary to the “stretch” IRA is the “super stretch” IRA. A “super stretch” IRA goes one step further than a “stretch” IRA, and permits the “stretch” IRA beneficiaries to further defer (and stretch out) the IRA proceeds. In a “super stretch” IRA, the “stretch” IRA beneficiaries (typically the children or the grandchildren) use the “stretch” IRA proceeds to fund their own IRA (or to indirectly fund their 401(k), 403(b) or other similar employer sponsored retirement plan).

The “super” stretch IRA has the effect of permitting the children/grandchildren to “rollover” the net proceeds of the “stretch” IRA into their own retirement plan account, thereby permitting the “rollover” proceeds to grow tax deferred (or possibly tax-free in the case of a Roth IRA) over an even longer period of time before the children/grandchildren have to begin taking their RMD.

The “super stretch” IRA works best where the children/grandchildren can use the "stretch" IRA proceeds to fund their own (or a spousal) tax deductible IRA, Roth IRA, or to make tax deductible contributions to their employer sponsored 401(k), 403(b) (or other similar plan). In such instances, the income tax payable on the “stretch” IRA proceeds by the children/grandchildren may be completely offset by the income tax deduction available for funding a “super stretch” traditional IRA or a tax deductible contribution to an employer sponsored retirement plan. Either way the there is a double tax benefit to the child/grandchild.

SECTION 10 — LEVEL TEN ESTATE PLANNING

Ten Estate Planning Techniques That Make Sense/Cents Even if the Federal Estate Tax Is Repealed

The 2001 Tax Act has a substantial impact on transfer taxes. However, unless re-enacted by a future Congress, these changes are merely temporary. These new laws "sunset" on December 31, 2010, and the transfer tax rules in effect in 2001 will be reinstated in 2011.

Accordingly, persons likely to have taxable estates at the time of their deaths should not postpone conventional estate planning. However, estate planning should proceed with an eye towards the possibility that estate taxes may eventually be repealed or that the estate tax exemption may be significantly increased in the future. Below is a discussion of 10 techniques that will not result in any adverse tax consequences to the donor (or the donor's spouse) even if transfer taxes are eventually eliminated or substantially reduced.

1. **Use the Gift Tax Annual Exclusion.** Gifts of $12,000 ($24,000 for married couples) can be made annually to as many donees as the donor desires. These gifts not only reduce the donor's estate by the amount of the gift, but also by the future appreciation on the gifted property.

2. **Gift the Gift Tax Exemption Amount.** Beyond the $12,000/$24,000 gift tax annual exclusion, donors can also give away their gift tax exemption amount of $1 million ($2 million for married couples). The advantage to using one's gift tax exemption to make lifetime gifts is that the future appreciation and income from the gifted property is shifted out of the donor's estate.

3. **Leverage the Generation-Skipping Tax Exemption.** The GST exemption (which is the same amount as the estate tax exemption) can be "leveraged" by allocating it to lifetime gifts. In other words, use a "dynasty trust" in conjunction with the gifts referred to in Paragraphs 1 and 2 above.

4. **Leverage Lifetime Gifts with Life Insurance.** Consider using lifetime gifts to purchase a life insurance policy on the donor's life, or a survivorship policy on the life of the donor and the donor's spouse. Typically, an ILIT will be used to own the policy. In many instances, an ILIT will provide an excellent way to "leveraged" the grantor's gift tax annual exclusion, gift tax exemption...
and GST tax exemption.

(5) **Use Charitable Remainder Trusts While Income Tax Rates Are Higher.** CRTs are widely used to avoid paying capital gains taxes when selling highly appreciated assets. If the grantor and the grantor's spouse are the only non-charitable beneficiaries, a CRT does not create any gift tax. In addition, a current income tax deduction is available to the grantor equal to the present value of the CRT remainder interest passing to charity.

(6) **Use a Private Foundation or Donor Advised Fund to Front-End Load Charitable Gifts.** With a private foundation or donor advised fund, donors can donate now, obtain a charitable income tax deduction and decide later which charities to benefit.

(7) **Use an Inter Vivos Charitable Lead Annuity Trust with the Remainder at the Gift Tax Exemption Amount.** An Inter Vivos CLAT is an excellent way to make a deferred gift to one's heirs at a deep valuation discount. The present value of the remainder interest passing to the donor's heirs is based on the value of the assets contributed to the CLAT, and the amount and term of the payout to the charity. By keeping the CLAT remainder valued at or below the gift tax exemption amount, no gift tax will be due. Therefore, if transfer taxes are repealed or reduced, the donor will not be disadvantaged.

(8) **Use a Grantor Retained Annuity Trust with the Remainder at the Gift Tax Exemption Amount.** A GRAT is another way to gift income-producing assets (e.g., Subchapter S stock, LLC interests, and appreciating investment assets) to one's heirs with valuation discounts. It is similar to the CLAT, but with the annuity paid to the donor for the set term, rather than to a charity. Again, as long as the GRAT remainder interest is valued at or below the gift tax exemption, the grantor will not be disadvantaged if transfer taxes are subsequently repealed or reduced.

(9) **Make Sales to an Intentionally Defective Grantor Trust ("IDGT").** In lieu of a GRAT, consider selling income producing assets to an IDGT on an installment basis. Since the property is "sold" to the IDGT, there are no gift tax consequences as such. Moreover, under Rev. Rul. 85-13, a sale of property by the grantor to a grantor trust results in no capital gains tax. However, for estate tax purposes, it is recommended that some "seed" money be gifted to the IDGT prior to the sale. Usually, 11.1% of the value of the property sold is recommended. Therefore, a $1 million gift (using the gift tax exemption) will support a $9 million sale (after valuation discounts).

(10) **Use a Qualified Personal Residence Trust with the Remainder at the Gift Tax Exemption Amount.** A QPRT is similar to the GRAT, but the trust is funded with a principal residence and/or vacation home. By retaining the right to occupy the residence for a term of years, the value of the remainder interest (and the taxable gift) is reduced. By keeping the remainder valued at or below the gift tax exemption amount, no gift tax will be due.

**CONCLUSION**

The 2001 Tax Act offers little benefit to taxpayers because of the sunset provision. The principal exception is those persons who actually die in 2010. Nevertheless, estate planning documents should be drafted with flexibility so that if the estate tax is eventually repealed or substantially reduced, irrevocable transfers can be "undone."

Perhaps the most effective estate planning tool to accomplish flexibility is a "limited power of appointment." For example, the grantor of an irrevocable trust can provide in the trust agreement for a person (i.e., a family member, friend or trusted individual) to have the power to appoint trust property to the grantor, the grantor's spouse and/or the grantor's descendants (i.e., property can go to anyone other than the powerholder himself or herself). As such, if a future Congress re-enacts estate tax repeal, the powerholder could (but cannot be required to) transfer the trust property back to the grantor. If properly structured, there are no tax consequences to either the powerholder or the grantor upon exercise of the power.

In summary, even for those persons who believe that estate taxes will some day be eliminated or significantly reduced, use of any one or more of the aforementioned techniques, as well as limited powers of appointment when applicable, is not only safe, but a prudent course of action.

**APPENDIXES**