THE KIRWAN LAW FIRM

OVERVIEW OF ESTATE PLANNING CONCEPTS TO REDUCE ESTATE TAXES

The purpose of this memorandum is to go over a few of the basics of estate and gift tax planning so that you will can fully appreciate the planning strategies we will discuss in the future.

The 60,000 Foot View

Different people have different ideas on the best way to approach estate planning when their assets are significant enough to put them into the group of people that will need to pay estate taxes if no planning is done. There are three broad based approaches people tend to gravitate to, so I want to briefly discuss each one. Of course, people often take a blended approach when they engage in their actual planning, but I think it is helpful to get a basic idea of the three camps so you can get a feel for which one you viscerally are most attracted to.

The Do Nothing Approach

A fact of life is that everything you do involves opportunity costs and trade offs. When you engage in estate planning to reduce estate taxes, you will necessarily need to make gifts of assets (oftentimes to trusts), give up use of the gifted assets, and give up control over gifted assets. You will also have to have assets valued and hire attorneys to draft legal documents that contain at least some complexity; and both of those things cost money while you are alive. There is no estate planning technique that gives you the option to keep all of your assets in your name during your life where you have full use, control over, and enjoyment of them, and pay zero estate taxes. As I will explain in more detail below, an individual can leave $15,000,000 to the next generation or other heirs without paying any estate taxes. A married couple can leave $30,000,000. Any assets that exceed this amount are taxed at a 40% estate tax rate.

Given the loss of use, control, and enjoyment a person would experience by engaging in planning and the fact that they can leave $15,000,000 or $30,000,000 to loved ones free of tax without doing anything, many people weigh the cost of paying estate taxes (which is done after they are dead and in the ground) against the cost of dealing with the loss of control over and the use of certain of their assets by engaging in planning and conclude that they would rather keep all of their assets and pay some estate tax when they die. Their thinking goes something like this:

> "If my spouse and I die in 2026, we can leave $30,000,000 to our children free of estate taxes which is a hell of a lot more than I was ever given. If they get the first $30,000,000 unreduced by any taxes and then 60% of all monies

> above that amount, my kids will receive $72,000,000 of my $100,000,000 net worth and I do not have to deal with attorneys, complexity, or loss of control. $72,000,000 is more than my kids will ever need and if the government ends up getting $28,000,000, so be it."

The "I Hate the Government" Approach
In contrast to the person in the last example, other people will take the exact opposite approach. They are completely opposed to paying even a nickle of estate taxes and if this means that they have to deal with some complexity and loss of use and control over their assets to accomplish that goal, they are more than willing to do so. Their thinking goes something like this:

> "My spouse and I worked hard to amass our $100,000,000 net worth and I'll be damned if $28,000,000 is going to go to the government rather than to my kids and loved ones. If dealing with some complexity and loss of control and use over some of my assets is the price to pay for my kids to inherit my entire $100,000,000 net worth and the government getting nothing, so be it!"

The Charitably Minded Approach
A third approach is sometimes attractive to the person who has at least some charitable aspirations. They do not want to pay estate taxes but they do not mind giving less to their children if the money goes to charity rather than to the government. Every dollar you leave to charity is a dollar that is not subject to estate tax. Given this, a couple may leave their children the maximum amount they can leave free of estate tax (i.e., $30,000,000 in 2026) and then leave the balance of their assets to a family charitable foundation that is established upon their death. They reason that their children really do not need more than $30,000,000 and that the kids can also run their charitable foundation after they die and earn a reasonable salary by doing so. They know their children will likely also enjoy the social benefits of being in charge of a large charitable fund of money (e.g., they get invited to all the important social events where they can meet other successful people who may be helpful to their careers and/or businesses). They further like the idea that their money is going to charitable causes they feel are important and like the fact that their name will be associated with doing good in the world for as long as their charitable foundation continues. Finally, given that the charitable foundation isn't even created until after they die, they can keep all of their assets in their name during their life and deal with none of the cost and complexity of a full blown estate plan that reduces estate taxes to zero. Their thinking goes something like this:

> "If my spouse and I die in 2026, we can leave $30,000,000 to our children free of estate taxes which is a hell of a lot more than I was ever given and I do not have to deal with attorneys, complexity, or loss of control over my assets. I love the fact that the government gets nothing and that my hard

> earned money will be out there doing good in the world. If the cost of paying zero estate taxes is that my children only get $30,000,000 and my charitable family foundation gets $70,000,000 of my $100,000,000 net worth, so be it!"

I hope you can see how different people would be attracted to different approaches and how none of them is necessarily better or worse than the others. Note that you can also engage in some combination of the three approaches.

For example, assume our couple is worth $100,000,000. Further assume that they are willing to create a gift trust during their life to remove $10,000,000 from their estate. This gift does carry some cost, complexity, and loss of control over the $10,000,000, however, the remaining $90,000,000 stays titled in their name where they have complete use and control over it. They establish revocable trusts that leave $45,000,000 to their children and the balance of their assets to a family foundation upon their death. If the gift trust assets grow to $30,000,000 by the time they die and the kids receive an additional $45,000,000, this means that the kids end up with $75,000,000. Since they used $10,000,000 of their $30,000,000 Unified Credit (the amount you can either give away during life or leave to people when you die), then they would pay estate tax on $25,000,000 (i.e., $45,000,000 LESS the remaining $20,000,000 remaining Unified Credit). This tax would equal $10,000,000. The balance of the assets would pass to a family foundation. This plan minimizes the cost and complexity of planning since a single gift trust is not terribly complicated, cuts the amount the government receives by more than half compared to doing no estate tax planning, more than doubles the amount children receive compared to the Charitably Minded Approach discussed above, and leaves a substantial amount to their charitable family foundation (a minimum of $35,000,000 even if the assets in their estate experienced zero growth).

I wanted to start by giving you this overview before delving into the more technical details in hopes that it will help you decide where you fall on the spectrum. Next I will delve into the nuts and bolts of estate tax planning so you can get an understand of what is involved when you plan to reduce or eliminate estate taxes.

The Estate Tax Basics - The Numbers and Dates

1. The **estate tax / gift tax** The Unified Credit is the amount each person can leave to the next generation (or other individuals) free of estate tax. Presently, the Unified Credit is $15 million indexed for inflation using 2026 as the base year. A married couple can leave twice this amount (i.e., $30,000,000) free of estate tax.
2. The estate and gift tax rate is 40% of the assets you die owning or gift during your life to the extent that they exceed your Unified Credit.

The Unlimited Marital Deduction. As a general rule, the tax law allows people to give unlimited amounts of cash and property to his or her spouse without triggering the estate or gift tax (this is often referred to as the "unlimited marital deduction"). This results in married individuals being treated as a single taxable unit for estate tax purposes because the payment of any estate tax is deferred until the surviving spouse's death.

Your Unified Credit. As mentioned above, every person has a "Unified Credit" which permits him or her to make gifts during life or at death up to a certain amount (discussed above). This is a single, one time credit; not a "per person" or "per year" credit. For purposes of the estate tax, this means that when you die, (i) the full Unified Credit amount can pass to your children or other beneficiaries without paying any estate tax, and (ii) the balance of your assets above that amount will be subject to a 40% tax.

The reason the unified credit is called the **unified** credit, is because it shelters (i) assets left to your heirs at death from the estate tax, **and** (ii) assets gifted to people and trusts during your lifetime from the gift tax, but (iii) is reduced for both estate and gift taxes to the extent it is used during your life. For example, if the unified credit was $1,000,000 and you made a gift to your children (or a trust for their benefit) of $600,000, then you could only shelter $400,000 from estate taxes when you died. The gift of $600,000 is made free of gift taxes and is now forever removed from your estate. Note that you could also make a gift to a trust for the benefit of your spouse, as well, and the assets in the trust are also forever sheltered from estate tax even though your spouse can use, invest, and spend the money in the trust. You could even have a trust for both your spouse and your children. If you made a $1 million gift to a trust like this, you lived for another 30 years, and the assets grew at an average annual rate of 5%, you would have removed over $4,300,000 from your estate. If you made a gift of $14 million to the same trust under the New Act, you would permanently remove over $37 million from your estate without paying any gift taxes even if the estate laws change for the worse in the future.

Additional Advantages of Gifting. Gifts made during life also trigger less tax than gifts made at death. As strange as it sounds, the estate and gift tax is imposed on the "*privilege*" of being able to give your assets away. But even if the tax rate is the same for both the estate and gift tax, making lifetime gifts is cheaper than leaving assets to your heirs at death. Assume you made a gift of $100,000 to your child. Your child receives the entire $100,000 and you pay the gift tax out of your other assets. Let's assume for simplicity's sake that the tax rate for both the gift and estate tax is 40%. The cost to you of giving away $100,000 is $40,000 ($100,000 x 40% gift tax) so it will cost you a total of $140,000 to give your child $100,000. If you left the same $100,000 to your child at death, however, you must have an estate of at least $166,666 in order for your child to receive the same $100,000. This stems from the fact that if your entire estate (all the assets you own at death) are taxed at 40%, you need an estate of $166,666 to leave your child with $100,000 ($166,666 estate LESS 40%

tax of $66,666 leaves $100,000 for your heirs). Note that the money that is used to pay the estate tax is itself subject to estate tax.

Since less taxes are paid with respect to gifts made during your life, there are more assets left to gift and grow outside your estate. For example, if you made a lifetime gift of roughly $133,333 to a trust for the benefit of your spouse and children, the full $133,333 would be forever removed from your estate and would also be forever protected from the reach of creditors. Since the gift tax on your $133,333 gift would be roughly $66,667 the total transaction cost you $200,000. But since you made a gift during your life (rather than at death), you now have an additional $33,333 growing outside your estate that is permanently protected from creditors and the estate tax.

The Generation Skipping Tax Exemption. In addition to the estate and gift tax unified credit, each person also has something called a "generation-skipping tax exemption" (or "GST Exemption" for short). One of the things this exemption can be used for is to shelter assets gifted to a trust from **ever** being subject to estate taxation not only when you die but also when the assets pass from your children and grandchildren to their children and grandchildren. This can drastically increase the amount future generations will receive since the assets are not being taxed at each generational level. The GST Exemption is equal to the Unified Credit meaning that a married couple can not only shelter historically high levels of wealth from estate taxes when they die, but can also ensure that their children, grandchildren, and future progeny never pay estate taxes on those assets either. This advantage can only be achieved, however, if assets are left to children in properly drafted trusts.

Make Gifts to "IDITs" or How the Income Tax Can Help You Reduce Estate Taxes. If you plan to make large gifts before 2026, consider making it to a special type of trust called an IDIT. IDIT stands for **I**ntentionally **D**efective **I**rrevocable **T**rust and is also called a "Grantor Trust." Like non-grantor trusts, gifts made to an IDIT (I) are removed from your estate, (ii) protect the assets from the beneficiary's creditors (and your creditors), and (iii) allow all or some of the assets to escape estate taxation when the beneficiary (and their descendants) ultimately die. IDITs also offer an additional advantage.

IDITs (or Grantor Trusts) are different terms to describe a trust that is ignored for **Income** Tax purposes. This means that the person who creates the trust is taxed ***personally*** for all income generated inside the trust). Remember, however, that for **Estate** Tax purposes, the trust is not ignored and the assets properly transferred to the trust will be removed from your taxable estate (i.e., not subject to estate tax when you die). Understand that when income and/or capital gains are realized by the IDIT, whoever established the trust is responsible for paying the income taxes. This is not a bad thing, however. First, if you pay the taxes from your own pocket (i.e., assets that will be included in your estate) the assets in the IDIT (i.e., assets that will NOT be included in your estate) will grow at a faster rate (this is sometimes called the "Burn Effect"). Second, even if you do not wish to gain the additional leverage by paying the taxes from your personal assets, the IDIT can be drafted in a manner that permits the trustee to reimburse you for any tax liability you incur with respect to trust assets.

To clarify the advantage of the Burn Effect, consider the following example:

> Emmett and Ruby-Mae have two children, Thurman and Medora. Emmett establishes an IDIT with Ruby-Mae as the trustee (the person who controls the trust assets) and which names Ruby-Mae, Thurman and Medora as the beneficiaries (the people who can use and benefit from the trust assets). Emmett then transfers $5,000,000 to the trust. This leaves him with savings (i.e., money that he doesn't spend on living expenses) of $2,000,000.
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> Assume the trust assets grow at the rate of 6% per year and the trust pays income taxes on those earnings at the rate of 35%. In twenty years, the assets in the trust grow to over $10,700,000; all of it sheltered from estate taxation and protected from creditors. If Emmett's remaining $2,000,000 grew (and were taxed) at the same rate as the trust, his personal estate would grow to almost $4,300,000. This would result in an estate tax of $2,150,000 if taxed at the rate of 50%. So in summary, if Emmett dies twenty years after creating the trust, Thurman and Medora receive roughly $12,900,000 ($10,700,000 from the trust and $2,150,000 remaining after estate taxes are paid.)
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> But now consider the effect of Emmett's using an IDIT. Since Emmett will now be personally paying the income taxes on the income earned by the IDIT, in twenty years the $5,000,000 gift will have grown to over $16,000,000, which again is sheltered from estate taxation and protected from creditors. In addition, since Emmett paid all the income taxes for the trust income personally, the savings in his estate ran out in the year of his death so Emmett paid no estate taxes. In summary, the Burn Effect of the IDIT resulted in (I) Thurman and Medora receiving roughly $16,000,000; or $3,100,000 more than with the non-Grantor Trust (this is an almost ***25%*** increase in the amount of assets received by the kids), and (ii) Emmett's paying no estate taxes. Note also that if Emmett had not died 20 years after setting up the trust and/or didn't want to reduce his savings to zero, the trust could have started paying its share of the income taxes at any time.

Using IDITS gives you all the benefits of trusts in general (e.g., asset protection, control, removing assets from being taxed in future generations, etc.), and allows you to further reduce the assets in your estate as well.

Trusts and Asset Protection. Without delving into all the details on how trusts are used to protect assets from creditors' claims, I want to point out that a well drafted trust can do just that. For example, a husband can create a trust for his wife and children and the assets transferred to that trust will be forever protected from the creditors of the husband, wife, and children. It is even possible for a married couple to create trusts for each other and achieve similar asset protection benefits. Please note that the trusts I am describing need to be carefully drafted to avoid something called the "reciprocal trust doctrine," but if done properly a married couple can permanently protect all their assets while continuing to be able to control the assets and spend them as they see fit. Trusts can also be created for children, both during your life and when you pass on, that not only give your children total use and control over the assets (subject to certain restrictions, if you deem appropriate), but also the ability to protect those assets from divorcing spouses and other creditors. You need to understand that Revocable Trusts, like the ones you use to avoid probate, generally do not provide you with any asset protection during your life and should not give you a false sense of security that the assets held within them are protected.

THE GIFTING PLAN BASICS

Like I eluded to above, given that your current net worth exceeds the amount that can be left to your children without triggering estate taxes in 2026 and will continue to grow, your plan will consist of two separate "pots" of assets. The first pot will continue to be included in your estate and includes money from which you will pay for personal living expenses, automobiles, your home, and other personal use assets. You will establish trusts to meet the estate planning goals of avoiding probate and ensuring that assets pass to your family in the way your desire in the event one or both of you were to die unexpectedly. In addition, these trusts can provide asset protection so that if one or both of you were subject to litigation, the asset would remain protected.

The second pot of assets will grow outside your estate and will ultimately pass on to children and future generations. This pot of assets will be held in a trust (I'll call this the "Gifting Trust") that would be established by one spouse for the benefit of the other spouse and the children. Having a spouse as a beneficiary gives you some access to the trust assets while still removing them from your estate. The next step would be to transfer an amount (not to exceed your Unified Credit) to your Gifting Trust.

Choosing the Right Assets to Gift

Choosing the right assets to fund your Gifting Trust is key to the future success of exactly how much wealth is removed from your estate in the future. In picking the right assets, there are some key points to consider. I have listed these below.

1. **Assets With a High Potential for Appreciation**. If you transfer an asset to your Gifting Trust that you believe has a strong likelihood of appreciating in the future, not only will the asset's value be removed from your estate and not subject to estate tax in the future, but so will the future appreciation. For example, assume you recently invested in a start up company. Your initial investment was $250,000 and you received a 10% interest in the company. Now assume you transfer your 10% interest to your Gifting Trust and five years later it's worth $2.5 million. You only used $250,000 of your Unified Credit to make the initial gift of the 10% interest to your Gifting Trust, but $2.5 million has been removed from your estate and can pass to your family free of estate tax. Of course, if the asset continues to appreciate, that additional appreciation will be removed from your estate as well.

2. **Assets With a High Potential to Produce Income**. Similar to the previous example, if you transfer an asset to your Gifting Trust that you believe has a strong likelihood of producing significant income in the future, not only will the asset's value be removed from your estate and not subject to estate tax in the future, but so will the income / cash flow.

   Assume this time that you invest in some form of E Commerce business that sells software subscriptions. Again assume that you invested $250,000 and received a 10% interest in the company. And again, you transferred your 10% interest to your Gifting Trust. This time, however, instead of appreciating substantially in value, your 10% interest in the company throws off a lot of positive cash flow; say $400,000 a year. This company may also become more valuable over time but in contrast to the previous example, the value being created is not primarily in the form of capital gains, instead it is in the form of dividend income.

   If your goal was to move as much money from your taxable estate before you die, and you could only transfer your 10% interest in one of the two companies (i.e., the "Capital Appreciation Company" or the "Income Company"), which one should you choose assuming the total return was roughly the same?

   Because of the Burn Effect discussed above, the correct answer would be your 10% interest in the Income Company. This stems from the fact that the money used to pay the income tax on the income produced by your 10% interest in the Income Company will be paid by you personally and not by the Gifting Trust. Therefore, in addition to removing the future income and appreciation from your estate, the assets in your estate are being depleted over time. Note that if the Income Company only produced tax free income (perhaps by holding a portfolio of tax free municipal bonds), then gifting it to the Gifting Trust would produce similar results (or even worse results) than gifting the Capital Appreciation Company interest. Similarly, a company that primarily threw off capital gains (taxed at a top income tax rate of roughly 20%) would produce less of a "Burn Effect benefit" that one that primary produced ordinary income (taxed at a top income tax rate of 37%).

A common example of an Income Company would be stock in a closely held business interest. After making the gift of company shares (presumably non-voting shares) to the Gifting Trust, you would continue draw a reasonable salary but the future appreciation and profits distributions would belong to the trust and, therefore, not be subject to estate tax when you die.

3. <u>Cash Flow / Liquidity / Access to and Use of Assets</u>. The next consideration is your need to have access to or use of the gifted asset or cash flow therefrom. When you make a gift of an asset to a Gifting Trust, you are necessarily giving up access to and control over the gifted assets. This is required due to certain sections of the Internal Revenue Code that pull assets that someone previously gave away back into their estate (thereby subjecting them to estate tax) even though those assets were not owned by the deceased individual when they died. These sections, called "string" provisions by estate planning attorneys, generally provide that when an individual gifts property or control over property away, but retains or thereafter acquires either the right to benefit from the property or the power to control the rights of others in the property, the value of all or a portion of the property will be included in their taxable estate when they die. For example, assume I own a rental home. One day I decide to give it to my good friend, Helvig Gunvaldsen. I sign a deed transferring the rental home to him and the deed clearly states that the owner of the property is Helvig Gunvaldsen, not Adam Kirwan. Now assume that I am not as generous as it appeared at first blush. I also required Helvig to sign an agreement that gave me the right to live in the home in the future, or to decide who can live in the home, or that required Helvig to obtain my permission before he sold the property or to give me all or a portion of the sales proceeds if the property is sold. If I ended up dying, even if I never exercised any of those rights, the full fair market value of the rental home would be included in my estate for purposes of calculating how much estate tax my estate is required to pay even though the rental home is clearly and unambiguously titled in the name of Helvig Gunvaldsen, and not Adam Kirwan.

The same principal holds true for assets gifted to a trust designed to remove assets from your estate like the Gifting Trust we have been discussing. If the person creating and transferring assets to a trust (called the "Settlor" or the "Grantor") also acts as the Trustee of that trust (the person empowered to manage the trust assets and make distribution decisions), then the trust assets and all of the future income and appreciation will be included in their estate for purposes of levying the estate tax when they die. The Settlor's spouse can typically serve as Trustee of a Gifting Trust, however, the Settlor cannot. In addition, in the event the Settlor retains the right to use or benefit from the trust assets, then, again, the trust assets and all of the future income and appreciation will be included in their estate for purposes of levying the estate tax when they die.

People will sometimes want to make a gift of a portfolio of rental homes but want to keep using rental income to pay for personal expenses. Or they will want to make a gift of a vacation home to a trust and continue to live in it for part of the year. Retaining these rights under the trust agreement would certainly cause the trust assets to be included in your estate even though the assets clearly belong to the trust and not you. Also note that even if the trust agreement says nothing about you retaining any legal rights to rental income or the use of a home but you in fact do use the rental income or use the home for family vacations, those actions would also cause the trust assets to be included in your estate for purposes of levying the estate tax when you die.

Therefore, in choosing assets to gift to a trust, the Settlor of the Gifting Trust needs to be able to part with the direct use, income, and control over the trust assets.

4. Gifts of Appreciated Assets Lose Step-Up In Basis. When assets such as real estate or securities are sold, any resulting gain is a taxable capital gain. If the assets have been owned for longer than one year, the gain is taxed at favorable rates (rates that do not exceed 20%). The amount of a taxable gain is equal to the difference between the "basis" of the asset and the sale price. Although grossly oversimplified, the term basis basically refers to the amount of after tax dollars you have invested in the asset.

For example, if you purchased a rental home for $300,000 and then spent an additional $40,000 putting on a new roof, your basis in the property would be $340,000. If you then sold the property for $500,000 you would pay tax on $160,000 of capital gains (i.e., $500,000 sales price - $340,000 basis = $160,000 capital gains).

Let's imagine that you didn't sell the property; instead you made a gift of the property to your favorite uncle, Buck Russell. When you gave Uncle Buck the property, you also gave him your basis in the property meaning that if Uncle Buck later decides to sell the property for $500,000, he will recognize the same $160,000 of capital gains that you would have had you sold the property instead of giving it away. This is called a "carryover basis" since the basis of the property in the hands of the person making the gift carries over to the recipient of the gifted asset.

Let's now imagine that you didn't sell the property or make a gift of it during your life. Instead you died owning the property. Your Will left that same property to Uncle Buck. This time, however, because the property was owned by you at the moment of your death and then passed to Uncle Buck, Uncle Buck gets a "stepped up basis" rather than a "carryover basis." This means that Uncle Buck's basis in the property is "stepped up" to equal the fair market value of the property as of your date of death. So if the property is valued at $500,000 as of your date of death and Uncle Buck later sells the property for $500,000, Uncle Buck will pay no capital gains tax.

I have been using gifts to people in the above examples, however, the same rules hold true if property is transferred to a Gifting Trust. Assume that you own two investment properties. Property A you purchased years ago and Property B was a more recent purchase. Your basis in Property A is $100,000 and your basis in Property B is $1 million. The fair market value of both properties is $1 million. Assuming your goal is to gift one of these properties to a Gifting Trust to remove it from your estate and to keep the other one, it would obvious make more sense to gift Property B to the Gifting Trust. If you gifted Property A to the Gifting Trust, the Gifting Trust's basis in the property would be a carryover basis of $100,000 meaning that if the trust sells the property for $1 million, there will be a $900,000 capital gain to pay tax on. If you died owning Property A, the capital gain could be erased altogether.

Note that certain tax professionals have argued that since assets gifted to a grantor trust remain taxable to the grantor for income tax purposes, they're entitled to a stepped-up basis in the hands of beneficiaries. However, in Revenue Ruling 2023-2, the IRS clarified that in order to obtain a step up in basis the property must be acquired by "bequest, devise or inheritance from the decedent" and assets transferred to a grantor trust during a person's life do not meet this standard. Therefore, in choosing assets to gift to a Gifting Trust, you would want to choose assets that do not have significant built in capital gain.

5. **Valuations of Gifted Assets Are Required**. Finally, note that when assets are gifted to a trust designed to remove assets from your estate for federal estate tax purposes, you will need to file a gift tax return and report the fair market value of the gifted assets. If the gift is of cash or publically traded stocks, determining the value is quite easy to do. If the gift is for non-voting shares in a closely held business or a piece of real estate, you will need to have the assets formally valued before you can transfer the asset to the trust. Any valuation report, whether it is for an estate tax filing or for a gift, is subject to IRS review and should meet the requirements of being a "qualified appraisal." If it fails to meet the "qualified appraisal" standard, then it will not be binding on the IRS later when you die meaning that if you undervalued the asset when you made the gift, the IRS can include the shortfall in calculating your estate tax liability even if the statutes of limitations period has run with respect to the gift tax return. And qualified appraisal's are not typically cheap. Therefore, if you do not want to spend the money to value the asset or you do not want to value the asset for other reasons, you should make gifts of cash or marketable securities to the trust and then have the trust use the cash to purchase real estate, for example. One reason people sometimes do not want to value a company is that people usually want the valuation to be on the low side of reasonable for gift tax purposes but if they are planning on selling the business in the near future, they do not want a low ball valuation report floating around that may need to be disclosed to a potential purchaser.

So to summarize, in choosing which assets to gift to a gifting trust, you would want assets that:

1. are likely to substantially appreciate in value;
2. are likely to produce substantial taxable income; preferably income taxed at higher tax rates;
3. have minimal built in capital gain;
4. the Settlor would not need to retain access to, income from, or control over; and/or
5. are easy to value.

If you have any questions after reading through this memorandum, please feel free to give me a call so we can discuss them in detail.