GREENSFELDER
ATTORNEYS AT LAW

Investing in Your Family and Creating Your Legacy

Have you considered what your legacy will be? If so, you may have a vision for sharing your wealth with your loved ones and the charitable causes that you support. This vision can be implemented by focusing on your estate plan, as techniques are available to help you create the legacy you envision.

Lifetime Giving

The vision you have may include sharing your wealth with your loved ones. One technique that can be implemented to achieve this goal is to establish an annual gifting program, whereby each year you make gifts to your children and/or grandchildren. A lifetime gift allows you to witness your family enjoying the benefits of the gift. Currently, you may gift up to $14,000 per calendar year to each of your children and grandchildren, free from gift tax. This amount is often referred to as the *annual exclusion amount* and is indexed for inflation each year. Your spouse may also gift $14,000 per year to those same individuals, meaning that up to $28,000 may be transferred to each of your descendants annually, gift tax free. Gifts in excess of this annual exclusion amount will decrease your lifetime gift tax exemption as well as your estate tax exemption. In 2015, each individual has a total gift/estate tax exemption of $5,430,000 (also indexed for inflation annually.)

If you establish an annual gifting program, such gifts may be made outright to your descendants or may be held in trust for their benefit. In most cases, when gifts are made to an *irrevocable gift trust*, the trust can be structured so the assets will be shielded from claims of the beneficiaries' creditors and will not be subject to division in the event of divorce. A gift to this type of irrevocable trust may also exclude the trust assets for federal estate tax purposes not only from your estate but from your descendants' estates. To further maximize the gifts to an irrevocable gift trust, the trust could be structured in a manner where you continue to pay the income taxes on the earnings in the trust. Doing so allows the gifted trust assets to grow, and your payment of the income taxes can be made without gift tax consequences.

If providing for your family is one of your goals, annual gifting may be a beneficial planning technique. In addition to annual exclusion gifts being gift-tax free, the gifts also remove the value of those assets, including future income and any appreciation on those assets, from your estate – meaning that the gifted assets will not be subject to estate tax at your death.

Education Planning

If your vision includes assisting your descendants with their education, several valuable options exist to accomplish this goal. For example, you can pay a descendant's tuition *directly* to the educational institution without incurring any gift tax, regardless of the amount paid. Payments for room and board, books and other supplies do not qualify for this benefit.

You could also fund a 529 account for a family member. Missouri's 529 plan is the Missouri Saving for Tuition Program (MO$T.) Currently, an account owner can contribute up to $70,000 per child (or a total of $140,000

between you and your spouse) to a MO$T or similar 529 account, using the annual exclusion gifts for the child for the next five years, with no adverse gift or estate tax consequences. One significant benefit is that all of the funds contributed to the 529 account grow tax-free and will be distributed to the beneficiary tax-free, as long as the funds are used for qualified higher education expenses. Another advantage of a 529 plan is that the funds may be used, in addition to tuition, for room, board and supplies. If you are a Missouri resident, you may also receive a tax deduction for state income tax purposes for contributions to MO$T accounts of up to $8,000 (or $16,000 jointly.)

Residence Trust

An often overlooked planning opportunity involves the use of a personal or vacation residence. This technique involves you making a gift of your house or your vacation home to your descendants through a *qualified personal residence trust* ("QPRT.") The value of the gift of the house for gift tax purposes, however, would be discounted from the current value of the house.

Under such a trust, you would retain the right to live in the home for a specified period of time (e.g., 10 or 15 years.) At the end of this term, ownership of your home would pass to the beneficiary named in the trust. This could be your children (or trusts created for their benefit.) When you establish the trust, you will be considered to have made a gift of the remainder interest. The value of the gift is determined by subtracting the value of your right to live in or use the property for the trust term (computed using IRS tables) from the value of the property. If you die before the end of the term, the entire value of the residence will be included in your estate; accordingly, this approach only works if you live longer than the selected term of years. However, a QPRT allows you to transfer an asset which does not produce income out of your estate at a significant discount.

You can continue to live in the house during the remainder of your life even after the expiration of the trust term. If you desire to remain in the home after the trust term ends, you would lease the home from your family (or the trust held for their benefit.) This payment of rent is another method for transferring funds to your family and reducing your estate.

Traditionally, a QPRT is considered to be more successful, from a tax planning perspective, when created in a high interest rate environment. The QPRT, however, may be attractive if you believe your home or vacation home will appreciate significantly and/or you wish to transfer the home to your family during your life.

Charitable Giving

Individuals frequently desire to include charities in their estate plan. If charitable giving is part of the vision of your legacy, numerous options are available to accomplish this goal, many of which also achieve income tax savings for you. The charitable giving options available range from simple to complex. The types of assets that can be gifted are vast. For example, along with monetary or investment funds, a charity may accept a gift of a life insurance policy, retirement account or real estate. The following discusses some commonly implemented techniques.

Gifts of Cash or Stock

Many people carry out their charitable intent by making outright gifts of cash to their favorite charities. If such a gift is made during your lifetime, you can deduct up to 50% of your "contribution base" (generally, your adjusted gross income with minor modifications.) This results in a reduction of your income taxes. Any excess typically can be carried forward and deducted within the next five tax years.

The tax savings generated from gifts of appreciated assets, such as stock, could be even greater than those of cash gifts. If you give away stock that has appreciated in value to a charity, your income tax deduction is based on the fair market value of the property on the date of the transfer (rather than the value on the date you purchased the stock, which is known as its cost basis.) In addition, by donating the appreciated stock to a charity, you do not have to pay income tax on the gain that would otherwise be taxable upon a sale of the stock.

Gifts Using Retirement Assets

You may wish to use your retirement plan (e.g., your IRA, 401(k), TSA, Profit Sharing, SEP, etc.) to make a gift to your favorite charity at your death. By leaving the retirement plan to a charity and other assets to family, you not only make a donation, but also leave more to your family. This happens because charities have an advantage over individuals – retirement plans pass to charities income and estate tax free.

Retirement plans can pass to a spouse estate tax free, but they will be subject to income tax when the spouse begins to access them. Plan benefits passing to individuals other than the spouse could be double-taxed. First, the retirement plan could be subject to estate taxes. Second, the beneficiaries must claim amounts withdrawn from the plans as ordinary income for federal and state income tax purposes.

Leaving a retirement plan to your favorite charity is simple. You must simply name the charity as the on-death beneficiary by completing the proper beneficiary designation form provided by the retirement plan administrator. The retirement plan is included in your estate, but your estate receives a charitable deduction for the retirement plan.

Charitable Gift Annuities

You may wish to make a gift to your favorite charity and receive a guaranteed stream of income in return for that gift. Charitable gift annuities permit you to do so, and have become an increasingly popular technique for charitable giving.

A charitable gift annuity is a simple arrangement that permits you to make a gift to the charity and secure a lifetime income stream for you and/or a loved one. It is very similar to a commercial annuity. Through this giving method, you irrevocably transfer money or property to the charity in return for its promise to pay you (or even a loved one, or both you and a loved one) fixed and guaranteed payments for life. Therefore, a gift annuity is both a charitable gift and the purchase of an annuity.

In addition to creating an income stream, you will be entitled to an income tax charitable deduction upon establishing a gift annuity. You may also avoid capital gains, if appreciated property is contributed. Moreover, you will be making a future contribution to the charity. You can choose to receive the annuity payment in monthly, quarterly, or semi-annual installments. The payments will be fixed at the outset, and will never vary. A portion of each annuity payment will be excluded from your gross income.

You can select to have the annuity payments begin immediately or to defer them. The deferral of annuity payments is attractive for younger donors, because it results in a higher payout once the payments begin, and a larger income tax deduction in the year the annuity is created.

Other Charitable Techniques

Depending on your charitable goals, other more complicated planning techniques may be attractive. You may wish to give a specific asset to carry out your specific charitable intent, such as real estate or life insurance.

Alternatively, you may find a gift that gives you an income stream and an income tax deduction – such as the *charitable remainder trust* ("CRT") – attractive. This arrangement allows for you to make a lifetime gift to an irrevocable trust that will ultimately benefit a charity, but retain some benefits of the gifted assets until your death. The converse of a CRT is a *charitable lead trust*. It is an irrevocable trust which provides for the payment of income to a designated charity for a designated term, with remaining trust assets distributed at the end of the term to you or your family.

If you would like to maintain some control over your gifts to charity, another option is a *private foundation*. You would receive an income tax deduction for the contribution to the private foundation, but no individuals or entities other than charities could receive payments from the trust. You (or your family members) could control the private foundation's distributions by serving as trustee or in some other management capacity.

Depending on what you want your legacy to be, these techniques can be implemented to help you accomplish your vision. By planning for the future now, you can ensure that your legacy is carried out.

For More Information:

Jennifer A. Davis
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102
(314) 345-4749
jac@greensfelder.com

Kelsey N. Kremer
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102
(314) 345-4786
knk@greensfelder.com

The Trust & Estates Practice Group

The Trusts and Estates Practice Group at Greensfelder provides sophisticated and personal lifetime, estate and tax planning, and related legal services for family and individual clients. We counsel our clients and their families regarding the preservation of their wealth, the charitable component of their planning, probate process, and trust and estate administration. Our Practice Group represents entrepreneurs and owners of closely-held family businesses. We also represent a number of St. Louis charitable entities in their legal matters, assisting them in carrying out their goals and in their fund-raising efforts to continue their charitable works.