Opportunity Shifting: A Life Insurance and Estate Planning Technique

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Abstract: *Opportunity shifting is a technique used to move anticipated future wealth into irrevocable trusts so that the wealth can be protected from estate, gift, and generation-skipping transfer taxes, and creditors, including spouses and ex-spouses. Whenever the owner of a large estate has a "hot" business or investment opportunity, the estate owner should consider "referring" the opportunity to a trust that is protected from transfer taxes and creditors. This strategy can create a large cash flow inside the trust to pay the premiums for large life insurance policies.*

Opportunity shifting, in its simplest form, is the shifting of the opportunity to make money or generate wealth from one person (the "opportunity shifter") to others, usually descendants or trusts for the benefit of descendants. Wealthy clients are frequently presented with business and investment opportunities which, if structured properly using the opportunity shifting technique, can be protected from income and estate taxes, and from creditors, including spouses and ex-spouses.

Most advisers, in counseling their clients with respect to new opportunities to make money, concentrate primarily on what type of entity their clients should own and invest in the opportunity. This article explores the benefits that advisers can provide for their clients by taking one additional step — examining who should be the beneficial owner of the entity that owns the business or investment opportunity. Life insurance funding applications are also addressed, including a discussion of how the opportunity shifting technique can be combined with sales to defective trusts and low interest loans to defective trusts to increase the amount of money available to pay insurance premiums.[1]

Prior to exploring the opportunity shifting technique, it is important to discuss two sophisticated estate planning concepts: (1) the philosophy of setting up trusts controlled by the beneficiary as trustee, and (2) the defective trust strategy. Understanding these two concepts is essential for advanced planning, not only in the context of opportunity shifting, but also in other situations.

Beneficiary Controlled Trust

Many advisers recommend trusts primarily as a vehicle to keep assets away from the control of the beneficiary. In these types of trusts, the trust assets are typically distributed to the beneficiary when the beneficiary reaches a particular age, theoretically projected to coincide with the beneficiary's expected age of maturity. If the beneficiary is already capable of managing the assets at the time of the gift or bequest, a trust is often not used at all. Unfortunately, this line of thinking creates more problems than it solves.

Rather than distributing assets from the trust when the beneficiary attains the projected age of maturity, the assets should be retained in the trust to enable the beneficiary to obtain more benefits than the beneficiary could obtain with outright ownership. This can be accomplished by selecting the primary beneficiary as controlling trustee (a "Beneficiary Controlled Trust"). The primary beneficiary, as trustee of the trust, can be given virtually identical rights in the trust property as he or she would have with outright ownership. In addition, the trust can offer insulation from creditor and divorce problems, as well as estate tax protection that does not result from outright ownership. Thus, the failure to use a trust is often a costly mistake. The primary beneficiary can be given all of the following rights in trust that can also be given with outright ownership: (1) the right to access the income, (2) the right to access the principal subject to a broad ascertainable standard, (3) the right as trustee to manage and control the property, (4) the right to use the property, and (5) the right to transfer the property during life and to determine who will receive the property after the beneficiary's death.

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The power to distribute principal without limiting such distributions to an ascertainable standard can be given to an independent trustee who can be removed by the beneficiary with or without cause and replaced with another independent trustee.[2] Alternatively, the grantor can retain the power to remove and replace the independent trustee.[3] The additional feature of using an independent trustee for distributions can provide greater tax and asset protection benefits, as well as additional flexibility in the trust, which is often the desired alternative when explained to the client.

Defective Trust

A trust can be designed and funded so that it is income taxable either to the trust, to the grantor, or to the beneficiary. In the past, when drafting a trust the attorney would usually be very careful not to cause someone other than the trust to pay tax on income earned by the trust. Except as to income distributions, if any of the trust income was taxable to someone other than the trust, it was usually as a result of a drafting error by the attorney. However, with today's compressed income tax brackets, low threshold before the trust reaches the top bracket, and advanced planning techniques, it is often beneficial to intentionally cause the trust income to be taxed to either the grantor or the beneficiary.

A "defective trust," as used herein, is an irrevocable trust in which either the grantor or the beneficiary is treated as the "owner" of the trust for income tax purposes, but not for transfer tax purposes. Therefore, the trust income, deductions, and credits are reported on the owner's personal income tax return.[4] The trust is defective with respect to the grantor if the terms of the trust violate any one or more of certain Internal Revenue Code provisions.[5] Some of the more common trust provisions that cause the trust to be defective with respect to the grantor include (1) giving the grantor the power, in a nonfiduciary capacity, to reacquire the trust assets by substituting property of an equivalent value;[6] (2) giving a nonadverse party the power to add beneficiaries;[7] or (3) making the grantor's spouse a permissible beneficiary.[8]

Beneficiary Defective Trust

The trust is defective with respect to the beneficiary if Internal Revenue Code (IRC) Section 678 is violated. For purposes of this article, this type of trust shall be called a "Beneficiary Defective Trust." The analysis of IRC Section 678 is much more complex than the analysis of the Code Sections which make the trust defective with respect to the grantor.

Under IRC Section 678(a)(1), a person will be treated as the owner of any portion of the trust for income tax purposes if that person has the power exercisable solely by himself or herself over such portion to vest the corpus or the income in himself or herself. A gift to a trust subject to a power of withdrawal gives the powerholder this type of power until the power to withdraw lapses or otherwise may no longer be exercised. After the power to withdraw no longer exists, the income tax analysis shifts to IRC Section 678(a)(2).

Under IRC Section 678(a)(2), a person will be treated as the owner of any portion of the trust for income tax purposes if that person has previously partially released or otherwise modified the IRC Section 678(a)(1) power, and after the release or modification, retained such control as would, within the principles of the grantor trust rules with respect to the trust creator, subject the grantor of the trust to treatment as the owner.

After the power of withdrawal has lapsed, the issue is whether the lapsed portion should be treated as being "partially released or otherwise modified" so as to fall within the scope of IRC Section 678(a)(2). The IRS's position is that after the lapse of a power of withdrawal, the powerholder is treated as having partially released the power; thus, the powerholder remains the taxpayer after the lapse.[9]

The latter portion of IRC Section 678(a)(2) requires the powerholder to retain control over the trust that would, within the principles of the grantor trust rules, subject a grantor to treatment as the owner of the trust. In almost all cases, the powerholder is a permissible distributee of the trust so that he or she retains a power that would have fallen under IRC Section 677(a)(1) had he or she been the grantor. If IRC Section 677(a)(1) does not apply, then an alternative is to give the powerholder the power to exchange all or part of the trust property by substituting for it property of equivalent value.[10]

Defective Trust Advantages

Planners should consider using a defective trust for two primary reasons. First, the payment of the income tax by the grantor (or the beneficiary) is the functional equivalent of a tax-free gift to the trust of the income tax liability each year. If the grantor (or the beneficiary), rather than the trust, pays the income tax each year, more cash is available inside the trust for investments. For example, if the trust earns $100,000 this year and both the trust and the grantor (or the beneficiary) are in a 40 percent income tax bracket, the entire $100,000 would be available for investments in the trust, whereas only $60,000 would be available in a trust in which the income is taxed to the trust. After a number of years, the compounding effect will be significant.

Another benefit in creating a defective trust is that the grantor (or the ben-

eficiary) can transact with the trust income tax free under the holding of a 1985 Revenue Ruling.[11] The IRS ruled that the trust is disregarded for income tax purposes and that transactions between the "owner" and the trust have no income tax consequences.

Opportunity Shifting Example 1

Facts

Bill Beneficiary is a young entrepreneur who has a great idea for a new computer business. He decides to form an entity called Newco, and he visits his attorney to set up the new entity. The attorney asks Bill how much money he expects to need for the start-up costs and how much he estimates the business may be worth in a number of years. Bill responds that his parents are going to give him $10,000 to contribute to the company and that he thinks Newco could eventually be worth millions of dollars. Bill asks the attorney for some alternative structures. (The following alternatives assume that Newco grows over 30 years to be worth $50 million.)

Alternative #1. Alternative #1 is to simply set up an entity, such as a limited liability company (LLC) or a corporation. Assuming Bill dies 30 years after starting the business, and assuming there have been no divorce claims or other creditor claims against Bill to reduce his estate, his estate would be subject to an estate tax of 55 percent of $50 million.

Alternative #2. Alternative #1 can be enhanced by shifting the business opportunity to a Beneficiary Controlled Trust set up by Bill's parents for the benefit of Bill and Bill's descendants. Bill's parents would gift $10,000 to the trust. The trust would form the entity and be the 100 percent owner. Again assuming Bill dies exactly 30 years after starting the business, under this structure, his estate would not owe any estate tax on the value of the business since the trust assets are not part of his taxable estate. In addition, the trust assets would be shielded from claims on account of divorce or other creditors due to the spendthrift protection provided by the trust.

Opportunity Shifting Example 2

Facts

Wife is a real estate developer and has a $10 million estate. Wife and Husband have two adult children, Daughter and Son. Wife recently made $1 million on her last shopping center project that she held in an LLC in which she is the sole member. On her visit to her adviser's office, she mentions that she wants to form another LLC to own and develop another shopping center. She anticipates signing the paperwork to start the project sometime next month.

The project will require an investment of $200,000. Wife anticipates, based on the success of her last project, that the shopping center will be 100 percent occupied with tenants within a year. She says that it should be worth approximately $1 million in a year and will produce $150,000 in annual cash flow from the leases. Wife is comfortable with the size of her estate and is looking for ways to reduce it. She asks for some suggestions.

Suggestion #1. The simplest suggestion would be for Wife to gift $100,000 each to Daughter and Son using a portion of her gift tax exemption. Daughter and Son would then contribute this money to a newly formed LLC, which will own and develop the project. At a 55 percent estate tax rate and assuming the property does not appreciate beyond its $1 million value, this simple maneuver would save $550,000 in estate taxes at Wife's death (or at Husband's death if Wife predeceases Husband and bequeaths it to Husband).

Suggestion #2. Suggestion #1 can be enhanced by shifting the opportunity to Beneficiary Controlled Trusts for the benefit of Daughter and Son and their descendants, rather than shifting the opportunity to them outright. Wife would make a gift of $100,000 to a trust for Daughter and her descendants and $100,000 to a trust for the benefit of Son and his descendants. Son and Daughter, as trustees of their respective trusts, would then contribute this money to a newly formed LLC, which would own and develop the project. Wife would allocate $100,000 of her $1 million generation-skipping transfer tax (GST tax) exemption to each trust so that the trusts are fully exempt.

Suggestion #3. Suggestion #2 can be enhanced by shifting the opportunity to Beneficiary Controlled Trusts for the benefit of Daughter and Son that are wholly defective for income tax purposes with respect to Wife. Since Wife is responsible for payment of the tax on income earned by the trusts, the trusts will grow income tax free, and Wife's estate will be reduced each year by the payment of the income taxes, thus shifting more of the wealth from Wife's estate into the trusts where it can be shielded from estate taxes and creditors of the beneficiaries, including spouses in the event of a divorce.

Suggestion #4. If Daughter and Son also have large estates, an additional strategy is for Wife to create Beneficiary Controlled Beneficiary Defective Trusts for Daughter and Son. The same tax and creditor protection benefits that can be achieved with respect to Wife using trusts that are defective with respect to her can also be obtained for Daughter and Son.

Suggestion #5. The same strategy described in Suggestion #4 can also be used for Wife's benefit by having one or both of Wife's parents set up a Beneficiary Controlled Beneficiary

Because the trust was set up by a third party, the trust property will be protected from Wife's creditors and from transfer taxes.

Defective Trust for Wife, Wife's spouse (if desired), and Wife's descendants. The trustee (i.e., Wife or an independent trustee if one is used along with Wife for additional flexibility) would give Wife a hanging power of withdrawal over the gift to the trust so that the trust would be wholly defective with respect to Wife. The power of withdrawal would lapse as to the greater of $5,000 or 5 percent of the trust assets each year.

The greatest advantage of this trust structure is that it shifts the opportunity from Wife's estate to a trust controlled by Wife as trustee which is not included in her estate, thereby leaving Wife in the same beneficial position as she would have been in had she not utilized this structure. Because the trust was set up by a third party, the trust property will be protected from Wife's creditors and from transfer taxes. The trust can also be designed to provide this protection for multiple generations.

Suggestion #6. A different twist to Suggestion #5 is for Wife to ask Husband to set the trust up for the benefit of Wife and their descendants. Under IRC Section 677(a)(1), the trust would be defective with respect to Husband since Wife is a beneficiary.[12] The disadvantage of this design in comparison to the one described in Suggestion #5 is that Husband cannot be a permissible beneficiary without causing estate inclusion. However, since in many situations there is no parent who can afford to make the gift, the spousal trust is often the best alternative available.

Suggestion #7. If Wife would like to leave open the possibility of accessing the trust assets in the future, another possible structure would be for Wife to create a defective trust in which her "spouse" is the primary beneficiary and controlling trustee. As long as she remains married to Husband, she can "indirectly" access the trust assets by asking the trustee in charge of distributions to make distributions to Husband.[13] If Wife and Husband were to divorce, Wife would not be able to "indirectly" access the trust assets anymore, unless and until she remarries.

Life Insurance Funding Opportunities

With the rapid increases in the sizes of clients' estates, the corresponding liquidity problems encountered at death often require the use of advanced techniques to fund irrevocable life insurance trusts to provide cash to pay estate taxes. Since larger insurance premiums are needed, the planner often faces the challenge of designing the funding of the life insurance trust using strategies other than, or in addition to, Crummey gifts.[14]

The creation of a large cash flow inside of an irrevocable trust by shifting business and investment opportunities to the trust can enhance the trust's ability to purchase a large life insurance policy. The opportunity shifting technique, when combined with the defective trust concept, takes advantage of the leveraging features of opportunity shifting and the income tax-free accumulation of the defective trust to create a gift and GST tax-free life insurance funding mechanism.

Example

Using the facts from Opportunity Shifting Example #2, Wife might set up three trusts: (1) a trust for Husband as primary beneficiary and controlling trustee (with Wife's descendants as the secondary beneficiaries); (2) a trust for Daughter and Daughter's descendants with Daughter as the controlling trustee; and (3) a trust for Son and Son's descendants with Son as the controlling trustee. Wife might gift $67,000 to each trust so that the three trusts could contribute this money to a newly formed LLC to own and develop the shopping center. The $150,000 annual cash flow (expected to begin in a year) from the leases could be used to purchase life insurance. Since the cash flow would not be immediate, an additional gift, or a loan, could be made to pay the first year's premium.[15]

To take care of Husband's possible concern that he would not be able to continue his high standard of living if Wife were to die prematurely, the trust for the benefit of Husband as the primary beneficiary and controlling trustee could use its $50,000 annual cash flow to pay for a large insurance policy on Wife's life. In order to plan for the eventual estate tax liability, the trusts for the benefit of Daughter and Daughter's descendants and for Son and Son's descendants could use the cash flow from the project to pay the premiums on a second-to-die insurance policy.

Opportunity Shifting and The Sale to a Defective Trust

Opportunity shifting can be used in conjunction with the installment sale to a defective trust technique to further leverage the amount that can be transferred to the defective trust in relation to the initial gift to the trust.[16] As explained below, one of the limitations on the sale technique is that ordinarily the defective trust should be independently funded with at least 10 percent of the value of the assets that will be sold to the trust.[17] By funding the defective trust with a "hot" business or investment opportunity that is expected to increase significantly in value, the initial gift to the trust can be leveraged so that the 10 percent rule of thumb will result in a much larger amount of independent funding with which to base the determination as to how much can be sold to the trust after the "hot" opportunity has exploded in value.

To understand the sale technique, it is first necessary to review valuation discount planning. For transfer tax purposes, the fair market value of an

asset is the price a willing buyer would pay a willing seller for the asset.[18] Under the willing buyer-willing seller test, it is often possible to position the assets in such a way that their value is significantly reduced. Although there are a number of methods to arrange the assets to reduce their value for transfer tax purposes, the most popular method is to contribute the assets to a family limited partnership (FLP).

A FLP is a limited partnership among family members or trusts for their benefit.[19] The general partners have control; the limited partners have no control. The limited partnership interests can be transferred at a discount from the pro-rata value of the partnership's underlying assets since they are nonvoting interests in a closely held entity. Two principal discounts apply in valuing a limited partnership interest: a minority interest discount and a lack of marketability discount. The minority interest discount is applied because limited partnership interests have no voting power. The lack of marketability discount is applied because a partnership interest in a closely held entity does not have a ready market and because of transferability restrictions included in the partnership agreement.

Using the facts from Opportunity Shifting Example #2, assume Wife contributes $1.98 million worth of assets and Husband contributes $20,000 worth of assets to a FLP. In exchange for the $2 million worth of assets, Wife receives a 1 percent general partnership interest and a 98 percent limited partnership interest, and Husband receives a 1 percent limited partnership interest. If Wife were to sell a 90 percent limited partnership interest — without considering the willing buyer-willing seller definition of fair market value — one might conclude that the fair sales price would be 90 percent of $2 million (i.e., $1.8 million). However, due to the minority interest and marketability discounts, a qualified appraisal might show that the fair market value is closer to only $1 million.[20] Estate planners frequently use discounts to leverage the amount that the client may gift.

An asset worth $1 million certainly may be sold by the grantor to a defective trust in exchange for $1 million cash without any income tax ramifications.[21] Similarly, assuming a 44.44 percent discount, limited partnership interests with a nondiscounted pro-rata value of $1.8 million can also be sold to a defective trust for $1 million cash without any income tax ramifications.

The sale of assets at a discount is significantly enhanced by leveraging the sale using a deferred payment. The interest-only installment sale with a balloon payment will be illustrated herein, but a private annuity or a self-canceling installment note might also be considered if the client's situation makes either of these alternatives more favorable. As mentioned previously, the general rule of thumb used by estate planners is that the trust must have a fair market value of at least 10 percent of the fair market value of the assets being sold to the trust. Thus, no more than a 10 to 1 ratio of assets being sold to assets independently owned by the trust should be used.

The technique is best illustrated by an example. Assume Wife gifts $200,000 to a defective trust for the benefit of her spouse and descendants (or for her descendants only) and allocates $200,000 of gift tax exemption and $200,000 of GST tax exemption to the transfer so that the trust is wholly exempt from transfer taxes. Wife then sells a limited partnership interest with a pro rata value of $1.8 million (and a fair market value of $1 million after a 44.44 percent discount) to the trust in exchange for an interest-only promissory note with a balloon payment of $1 million due after nine years. The sale is for fair market value so that no additional gift tax exemption or GST tax exemption needs to be allocated to the trust.

If the partnership assets and the initial $200,000 gift are both earning income at a rate of 10 percent each year, then the trust will have an additional $200,000 (i.e., 10 percent of $1.8 million plus 10 percent of $200,000) at the end of the first year. Using the February 1999 federal mid-term rate of 4.71 percent, the interest payable from the trust to Wife at the end of the year would be only 4.71 percent of $1 million, or $47,100.[22] Each year, the trust continues to accumulate much more income than it must pay back to Wife since (1) the trust is increasing income tax free, and (2) the interest is applied against the discounted fair market value of the limited partnership interest. The difference between the increase in the value of the trust assets and the interest payment to Wife each year inures to the benefit of the trust gift tax free. Because of the valuation discount and because the typically low interest rate is applied against the discounted limited partnership interest (or other asset), this difference is often significant. The additional cash flow can be used to pay life insurance premiums.[23]

If Wife were to die immediately after entering into the sales agreement, her estate would be reduced by the $1.8 million pro rata value of the partnership assets and would be increased by the promissory note with a face value of only $1 million. This would result in an immediate savings of the estate tax on the difference between the two figures. In addition, the promissory note may be further discounted because of its low interest rate. The fact that there is no requirement that Wife survive the term of the note along with the ability to immediately apply GST tax exemption to the trust are the two primary reasons that this technique is superior to the grantor retained annuity trust technique.[24]

The opportunity shifting concept can help create a large cash flow inside of a trust to fund the premiums for a large life insurance policy.

Opportunity Shifting And Low Interest Loans To a Defective Trust

Opportunity shifting can also be used in conjunction with low interest loans to a defective trust to further leverage the amount that can be transferred to the trust. Because the trust is defective with respect to the lender, the transaction is disregarded for income tax purposes. This technique takes advantage of the applicable federal rates, which are generally low in comparison to the return that the borrower can get by investing the money.

In the case of any term loan, the applicable federal rate is the rate in effect under Internal Revenue Code Section 1274(d) as of the day the loan is made, compounded semiannually.[25] In the case of any demand loan, the applicable rate is the federal short-term rate in effect under the same IRC Section for the period in which the amount of foregone interest is being determined, compounded semiannually.[26] It is generally not advisable to use a demand loan because the decision not to call the loan prior to the end of the applicable state statute of limitations for demanding payment is arguably an additional gift that is subject to gift tax.

Again using the facts from Opportunity Shifting Example #2, Wife might set up a defective trust for the benefit of her spouse and descendants (or for her descendants only) with an initial gift of only $20,000 and a low interest loan of $180,000 payable interest-only at the statutory rate with the principal due after nine years. This would use only $20,000 of her estate and gift tax exemption (or could be covered using Crummey gifts) and $20,000 of her GST tax exemption.

Using the February 1999 applicable federal rate of 4.66 percent for a nine-year loan, the annual interest payable from the defective trust to Wife would be only $8,388. Therefore, as long as the trust earns more than $8,388 during the year, the loan transaction will be successful in shifting value away from Wife's estate and into the trust. Whenever a successful opportunity shifting transaction is involved, a return greater than the applicable federal rate should be easily obtainable. Similar to the sale to a defective trust technique, the additional cash flow can be used to pay life insurance premiums.

Summary

Estate planners should consider advising their clients to shift their "hot" business and investment opportunities into irrevocable trusts that protect assets from the beneficiaries' creditors, including spouses and ex-spouses, and which can be designed to avoid transfer taxes for multiple generations. In some cases, the opportunity shifter can shift the opportunity into a trust set up by a third party for the opportunity shifter's benefit, which is controlled by the opportunity shifter as trustee.

The opportunity shifting concept can help create a large cash flow inside of a trust to fund the premiums for a large life insurance policy. The concept can also be combined with defective trusts, including leveraging techniques such as sales to defective trusts and low interest loans, so that even more estate planning benefits can be achieved. **J**

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(1) Another popular life insurance funding method, split dollar, is not discussed herein. See materials written by Michael D. Weinberg or Larry Brody for more information on split dollar agreements.
(2) Priv. Ltr. Rul. 97-46-007 (Nov. 14, 1997).
(3) Rev. Rul. 95-58, 1995-36 I.R.B. 16.
(4) IRC §671.
(5) *See generally* IRC §§673-677, 679.
(6) IRC §675(4)(C).
(7) IRC §674(b)(5).
(8) IRC §677(a)(1).
(9) Priv. Ltr. Rul. 81-42-061 (July 21, 1981); Priv. Ltr. Rul. 85-21-060 (Feb. 26, 1985); Priv. Ltr. Rul. 90-34-004 (Aug. 24, 1990).
(10) IRC §675(4)(C).
(11) Rev. Rul. 85-13, 1985-1 C.B. 184.
(12) Under IRC §677(a)(1), "[the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be — (1) distributed to the grantor or the grantor's spouse."
(13) The trustee with the distribution powers might be either the grantor's spouse subject to an ascertainable standard or an independent trustee who can be given a much broader distribution standard.
(14) Crummey v. Commissioner, 397 F.2d 82 (9th Cir. 1968).
(15) Split dollar funding would also solve the problem of paying the first year's premium.
(16) *See* Michael D. Mulligan, *Sale to a Defective Grantor Trust: An Alternative to a GRAT*, Est. Planning (Jan. 1996); Fred Nicholson, *Sale to a Grantor Controlled Trust: Better than a GRAT?*, Tax Mgmt. Memorandum (Feb. 22, 1996); H. Allan Shore and Craig T. McClung, *Beyond the Basic SUPERFREEZE - An Update and Additional Planning Opportunities*, Taxes (Jan. 1997); Michael D. Mulligan, *Sale to an Intentionally Defective Irrevocable Trust for a Balloon Note - An End Run Around Chapter 14?*, 32 U. Miami Philip E. Heckerling Inst. on Est. Plan. Ch. 15 (1998); Steven J. Oshins, et al, *Sale to a Defective Trust: A Life Insurance Technique*, Trusts & Est. (Apr. 1998); Steven J. Oshins, Sale to a Defective South Dakota Dynasty Trust: Leveraging Your Trust into Perpetuity, Communique (Apr. 1998); Michael D. Weinberg, *Analysis of the IDIOT Trust(R), Interview of Michael D. Weinberg, JD*, Insights & Strategies (Apr. 1998); Jerome M. Hesch, *Installment Sale, SCIN and Private Annuity Sales to a Grantor Trust: Income Tax and Transfer Tax Elements*, Tax Mgmt. Est., Gifts and Trusts J., (May/June 1998); Richard A. Oshins, *Defective Trusts Offer*

Unique Planning Opportunities, Fin. and Est. Plan. - Est. Plan. Rev. (Aug. 20, 1998); Richard A. Oshins and Steven J. Oshins, *Protecting & Preserving Wealth into the Next Millennium*, Trusts & Est. (Sept/Oct 1998); Steven J. Oshins, *Sales to Grantor Trusts: Exponential Leverage Using Multiple Installment Sales*, Probate & Property (Jan/Feb 1999); Michael D. Weinberg, *Reducing Gift Tax Liability Using Intentionally Defective Irrevocable Outstanding Trusts*, J. Asset Protection (Jan/Feb 1999); Elliott Manning and Jerome M. Hesch, *Deferred Payment Sales to Grantor Trusts, GRATs and Net Gifts: Income and Transfer Tax Elements*, Tax Mgmt. Est., Gifts and Trusts J. (Jan/Feb 1999).

(17) *See* Byrle M. Abbin, *[S]he Loves Me, [S]he Loves Me Not - Responding to Succession Planning Needs Through a Three-Dimensional Analysis Of Considerations To Be Applied In Selecting From The Cafeteria Of Techniques*, 31 U. of Miami Inst. on Est. Plan., Ch. 13 (1997), who commented, "...[i]nformally, the IRS has indicated that the trust should have assets equal to 10 percent of the purchase price to provide adequate security for payment of the acquisition obligation." *Id* at 13-9.

(18) Treas. Reg. §20.2031-1(b); Treas. Reg. §25.2512-1.

(19) See materials written by Stacy Eastland, Tom Baird, or Owen Fiore for more information on family limited partnerships.

(20) This figure assumes a 44.44 percent discount. In the author's experience, most discounts are between 30 percent and 60 percent. The discount depends upon the provisions of the partnership agreement and the assets owned by the partnership. A qualified appraisal should always be obtained prior to a sale.

(21) *Supra* note 11.

(22) *See generally* IRC §1274(d).

(23) *See* Steven J. Oshins, et al., *supra* note 16 for more information on the life insurance opportunities available using the sale to a defective trust technique.

(24) A grantor retained annuity trust is an irrevocable trust in which the grantor retains an annuity payment for a term of years. A complete explanation of this technique is beyond the scope of this article. For an excellent recent article on grantor retained annuity trusts, see David A. Handler, *Economically Zeroed-Out GRATs Produce The Best Results*, Trusts & Est. (Jan. 1999).

(25) IRC §7872(f)(2)(A).

(26) IRC §7872(f)(2)(B).

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