

## Client Advisory Bulletin

Kistler-Tiffany Advisors

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### SPOUSAL LIFETIME ACCESS TRUST

An Irrevocable Trust can be an excellent vehicle for providing controlled distributions of assets to heirs, while at the same time keeping the trust proceeds outside the Grantor's taxable estate. One major drawback, however, is that in order to accomplish these objectives, gifts to an Irrevocable Trust must be irrevocable, and the Grantor must not possess any incidents of ownership over the trust.

A **Spousal Lifetime Access Trust (SLAT)** is an irrevocable trust that owns and shelters assets but permits the Grantor's spouse to have access to the trust for distributions of principal and income during the spouse's lifetime while continuing to prevent inclusion of the death benefit in the grantor's estate. Children and descendants can also be beneficiaries of the trust during the spouse's lifetime.

A SLAT provides an excellent planning opportunity in today's estate tax environment. Under existing tax law, the 2021 estate tax exemption is \$11,700,000. This exemption is scheduled to sunset in 2026. At that time, it would reduce back to the pre-2018 exemption levels, as indexed for inflation (the 2017 exemption was \$5,490,000). Pending any future tax legislation, the estate tax exemption could be reduced prior to 2026.

In order to accomplish the planning objectives of a SLAT, the following should be considered:

- ▲ The trust must be irrevocable.
- ▲ **The Grantor should use his or her own separate property to fund the SLAT.** If contributions are from property owned by the spouse, the spouse would be treated as a grantor, and his or her status as both grantor and beneficiary would cause inclusion of the trust property within the taxable estate at the spouse's death. It is also important to take preventative measures to avoid contributing assets of the spouse in community property states where both spouses are considered to own half of all community property.
- ▲ Someone other than the Grantor should serve as trustee of the trust. Eligible trustees and co-trustees may include the Grantor's spouse, an independent trustee, a family member, or a close friend. **If the Grantor's spouse is to serve as the trustee of the SLAT, his or her rights to make discretionary distributions to himself or herself should be limited by an "ascertainable standard" or health, education, maintenance and support. An independent trustee would have the power to make distributions to the spouse for any reason.**
- ▲ As a beneficiary of the trust, the spouse's right to withdraw assets from the trust in any one year should be limited to the greater of \$5,000 or 5% of trust assets.
- ▲ For federal income tax purposes, the SLAT can be treated as a "grantor trust". The Grantor would be treated as owner of the trust assets for income tax purposes, and the trust income would be included in the Grantor's gross income.
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As with any tax sheltering opportunity, there are downsides. For a SLAT, the potential downsides include:

- ▲ Once the Grantor transfers the assets to the trust, the assets cannot be returned. In the event of divorce, the assets remain in trust for the benefit of the spouse (or children depending on drafting provisions). The Grantor would also lose indirect access to trust assets in the event his or her spouse predeceased the Grantor.

- ▲ Generally, there should be only one SLAT between the married couple. If both spouses elect to create a SLAT for each other, care must be taken to draft the trusts so the terms and funding are sufficiently dissimilar to ensure the IRS will not invoke the “reciprocal trust doctrine” and include the assets in their taxable estates.

In conclusion, the SLAT can be an extremely useful estate planning technique to help pass estate tax-free death benefits to heirs, while at the same time providing the Grantor access to the trust assets during his or her spouse’s lifetime.

If you have any questions regarding the above, please give us a call. As always, it is important to consult with a financial and legal advisor before taking any specific action. *This publication is designed to present information on business, tax and estate planning matters in general terms and is not intended to be used as a basis for specific action without obtaining professional advice.*

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