

Family Gift Trusts

by John S. Kitchen, JD, LLM
johnkitchenlawoffices.com

Family gift trusts allow parents, grandparents, aunts, uncles and other benefactors to make annual gifts for children, grandchildren and other loved ones over the years in a specific way that allows the annual gifts to accumulate in a gift trust.

The annual gifts can accumulate in the gift trust to go to the family member or loved one at the death of the benefactor/donor, or could even stay in the gift trust after the death of the benefactor/donor as a “family safety fund” for one or more loved ones. In New Hampshire, there is no limit as to the generations of family members who can benefit. The gifts made into the gift trust are not included in the taxable estate of the benefactor (up to a total of \$1M for federal gift tax purposes), if the gift trust is written in a certain way and required gifting procedures are followed.

These trusts are typically used when the benefactor/donor has a taxable estate of \$1M or above (for deaths occurring after December, 2010), and are usually created as a second step after first creating a revocable trust. The leading case for these family gift trusts is Cristofani v. Commissioner 97 T.C. 74 (29 July 1991). See also the Action on Decision in Cristofani, and Crummey v. Commissioner 397 F. 2d 82 (9th Cir. 1968).

These family gift trusts can use the annual federal gift tax exclusion for gift and estate tax free annual gifts of up to \$13,000 per donor for each beneficiary per year. So, for example, a married couple with two children can gift into a family gift trust up to \$52,000 each year and can decide each year what, if any, amount to add (up to the \$52,000 limit each year). The amounts gifted into the gift trust are then not includable in the taxable estate of the person making the gift, if required procedures are followed. This would generally save approximately of one-half of each dollar gifted into the gift trust, if the required gift and estate tax trust rules are followed. and the assets of the person making the gift exceeds \$1M.

Other types of family gift trusts include trusts authorized in the Internal Revenue Code at IRC 2503(c), IRC 2503(b), IRC 7520, IRC 2702 and IRC 529. It is also possible to do a family gift trust in combination with charitable giving.

These are many types of helpful gift trusts, and it is important to select the type of trust after reviewing the family estate plan and the wishes of the benefactor/donor.

June 2010