NON TAX REASONS TO ESTABLISH A TRUST

Fendrick & Morgan, LLC
1307 White Horse Rd., Bldg B, Ste 200
Voorhees, NJ 08043
(856) 489-8388
www.fendricklaw.com

INTRODUCTION

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act"). The Act significantly changes the federal estate tax, which impacts estate planning for many of our clients, and presents significant estate planning opportunities. This Act's key changes that relate to estate planning are as follows:

Estate Tax

Under prior law, beginning in 2001, the federal estate tax was gradually reduced over a period of years and then eliminated for decedents dying in 2010. The estate tax was scheduled to be reinstated in 2011 with a maximum tax rate of 55 percent and $1 million applicable exclusion amount. Additional changes scheduled for years after 2010 affected the gift and generation-skipping transfer ("GST") taxes.

The Act reinstates the federal estate tax for decedents dying during 2010 with an applicable exclusion amount of $5 million and a maximum tax rate of 35 percent. However, the Act gives estates of decedents dying during 2010 the option to apply either: (1) the new estate tax, with a 35 percent top rate, $5 million applicable exclusion amount and a return to the step-up in cost basis rule, or (2) no estate tax and modified carryover basis rules which were to apply for 2010 under prior law (discussed below).

Basis Issues.

Pre-2010, inherited property would receive a "stepped-up basis" in the hands of the beneficiary equal to the property's fair market value on the date of the decedent's death. However, under prior law, for the year 2010, "modified carryover basis" rules were to apply for property inherited from a decedent. Under the modified carryover basis rules, executors could increase the basis of estate property only by a total of $1.3 million (plus an additional $3 million for assets passing to a surviving spouse, for a total increase of $4.3 million), with other estate property taking a carryover basis equal to the lesser of the decedent's basis or the property's fair market value on the decedent's death. The Act also eliminates the modified carryover basis rules for 2010 and replaces them with the stepped-up basis rules that had applied before 2010.

Expiration.

This new estate tax regime, as promulgated by the Act, continues for decedents dying in 2011 and 2012. Unfortunately, this new regime is itself temporary and will sunset on December 31, 2012. At that time, the prior estate tax regime, with a 55 percent maximum estate tax rate and a $1 million applicable exclusion amount, is to be reinstated.

Portability.

The Act also provides for "portability" between spouses of the estate tax applicable exclusion amount for estates of decedents dying in 2011 and 2012 if both spouses die before 2013. Generally, portability allows surviving spouses to elect to take advantage of the unused portion of the estate tax applicable exclusion amount (but not any unused GST tax exemption) of their predeceased spouses, thereby providing surviving spouses with a larger exclusion amount. Special limits may apply to decedents with multiple predeceased spouses.

To preserve the first deceased spouse's unused applicable exclusion amount, the executor for such spouse must file a federal estate tax return and make an election thereon, even if such an estate tax return would otherwise not be required.

Gift Taxes.

For gifts made in 2010, the maximum gift tax rate is 55 percent and the applicable exclusion amount is $1 million. For gifts made in 2011 and 2012, the Act limits the maximum gift tax rate to 35 percent and increases the applicable exclusion amount to $5 million. As discussed below, this change provides an opportunity to move significant amounts of wealth free of estate and gift taxes.

Donors continue to be able to use the annual gift tax exclusion before having to use any part of their applicable exclusion amount. For 2010 and 2011, the annual exclusion amount is $13,000 per donee (married couples may continue to "split" their gift and may make combined gifts of $26,000 to each donee).

Generation Skipping Transfer ("GST") Tax

The Act provides a $5 million GST exemption amount for 2010 (equal to the applicable exclusion amount for estate tax purposes) with a GST tax rate of zero percent for 2010. For transfers made after 2010, the GST tax rate would be equal to the highest estate and gift tax rate in effect for the year (35 percent for 2011 and 2012). The Act also extends certain technical provisions under prior law affecting the GST tax.

I. OBSERVATIONS REGARDING THE ACT

Generally, the estate and gift tax provisions of the Act are very favorable to taxpayers because of the substantial increase in the applicable exclusion amount of $5 million, and the lower maximum estate and gift tax rate of 35 percent. The Act also addresses several technical estate, gift and GST tax issues in a manner that is favorable to taxpayers (e.g., the impact of the lapse of the estate tax, including the application of basis rules, on decedents passing away during 2010).

Temporary Fix

The Act is a temporary fix, which sunsets on December 31, 2012, immediately after the next election cycle. It is impossible to predict whether it will be extended in either its current or some modified form, especially given the fact that it is a hot button issue with both major political parties. If Congress fails to act, the Act will lapse and the estate tax will revert to what it would have been under prior law (i.e, $1 million applicable exclusion amount and 55 percent maximum estate and gift tax rate).

Increased Gift Tax Applicable Exclusion Amount

From 2001 to 2010, the applicable exclusion amount for gift tax purposes was $1 million. The Act increases this to $5 million, or $10 million per married couple. This change provides an unprecedented opportunity to move substantial amounts of wealth out of individuals' estates. There are several techniques that individuals can use to leverage this $5 million applicable exclusion amount to move substantially more wealth out of their estates.

Given the fact that the Act will sunset without further Congressional action in 2012, we are advising clients that it would be prudent to implement estate planning techniques utilizing lifetime gifts before the December 31, 2012 sunset date.

State Estate Tax

Many states have separate estate tax regimes with lower applicable exclusion amounts than the federal applicable exclusion amount. New Jersey happens to be one of those states. If you die and you are a New Jersey resident, then your New Jersey exemption is only $675,000. Consequently, it is critical that your estate plan address your current New Jersey estate tax exposure. There are different techniques that our office is utilizing to reduce or even eliminate New Jersey estate taxes that may apply at a person's death. Please make sure your estate plan includes one of these acceptable techniques. It is imperative that you realize that the Act does not avoid potential New Jersey issues that apply if your estate exceeds $675,000.

Portability

As described above, one of the more notable (and, surprising) provisions contained within the Act is the "portability" provision which essentially provides that if one spouse does not fully utilize his/her entire $5 million applicable exclusion amount, the unused portion can be used by the surviving spouse's estate. This provision is intended to avoid the need for Credit Shelter Trusts in estate planning documents. Unfortunately, both spouses must die before 2013 in order to benefit from the portability provision. In addition, because of the New Jersey Estate Tax, Credit Shelter and Disclaimer Trusts are still useful techniques to avoid or reduce New Jersey estate taxes.

II AFTER PASSING OF ACT – TRUSTS ARE STILL IMPORTANT

A. INTER VIVOS OR TESTAMENTARY

Individuals can execute inter vivos trusts (established during life) or testamentary trusts (established at death). Assets are transferred into the living, or inter vivos, trust at the time of its creation, and the trust operates during the trust creator's lifetime. Inter vivos trusts can be either revocable or irrevocable. Revocable Living Trusts, discussed below, are one type of revocable

inter vivos trust. Testamentary trusts, on the other hand, are established in a will and become operative at the time of death. They are irrevocable upon inception. Pour over trusts are created while a person is alive, but can be funded at death. Many trusts can be either inter vivos or testamentary, depending on when the grantor intends to fund the trust, and you will need to counsel your client regarding which type of trust to use for the desired purpose.

1. Parties - The three (3) parties to any Trust are the Grantor, the Trustee and the Beneficiary. The Grantor establishes the Trust and transfers assets to the Trust. The Trustee administers the assets in accordance with the instructions set forth in the Trust document. The Trustee is responsible for investments and for making the appropriate distributions. The Beneficiary is the person who benefits from the Trust.

2. Revocable or Irrevocable - An Inter Vivos Trust can also be either Revocable or Irrevocable. The differences are as follows:

(a) Revocable Trust - With a Revocable Trust, the person establishing the Trust reserves the right to amend or revoke the Trust, change the conditions under which the assets are held or reclaim the assets for personal use. Revocable Trusts are commonly used to avoid Probate, which is required when an individual dies with a Will. New Jersey is a probate-friendly state and does not require an attorney to administer an estate. Nevertheless, avoiding probate can be useful for certain situations. Because with a Revocable Living Trust, at death, the Trustee has the authority to distribute all of the Trust assets to named beneficiaries without the supervision of the probate court, the process is sometimes quicker and more private than probate, as would be required if the assets passed through the decedent's estate and will. Revocable Trusts also allow individuals to avoid Ancillary Probate for real estate owned outside of the state in which they died a resident. This can save estates out-of-state probate costs and attorneys fees. Many people operate under the mistaken assumption that Revocable Living Trusts save taxes. They are, essentially, tax neutral. While there are many benefits of Revocable Trusts, such Trusts will not reduce estate tax liability.

(b) Irrevocable Trust - Unlike a Revocable Trust, the person establishing an Irrevocable Trust typically relinquishes all rights to the assets in the Trust. That individual also cannot later alter, amend, or revoke the terms of the Trust. Assets are placed into an Irrevocable Trust not only to avoid the jurisdiction of the probate court but also to avoid inclusion in the Settlor's estate (unlike Revocable Trusts).

B. TAX SAVING TRUSTS

There are many tax reasons to establish a trust. One reason to establish a Trust is to avoid Federal and State estate taxes. However, in recent years the estate tax exemption has increased. As the estate exemption increased, the need for many estates to establish Trusts to avoid federal estate taxes has diminished. However, if your estate exceeds the exemption amount then trusts can be established to help reduce or eliminate taxes. Some trusts that would be established to reduce death taxes are as follows:

1. Credit Shelter Trusts

In 2011, the Federal Government has an estate tax. For the year 2011, the federal estate tax applies to estates in excess of $5,000,000. This exemption is often referred to as the Applicable Exclusion Amount. The estate tax rate on estates in excess of the Applicable Exclusion Amount is 35 percent. However, the applicable exclusion amount could change as of 2013. In addition, the State of New Jersey has a State Estate tax on estates in excess of $675,000

Accordingly, for married clients with estates in excess of the Applicable Exclusion Amount (for federal or New Jersey purposes), it is important to take advantage of both spouse's exemptions. As state above, if you are married, the Internal Revenue Service and the State of New Jersey exempts from tax any property transferred outright to a surviving spouse. Because individuals typically leave their property to their surviving spouse, estate tax often first becomes a problem upon the death of the surviving spouse. If one spouse leaves everything outright to the surviving spouse, then the Applicable Exclusion Amount of the first spouse to die would be wasted.[1] If the surviving spouse is a United States citizen, no tax will be imposed due to the unlimited marital deduction (for federal or New Jersey purposes). However, all assets would be included in the estate of the surviving spouse and taxed on the second death to the extent the assets then exceed the Applicable Exemption Amount. Usually, this is an undesirable result. Consequently, married couples should attempt to take advantage of each spouse's Applicable Exclusion Amounts for federal and New Jersey purposes. Language in each spouse's estate planning documents can be used so that, upon the first spouse's death, the maximum amount allowable by law passes into a Trust for the benefit of the surviving spouse. This type of trust is known as a "credit shelter trust."

By establishing a credit shelter trust, the first spouse will leave his assets in trust for his spouse, allowing her to utilize the assets in the trust during her lifetime, but precluding them from tax when she dies. The trust usually provides that the spouse has the right to the income generated off of the trust assets as well as any amount of principal to maintain the health, education, maintenance, and support of the surviving spouse. This latter right can be extended for the needs of the decedent's children. In addition, the client can choose to include the right of the surviving spouse to invade 5% or $5,000 of the trust corpus, whichever amount is greater, on a non-cumulative annual basis without restriction as to how the funds are used. This right is commonly known as a "5 and 5 power".

In cases where Credit Shelter Trusts are established, careful consideration should also be given to how the assets are titled. Any jointly owned property will pass to the surviving spouse with rights of survivorship. Furthermore, any accounts which designate beneficiaries, (i.e., retirement accounts, life insurance policies, annuities and other payable on death accounts) will pass directly to the named beneficiaries. Accordingly, married couples must pay attention to how accounts are titled and how beneficiaries are designated. It is important not only to prepare a proper trust for the client, but to also make sure that there are sufficient assets to fund the trust upon the client's death.

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[1] Note that for years 2011 and 2012, the federal exemption would not be wasted thanks to the portability provisions. However, for New Jersey and post-2012 federal estate tax purposes, it is important to not waste either spouse's exemption.

2. Disclaimer Trusts

Because the future of the federal estate tax (and, therefore, the Applicable Exemption Amount) is uncertain at best, clients of relatively modest estates may also consider the use of a "Disclaimer Trust." With Disclaimer Trusts, each spouse's Will leaves all of his/her assets outright to the surviving spouse. However, if the surviving spouse so chooses, he or she can disclaim any portion of the deceased spouse's estate (including, all) into a Trust. The provisions of the Disclaimer Trust state that the surviving spouse will have access to the income and any principal to maintain his or her standard of living. This is an excellent option for clients who want flexibility in case the estate tax is repealed or the applicable exemption amount exceeds the assets of their estate. The Disclaimer Trust would give the surviving spouse the option to pick and choose what, if anything, goes into the Trust upon the first spouse's death. Obviously, there are some drawbacks to a Disclaimer Trust. Clients who are concerned with controlling the ultimate beneficiary of their assets may not want to allow the surviving spouse to have the option as to whether or not to make a disclaimer. (For example, in cases involving second marriages, or situations in which one spouse is concerned with the second spouse remarrying and leaving assets to new spouse, a Disclaimer Trust may not be desirable).

3. QTIP or Marital Trusts

In modern society, this issue arises often. In the case of a second marriage, where both spouses have children from a prior marriage, trusts are desirable in order to protect the interests of both spouses' children. If one spouse leaves the entire estate to the surviving spouse, the surviving spouse might then distribute all property to his/her children upon his/her, leaving little or no assets for the children of the spouse who died first. A distribution in a trust, such as a Q-Tip Trust, can ensure that a surviving spouse will have economic protection yet allow for any remaining principal and interest to be distributed among the decedent's family. These trusts are typically testamentary.

The terms of such a trust must mandate that the income be paid out to the surviving spouse and the surviving spouse must be the sole beneficiary of the trust during their lifetime.

C. NON TAX REASONS TO ESTABLISH A TRUST

1. Non-Tax Reasons for Trusts –

Some of the common reasons to establish a Trust in your estate planning documents are driven by non-tax reasons. These include, but are not limited to, the following:

(a). Protection from a spouse remarrying and leaving assets to new spouse.

(b). Ensuring that your children receive an inheritance. If you have a blended family, often you are concerned with making sure your biological/adopted children receive your assets. A Trust can be set up to make sure that upon your surviving spouse's death, all of your assets pass to your children.

(c) . Protection of assets from passing to a son-in-law or daughter-in-law. You can leave your assets to your child, in Trust. Upon your child's death, the assets in your child's Trust pass to their children. This will keep your assets in your bloodline.

(d). Protection in case a child later gets divorced. If parents leave assets to their children in a Trust, then the assets in the Trust are better protected in the event that child later gets divorced. The Trust may also give additional protection from creditors.

(e). The establishment of a "Dynasty Trust." Since New Jersey has abolished the rule against perpetuities, Trusts in New Jersey can now last in perpetuity.

(f). A client may want to restrict how a beneficiary spends the inheritance. This is especially important when leaving assets to young beneficiaries.

(g). Protection of government entitlements. A Special Needs Trust can be established for a beneficiary who has Special Needs in order to preserve government entitlements.

2. Bloodline or Family Protection Trusts-

One of the most important reasons to establish a Trust is to keep your assets in your bloodlines. Typically, parents want to leave their assets to children. Often parents specify in their estate planning documents that if a child predeceases them, such child's share shall pass to their children (i.e., the Testator's grandchildren). Although individuals specify this disposition in their Will, or other estate planning documents, their objectives may not be achieved. For example, if an adult child survives you, then (absent a Trust) he or she will receive their portion of the inheritance, outright. Once your child receives this portion, then his or her Last Will and Testament will control where the inherited portion eventually passes upon his or her death. Typically an adult child's Will leaves his or her assets to his or her spouse if they are married. Accordingly, the ultimate disposition may be inconsistent with **your** estate planning objectives if your desire is to leave your assets to your grandchildren, rather than a daughter-in-law or son-in-law.

A great technique to ensure that assets pass ultimately to your grandchildren is to set up a Trust for each of your children. The Trust can be established irrespective of the ages of your children. Typically, clients consider Trusts for their children only in situations where the children are minors or spendthrifts. However, a Family Protection Trust can be set up in your estate planning documents to last for the duration of your child's lifetime. Your Will could establish a separate Trust for each of your children, or you could establish a separate trust document for your children outside of your Will. The Trust terms can specify that your child is entitled to all of the income earned by the Trust and whatever principal he or she needs from the Trust for their health, education, welfare and support. Each child could be the Trustee of their respective Trust share. The Trust could specify that, upon your child's death, any assets that remain in the Trust could pass in accordance with a Limited Power of Appointment to be exercised by each child in their estate planning documents or that the assets be distributed directly to such child's then living descendants. The use of a Limited Power of Appointment allows a child to designate the eventual beneficiary of the trust assets upon their death. You

could limit this to be your living children and/or grandchildren, in equal or unequal proportions. Furthermore, if so desired you could allow your children to exercise this Limited Power of Appointment in favor of their spouse.

Consequently, through a Family Protection Trust you can leave your assets to adult children, naming each child as trustee and beneficiary of his/her respective trust share. Upon said child's death the assets in the trust can remain in your bloodline (i.e. pass to children of deceased child) or pass as designated by the deceased child. The assets passing to ultimate beneficiary would be removed from your child's estate. Furthermore, while the assets remained in trust, your children may receive creditor protection from a divorcing spouse or third party creditor. Lastly, the appreciation that occurs in the trust from the date of your death until the date of your child's death is also removed from your child's estate.

3. Generation Skipping Tax -

As mentioned previously, the Generation Skipping Tax (GST) exemption for 2011 and 2012 is $5,000,000. It is uncertain what will happen in 2013 and beyond. Consequently, rather then placing a set dollar amount into a GST trust it is preferable to specify a formula or percentage amount. For example, in my above-example placing funds into a "Family Protection Trust" will require that a Generation Skipping Allocation be made on a Parent's Estate Tax return. To the extent an amount is placed into the trust that exceeds the available GST Exemption amount, (presently $5,000,000) a tax could be triggered. You want to be careful to include proper language in your trust documents to avoid this from occurring. Sample language that I include in our trust document is giving a trustee the ability to make this allocation is as follows:

GENERATION SKIPPING TAX POWERS - Trustees are authorized:

Division - To divide any trust established by this instrument, at any time and from time to time (whether before or after funding), without court approval, into two or more separate trusts (based on the fair market value of the trust assets at the time of the division) so that the federal Generation Skipping Transfer Tax inclusion ratio, as defined in Section 2642(a) of the Code, for each such trust shall be either zero or one. Any such separate trusts shall have provisions identical to those of the original trust, except that Trustees need not make discretionary distributions equally from each such trust.

Combination - To combine two or more trusts hereunder with substantially similar terms for the same beneficiary whether or not such trusts were previously separated from one trust.

Treatment of Trusts - If any trust hereunder is divided into separate trusts, at any time prior to a combination of such trusts, to expend principal and exercise any other discretionary powers with respect to such separate trust differently, invest such separate trusts differently, and take all other actions consistent with such trusts being separate entities. In addition, the donee of any power of appointment over a trust so divided may exercise such power differently with respect to the separate trusts created by such division.

General Power of Appointment - If Trustees have set apart any trust for the benefit of any beneficiary hereunder with an inclusion ratio of one for Generation Skipping Transfer Tax purposes, in their absolute discretion, by a writing delivered to such beneficiary during his or her lifetime, to give to such beneficiary a general power of appointment by will (as such term is defined in Section 2041 of the Code) as to all or any portion of the assets of such trust. In default of the exercise of such power of appointment by such beneficiary, in whole or in part, the assets subject to such power shall pass as provided in the dispositive provisions of such trust. Trustees are also authorized to modify or eliminate in whole or in part a power of appointment previously created under this subparagraph by a writing delivered to such beneficiary prior to the death of such beneficiary.

Additions - Notwithstanding any other provision of this Trust, if the inclusion ratio (as that term is defined in Section 2642(a) of the Code) of property directed to be added to an existing trust is different than the inclusion ratio of such existing trust, in their absolute discretion, to decline to make the addition and instead to administer the property as a separate trust with provisions identical to those of the existing trust to which such property was to be added, except that Trustees need not make discretionary distributions equally from each such trust.

Discretion - The exercise of discretion by Trustees under any paragraph of this Article shall be absolute, final and conclusive. Trustees shall not be held personally liable for the exercise, failure to exercise or manner of exercise of any of these powers, provided, however, that the exercise, non-exercise or manner of exercise of any of these powers is made in good faith and does not constitute willful misconduct.

4. Spendthrift Trusts.

Occasionally, families have a child who is beset with financial problems. This definition can vary from a child who merely lives paycheck to paycheck to a child who is saddled with judgments or bankruptcy problems. Individuals with mild financial problems can have their outright distributions staggered over a period of years, but more serious cases warrant the use of a spendthrift trust to provide for the child but not subject the trust assets either to the claim of creditors or the poor habits of the spendthrift child. Often such trusts are called "discretionary trusts" and with such a trust, the Trustee has full discretion over the funds placed in the trust. Again, these trusts can be either testamentary or inter vivos.

5. Children's Trust-

When clients think of Trusts, one of the first types of Trust thought of is for minors. This is natural since an essential characteristic of a Trust is that they provide for the separation of ownership and management of an asset (in the Trustee) and the beneficial enjoyment of that asset (in the beneficiaries). With minor beneficiaries, who have important financial needs for their education and care, and the immaturity that requires another to manage their assets, the use of Trusts is often ideal. The need to provide for management of assets, and to protect the child from themselves, a potential divorce, or creditors makes Trusts the ideal approach to providing for minor beneficiaries. When parents are doing simple Wills, and wish to establish contingent trusts for healthy minor children, avoid "POT" trusts (where the minors') funds are administered in one "POT" and establish separate trust instead. If the minors' funds are placed in a POT

support trusts and one of the children later becomes disabled and has high medical costs, the one ill child's need could drain the trust completely leaving little for the other children. Establishing share trusts prevents draining the healthy children's funds for the needs of one disabled or non healthy child. Minors' support trust are established in a share, not POT trust format. Often what my office does is we keep assets in a POT trust until the youngest child completes his or her education and then divided the assets into separate trusts.

6. Educational Trust –

Parents and particularly grandparents are anxious to see their children or grandchildren properly educated. If a document establishes a trust for educational purposes, it is useful to define what is included in the term "education". Typically in establishing these types of trusts my office defines education as follows:

> (a). As used herein, the term "education" shall include nursery school, kindergarten, private lower, middle and upper schools, secondary, post-secondary, graduate, and post-graduate education, as well as such technical or vocational training as my trustee may deem to be appropriate. Expenses shall include tuition, fees, room and board a reasonable amount of spending money, reasonable travel expenses to and from the beneficiary's school, and other reasonable cost related to beneficiary's education. When ascertaining the amount appropriate, my trustee may, in my trustee's sole discretion inquire into or investigate any other income or resources then available to the beneficiary.

7. Children with Substance Abuse or Criminal Activity –

Unfortunately, client's children become involved with substance abuse or criminal activity. Clients are anxious to provide for such children but are weary of doing so without some protection.

8. Total Return Trust -

Earlier we discussed some of the reasons to establish a Trust. The typical Trust provides that income will be paid to one person (hereinafter referred to as the "income" beneficiary) and the principal will be payable to others (hereinafter referred to as the "remaindermen"). This type of Trust can produce conflicts between the interest of the income beneficiary and the remaindermen. The income beneficiary wants Trust proceeds invested in assets that generate income on an annual income. The remaindermen wants the Trust proceeds invested in assets that will appreciate over time. The recent, significant decline in interest rates and the unprecedented drop in dividend yields make it impossible for a Trustee to produce reasonable growth and income. Usually a Trustee will disappoint the income and remaindermen beneficiaries equally.

An estate plan planning technique called the "Total Return Trust" has recently grown in popularity because of this inherent conflict. The "Total Return Trust" provides a partnership between the income beneficiary, trustee, and remaindermen that enables impartiality to coexist with maximization of total return. A typical "Total Return Trust" specifies that a certain percentage of the proceeds of a Trust will be paid out to a specified beneficiary on an annual basis. The identification in a Trust document that an income beneficiary will receive a specified

percentage removes some of the pressure from the Trustee. Rather than be concerned with the amount of income being generated from the Trust, the Trustee can concentrate primarily on increasing the amount of assets held in the Trust. If the assets in the Trust appreciate over time then the dollar amount paid over to the income beneficiary will increase as well. The Trustee will not be required to make a distinction between income and appreciation. If the amount of income generated is not equivalent to the total return amount, then the Trustee will continue to pay the total return amount to the income beneficiary. Furthermore, if the income beneficiary ever needs more than the total return amount, the Trust can specify that the Trustee has the options to make discretionary distributions from the principal of said Trust.

The benefits of the "Total Return Trust" are that the income beneficiary can potentially receive a higher payout. Since the Trustee no longer has to fixate on the generation of income, he can choose investments that have more growth potential for the remaindermen. If the assets in the Trust increase in value, then the payout to the income beneficiary can increase as well. The remaindermen are satisfied because the Trustee can invest the Trust proceeds in growth investments. Accordingly, both the income beneficiary and the remaindermen's goals would be met.

It seems that the best time to establish a "Total Return Trust" would be in a situation in which the income beneficiary is not in the same bloodline as the remaindermen. This would always occur in a second marriage in which each spouse had respective children.

CONCLUSION

If the Federal exemption amount continues to increase then the need for many of our client's to establish trusts to reduce their federal estate tax liability will decrease. However, if we emphasize the non tax reasons to establish trusts you will find that more and more clients will see the benefits of establishing a trust.