INSURANCE

Dynasty Trusts: What The Future Holds For Today's Technique

Abstract: THE DYNASTY TRUST is one of the most powerful estate planning tools available under current law, and offers much more than family trusts used by estate planners in both the traditional and insurance trust contexts. This type of trust offers significant long-term flexibility and advantages to individuals throughout the U.S. who want to establish a truly perpetual, tax-favored source of income and capital for future generations of family members. These advantages are especially unique under the laws of certain states and and are available to residents and non-residents alike.

Inheritances between 1990 and 2040 have been approximated at more than $10 trillion dollars.[1] The estate tax rates in this country are currently 55 percent for estate values above $3 million and the generation-skipping transfer (GST) tax rate is 55 percent for transfers in excess of the $1 million exemption ($2 million for married couples).[2] Reportedly, less than 30 percent of family-owned businesses survive into the second generation and less than 5 percent into the third generation.[3] It is for these reasons that the *Wall Street Journal* recently reported that the number of families considering multi-generational planning doubled in 1995.[4]

Since the turn of the century, many wealthy families have successfully left a legacy of wealth for future generations that, in several cases, continues today. Through the use of Family Trusts now called "Dynasty Trusts," these individuals were able to arrange their affairs so that their assets would not be ravaged by estate taxes as each generation passes away. Generally, the Dynasty Trusts either distribute the income of the trust to the grantor's children during their lifetime or add the income to trust principal. The trust also generally provides discretion to distribute the trust principal for the health, education, maintenance and support of the children. Any remaining principal of the trust, upon the death of the children, becomes available for the grandchildren and other family descendants during their lifetimes. Consequently, the Dynasty Trust continues until all funds are distributed, there are no living decedents of the trust grantor or the trust terminates by operation of state law.

Most states and offshore trust venues limit the duration of a trust (typically 80-110 years) by having adopted some version of the old common law doctrine enacted in 1536, the "rule against perpetuities." Consequently, affluent individuals have utilized the Dynasty Trust as a vehicle to give their descendants, through a trustee, the opportunity to "use" the trust assets during the beneficiaries' lifetime. Although beneficiaries enjoy the assets almost as if they owned them outright, the assets would not be included in the beneficiaries' estates upon death. Only at the time of the trust's termination and subsequent transfer would the assets be exposed to the transfer tax system; thus escaping the federal transfer tax system that was designed to tax a dollar each time it passes from one generation to the next.

Since Congress deemed it unfair that these trusts were able to effectively thwart the federal transfer tax system, it placed a limitation on the Dynasty Trust by adopting the GST tax. In addition to the federal gift and estate taxes imposed at each generation at rates as high as 60 percent, an additional GST tax of up to 55 percent is levied on transfers to beneficiaries who are more than one generation younger than the person making the transfer (i.e., grandparent to grandchild). Many states impose their own estate/inheritance taxes and, in some cases, gift taxes as well. Without a sound planning strategy, taxes may consume approximately 79 percent or more of one's estate by the time it passes to the grandchildren.

But there is some consolation if an individual wishes to leave a legacy for future generations. An individual may make aggregate lifetime gifts and/or bequests at death totaling $600,000 ($1.2 million for a married couple) without in-

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curring gift or estate taxes. An individual may also shelter up to $1 million ($2 million for a married couple) from the GST tax. Thus, one can minimize the GST tax by placing $1 million of assets (or $2 million, if married) into a trust designed to benefit multiple generations without substantial reduction by transfer taxes. By taking advantage of these exemptions, and by "leveraging" them, significant additional amounts can be set aside for the future benefit of one's family. This is where the "modern" Dynasty Trust can be of assistance.[5]

The Dynasty Trust is designed to permit the passage of significant wealth through multiple generations without the imposition of transfer taxes, even though the beneficiaries have the enjoyment in the property virtually equivalent to outright ownership. For this reason, the trustee should be encouraged to acquire assets for the "use" of the beneficiaries rather than to make distributions to them. The exempted assets may include such assets as closely-held stock, limited partnership interests, financial assets, artwork, life insurance, real estate, family heirlooms and/or cash. Due to the perpetual nature of the Dynasty Trust, the terms of the trust — how trust income and principal will be distributed — should be flexible. One could, for example, provide incentives for one's heirs to accomplish certain goals, such as graduating from college, obtaining employment (i.e., $1 of trust income for every $2 of earned income), starting a business, etc. If the trust is properly established, the assets placed in the trust — as well as all future appreciation on those assets — remain free from federal and state transfer taxes on future generations so long as the assets remain in the trust. Unfortunately, almost every state has a "rule against perpetuity" restricting the length of time a trust may remain in existence. As previously discussed, a trust must generally terminate between 80 and 110 years after its inception pursuant to state law. However, there are some exceptions, including four states that do not limit the duration of a trust.

State Comparison

CURRENTLY, SOUTH DAKOTA, Delaware, Idaho and Wisconsin do not limit the duration of a trust. Idaho and Wisconsin both have the disadvantage of relatively high income taxes on trust income. Wisconsin's marginal income tax rate is 6.93 percent and Idaho's is 8.2 percent. Over the course of time this can have a significant impact on the investment performance of a trust as compared to a no state income tax environment. Consequently, we will turn to a comparison of Delaware and South Dakota,[6] the two states which do not limit the duration of a trust and do not impose income taxes on trust income.

It is interesting to note that these two states have actively solicited business to their respective jurisdictions for many years. Delaware had shown this prescience first by creating an attractive environment to incorporate. The South Dakota Legislature enacted legislation to attract residents and non-residents to move and/or create irrevocable trust entities in the state. (In other words, families do not need to move to South Dakota to reap the benefits of the beneficial trust and tax legislation; they need only move their trusts!) In 1983, by creating an exception to its statute that limited the duration a trust could be in existence[7] and formally disposing of the common law rule against perpetuities by statute,[8] South Dakota provided one of just a few jurisdictions in the world to theoretically allow a trust to last forever! Delaware responded in 1995 with legislation that effectively did away with its 110 year limitation on the duration of a trust.[9] However, Delaware (like Idaho)[10] retained a duration limitation requirement for trusts containing real estate.[11]

It appears that it was the intent of the Delaware legislators that only the real estate portion of the trust need terminate 110 years after the trust's inception, not the trust in its entirety if it also holds non-real property.[12]

Exhibit 1 reflects the status of certain other tax benefits that may be obtained by creating situs in Delaware or South Dakota. In addition to the tax benefits, these states have been extremely proactive in continuing to enhance laws with respect to non-tax trust benefits. Some examples include the recognition and support of spendthrift trust provisions,[16] the ability to delegate investment responsibility[17] and the lack of a statutory requirement for court involvement unless requested by a beneficiary.[18] There is no question that both states are very responsive to trust beneficiaries' needs.

Impact Of Regulations

SOME PRACTITIONERS and planners have questions about how the final GST tax regulations affect Dynasty Trust planning.[19] While amendments to the final regulations are rumored to be forthcoming, these comments provide a beginning point in the discussion about planning opportunities in the four states that have no rules against perpetuities.

One area of concern is the use of nongeneral powers of appointment. Nongeneral powers of appointment are important tools in perpetuities trusts because they provide increased flexibility in the administration of the trust, while maintaining the perpetual status of the trust. The problem is that of providing nongeneral powers and other flexibility without defeating the GST tax exemption allocation of the original transferor. While the proposed[20] and final regulations[21] purport to create a taxable transfer if a nongeneral power of appointment is exercised to extend the life of the trust beyond the common law or Uniform Statutory Rule Against Perpetuities (USRAP) period,[22] this should not be applicable in the four states which have no rule against perpetuities. Because state law intentionally permits perpetual trust status in those jurisdictions, the exercise or non-exercise of a nongeneral power of appointment does not act to extend the maximum period permitted under the law in those states. In addition, South Dakota, Idaho and Wisconsin provide an alternative to the perpetuities' doctrine that is satisfied by meeting specific drafting requirements provided under local law.[23] This is not the case with Delaware. One commentator has suggested that "to the extent that such an exercise is not actually taxable to the power holder for federal or gift tax purposes, this provision may not be valid because the transferor is defined as the person for whom the property was subject to tax under chapter 11 or 12 [of the Code]." For states that have no rule against perpetuities, "a power could be validly exercised to extend the trust beyond the perpetuities period defined in the final regulation."[24]

As a safeguard, the drafter of perpetuities trust documents should consider including a "GST tax exemption allocation savings clause" which would, in effect, allow the beneficiaries in those states which have not adopted the common law or USRAP to "wait and see" how the law will be interpreted when the perpetuities' issue ripens. Meanwhile, the trust document would continue to provide the flexibility that nongeneral powers provide for families in a multi-generational setting. Another helpful tool that is being considered for adoption in the Dynasty Trust arena is the South Dakota Trust Protector Statute, a statute that is similar to the concept found in British Common Law jurisdictions.[25] A trust protector statute would provide the flexibility for a disinterested trust protector to amend a document to conform to present law or take advantage of changes in the tax law, while not affecting the GST tax exempt qualification of the trust. The trust protector, within reasonable rules, could also adjust the interests of existing beneficiaries and their spouses to create more equitable administration of the trust.

The final GST tax regulations also provide a very positive clarification that is useful in post-mortem perpetuities planning to utilize the GST

Exhibit 1

Tax Benefits from Creating Situs in Delaware or South Dakota

	Delaware	South Dakota
• no state income tax when a trust sells an asset at a gain	yes, but[13]	[illegible]
• no state income tax on accumulating income	yes, but[14]	[illegible]
• no state securities transfer tax	yes	[illegible]
• no state intangibles tax	yes	[illegible]
• no state corporate tax	no	[illegible]
• no state Limited Liability Company tax	yes	[illegible]
• no state gift tax	yes, but[15]	[illegible]
• no state dividends and interest tax	yes	yes
• no state coupon tax	yes	yes
• no state personal property tax	yes	yes
• no city or local income tax	yes	yes

tax exemption of both spouses. The regulation has clarified that the use of a reverse qualified terminable interest property (QTIP) election may preserve the GST tax exemption of a deceased spouse. However, only the remaining available amount of the deceased spouse's GST tax exemption must be used to fund the QTIP intended for this purpose since the regulations do not permit a partial reverse QTIP election.[26]

Trust Types

A DYNASTY TRUST CAN be created during an individual's lifetime or at death. The advantage of using an individual's unified credit and/or GST tax exemption during one's lifetime is greatly enhanced because once transferred, all appreciation and accumulated income generated by the property until the individual's death will remain exempt. Furthermore, there is no guarantee that the exemptions will remain as they are today; if reduced and not utilized the opportunity may be is lost.

The question frequently arises whether the entire $1 million ($2 million for married couples) GST tax exemption should be utilized during one's lifetime by establishing a $1 million inter vivos Dynasty Trust or whether only $600,000 ($1.2 million for married couples) of the $1 million (again, $2 million for married couples) GST tax exemption should be utilized to establish an inter vivos Dynasty Trust. The latter would not result in any gift taxes since the $600,000 unified credit exemption would be available to offset the gift, and the remaining $400,000 (or $800,000 in a marital situation) could be planned for in the testamentary estate plan. The former would result in a gift tax on $400,000 ($1 million GST tax exemption minus $600,000 unified credit exemption) or $800,000 in a marital situation ($2 million GST tax exemption minus $1.2 million unified credit exemptions). The federal gift tax owed on $400,000 would be approximately $153,000 and the federal gift taxes owed on $800,000 would be approximately $306,000.

The preferred route for larger estates, i.e., those between $10-21 million where the $600,000 unified credit exemption is phased out and lost at death, usually find it more favorable to pay the gift taxes and transfer the entire $1 million ($2 million if married) GST tax exemption into an inter vivos Dynasty Trust.

Additionally, even though the gift tax and estate tax rates are similar, the method for calculating the gift tax is more favorable than the method for calculating the estate tax. The estate tax is tax inclusive while the gift tax is tax exclusive. For example, suppose an individual has $150 and is in the 50 percent estate and gift tax bracket and has previously utilized the unified credit and lower brackets. If the individual dies owning the $150, the individual's estate will pay estate taxes of $75 and the heirs will receive $75. The individual could gift $100 to a Dynasty Trust and pay $50 in gift tax. The benefit of gifting stems from the fact that no transfer tax is levied against the $50 gift tax, assuming the individual survives for 3 years following the gift.

As expressed earlier, each individual transferor is granted a $1 million GST tax exemption amount ($2 million for a married couple) to be allocated during the individual's lifetime or at death. Any property over the exemption amount that is transferred by gift or by death in such a way to skip the next generation will be subject to the GST tax. The GST tax is imposed at the maximum estate tax rate — currently 55 percent — and is in addition to any gift or estate tax that may be due on the transfer. Further any GST tax paid by a transferor or by a trust is considered an additional gift subject to the federal gift tax. Consequently, GST tax transfers can carry an effective transfer tax rate of between 58.38 percent and 79.75 percent.

If the generation-skipping transfer is a testamentary bequest, the money needed to pay the estate tax on the bequest is includable in the tax base. Consequently, an interdependent computation between the value of the bequest and the value of the total tax payments needed to pay the tax on the tax on the bequest is required!

For example, assume an individual leaves a $500,000 bequest to a testamentary trust for a child and grandchild. Assuming a 55 percent federal estate tax rate, this bequest would require approximately $1.11 million to fund the after-tax bequest to the trust ($1.11 million x 55 percent ($610,000 in estate taxes; therefore, $1.11 million minus $610,000 = $500,000 bequest). Thereafter, assuming a subsequent distribution to the grandchild from the testamentary trust of $225,000, the ultimate effective tax rate on the decedent's original $1.11 million is approximately 79.75 percent.

This is derived from the fact that the remaining $500,000 bequest after the estate tax is applied is subjected to the generation-skipping tax of 55 percent ($500,000 x 55 percent = $275,000 in GST tax paid; therefore, $500,000 minus $275,000 = $225,000 bequest). Conversely, a lifetime gift of that same amount of $225,000 to the grandchild would have cost only $315,563 in taxes ($225,000 x 55 percent = $123,750 gift tax; $225,000 + $123,750 = $348,750 total gift for GST calculations; $348,750 x 55 percent = $191,813 GST tax) resulting in an effective tax rate of only 58.38 percent versus 79.75 percent.

Consequently, by utilizing the entire $1 million GST tax exemption currently (i.e., paying $153,000 federal gift tax on the $400,000), not only the million dollars placed in trust, but the appreciation on the $1 million is removed from one's estate and therefore not subject to estate taxation. Additionally, by creating the trust currently, the amount paid in gift taxes will also be removed from the estate (provided the grantor lives 3 years after making the gift) as well as the appreciation on the gift tax amount. Therefore, the creation of a $1 million inter vivos Dynasty Trust will result in less total tax being paid and more assets being available for use by the descendants.

Leveraging The Trust

AS PREVIOUSLY DISCUSSED, the Dynasty Trust is designed to permit the passage of significant wealth through multiple generations without the imposition of transfer taxes, even though the beneficiaries have the enjoyment of the property similar to outright ownership. For this reason the trustee should be encouraged to acquire assets for the "use" of the beneficiaries rather than make distributions to them. Consequently, as previously discussed, the trust should allow the trustee to permit investing in not only financial assets and life insurance, but also in such assets as closely-held stock, family limited partnership interests, artwork, real estate, jewelry and other family heirlooms, i.e., vintage automobiles as well as grantor-retained annuity trusts (GRAT) and charitable lead annuity trusts (CLAT) remainder interests. The level of growth and risk depends upon how the trust fits into the family's financial future. A properly structured, funded and invested Dynasty Trust can be a powerful tool in achieving significant transfer tax savings across multiple generations as illustrated in Exhibit 2.

The benefits of the South Dakota Dynasty Trust will not end after the 85-year period assumed in the example. Because this trust need never terminate, the benefits will continue to compound for future generations. It is easy to imagine that the relative benefit of a perpetual Dynasty Trust over two hundred years could reach several billion dollars.

Furthermore, the four-state comparison illustrates the utilization of a portfolio consisting of stocks and bonds. Leveraging strategies may add to the above results. Some of the most common leveraging strategies involve purchasing remainder interests in GRATs and/or CLATs; closely-held stock; limited partnerships; installment sales and insurance. Due to the fact that the theme of this issue is insurance, we will concentrate on its value as a leveraging device in a Dynasty Trust.

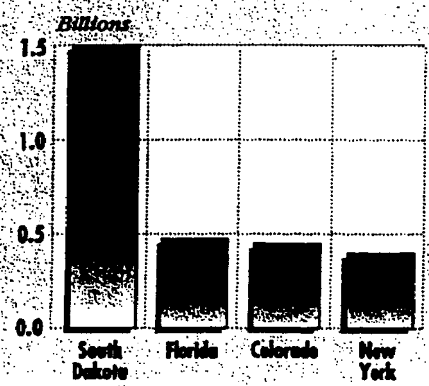
Life Insurance

SINCE THE PERPETUAL Dynasty Trust is theoretically not going to be subject to transfer taxes, it makes sense to leverage the trust by investing in assets such as life insurance. The combination of an irrevocable Dynasty Trust coupled with a second-to-die (survivorship life) contract can result in leveraging of the $1 million GST tax exemption ($2 million for married couples). Second-to-die life insurance is life insurance purchased on the spouses' joint lives rather than conventional insurance on one life. Consequently, the premium cost per dollar of death proceeds for second-to-die insurance is generally significantly less than conventional insurance on one life. Further, the second-to-die policy has the added benefit of allowing the transfer on one who may otherwise be highly rated or uninsurable on his or her own to obtain insurance closer to standard rates. Additionally, the death benefit associated with second-to-die insurance is not available until the death of the second spouse, which makes such insurance ideally suited for a Dynasty Trust.

An attractive option for funding a life insurance Dynasty Trust is a split-dollar contract. However, Tax Advice Memorandum (TAM) 9604001 recently issued by the IRS impacts the phenomenal leveraging of the $1 million GST exemption through the utilization of split-dollar second-to-die contracts.

The split-dollar arrangement is an agreement with the transferor's employer or closely-held business and the Dynasty Trust to split-fund the policy. By utilizing the split-dollar method, only the economic benefit of the policy is subject to gift tax (or chargeable against the transferor's unified credit or annual exclusions) each year. The economic benefit is

Exhibit 2
South Dakota Dynasty Trust Comparison
Total Aggregate Value Available to Family at End of 85 Years



Assume:

1 Four identical Dynasty Trusts are established by a 70-year-old in four states and are funded with $1 million each. The trust grantor intends to have the trusts last for the longest possible time permitted by state law.

2 At the time the trusts are created, the trust grantor has a 45-year-old child and a 20-year-old grandchild. The grandchild's life expectancy is 62 years.

3 In Florida, Colorado, and New York, assuming the common law rule against perpetuities applies,[27] the trusts are limited to an 83-year term under state law (the grandchild's life expectancy, i.e., 62 years plus 21 years). In South Dakota, there is an unlimited term.

4 South Dakota and Florida are similar in that they impose no income tax. However, for purposes of this case study comparison we have built in the equation the fact that a Florida trust would be impacted by Florida's intangibles tax ($2 per $1000) while New York and Colorado were selected for purposes of the comparison due to the fact that they represent high-income-tax (NY) and low-income-tax (CO) states.

5 Trust assets generate 4 percent income and 7 percent growth annually; the trust portfolio turns over at a rate of 20 percent annually.

6 At the end of 83 years, there is a great-grandchild living in whom the trust will vest in Florida, Colorado and New York. Assume the great-grandchild dies 2 years later, in the 85th year after the trust was created.

7 In this example, Florida, Colorado, and New York situations are subject to transfer tax at the end of 85 years. The South Dakota trust is not taxed at that time and continues to compound, without transfer tax reduction, for the benefit of future generations.

Exhibit 3

Single Life Summary - Premuim $2,816,716

Age	P.S. 58 Cost	Term Rate	Gift Tax Leverage Factor
55	$687,000	$102,000	16.8 to 1
65	$1,248,939	$188,653	9.1 to 1
75	$2,059,709	$403,126	4.25 to 1
83	$2.552,156	$978,618	1.75 to 1

Exhibit 4

Second-to-Die Summary

Age	Table 38 Cost	Term Rate	Gift Tax Leverage Factor
55	$19,351	$5,050	308 to [illegible]
65	$101,770	$6,050	258 to [illegible]
75	$549,670	$10,050	153 to [illegible]
83	$2,630.911	$53,756	29 to [illegible]

SOURCE: TAX MANAGEMENT ESTATES, GIFTS AND TRUSTS JOURNAL VOL. 20, NO. 4, JULY-AUGUST, JULY 13, 1995, p. 162.

the greater of the PS 58 cost (PS 38 cost in the case of second-to-die insurance while both insureds are alive) or the 1-year term premium. Consequently, the attractiveness of the split dollar is that the measure of the annual gift imputed by the insured to the Dynasty Trust is the value of the economic benefit reported for income tax purposes. Upon the death of the transferor or before, the corporation (or partnership) that split funded the policy receives back all of the premiums advanced (i.e., the lesser of the premium paid or the policy cash value), thus having provided an interest-free loan to the Dynasty Trust.

This repayment is secured by a collateral assignment of the policy from the trust. Please note that with second-to-die life insurance the PS 38 costs switch to the PS 58 costs upon the death of the first insured. Depending upon the age of the remaining insured and the circumstances, the corporation or partnership may be reimbursed for premium payments at that time.

This is superbly illustrated in an article entitled "Fitting a Bull into a China Closet — Techniques for Handling the Large Premium Life Insurance Sale in the Estate Plan" which appeared in the July 13, 1995 issue of the *Tax Management, Estates, Gifts and Trusts Journal*.[28] The article discussed the following example:

A client, age 55, plans to purchase $50 million of universal life coverage. The coverage is to be owned by an ILIT. A premium of $2,816,716 is projected for 10 years. The client's company will pay the full premium less the value of the economic benefit to the ILIT, which the trustee will pay. The gift to the trust is based upon the lower of the PS 58 costs or the term costs. The article further points out that the impact of the leverage and differences between the PS 58 costs and term rates are substantial (see Exhibit 3).

The article further states that the gift tax leverage using split-dollar with second-to-die is even more substantial as illustrated by the following example: client and spouse, both age 55, purchase $100 million second-to-die within the ILIT with an annual premium of $1,599,904 (see Exhibit 4).

As Exhibit 3 illustrates, the PS 58 costs rise dramatically as the client ages, forcing a need for a "rollout" or termination of the split-dollar plan. In order to avoid potential gift and income tax problems on a second-to-die policy, the Table 38 costs revert to PS 58 costs when one of the insureds die also possibly resulting in income tax, transfer for value and gift tax issues, consequently also forcing the need for a "rollout" on termination of the split-dollar plan.

In TAM 9604001 the IRS concluded that the growth in the insurance policy equity (i.e., the annual increase in the amount by which the cash value exceeds the amount due back to the employer) was taxable income to the insured and a gift from the insured to the trust. There are several strategies to enable the trust to repay the employer without running afoul of TAM 9604001. One or more of these strategies will allow the split-dollar plan to be terminated not long after the equity appears in the insurance policy.

In any event, a carefully structured rollout program to reimburse the corporation or partnership may be crucial for tax purposes, especially due to the recently issued TAM.

Drafting Considerations

THE UNIQUE LONG-TERM, tax-invisible nature of the Dynasty Trust makes its drafting extremely important. It is important that the uncertainty of future tax laws and future family circumstances be taken into account when establishing a Dynasty Trust. The effective utilization of the Dynasty Trust ensures that a family's wealth will be disposed of in accordance with their wishes in perpetuity.

Committee: Distributions, Investments, Trustee. Traditionally, the trustee or co-trustee of a trust has been responsible for the trust administration, distribution decisions, investment management, tax preparation, etc., of an irrevocable trust. The recent trend in drafting long-term Dynasty Trusts has been the establishment of committees for purposes of distributions and investments. Additionally, multiple co-trustees are frequently selected. Co-trustees are quite frequently chosen to also participate on the distribution and investment committees. The utilization of committees ensures that there is not any one individual or institution making decisions. This allows the transferor to feel more comfortable regarding discretionary distributions and investments. Frequently, with very large trusts, there are several investment managers involved. Since the financial investments held by the trusts may include a family limited partnership and discounted partnership units, it is important that the trustee has expertise in handling these partnership units. The same is true with closely-held stock and real estate. A corporate fiduciary serving as co-fiduciary with family members or other trusted family advisors is quite common. If the Dynasty Trust holds family business interests and the individual co-fiduciaries are actively involved in the business, a conflict clause addressing the situation should be inserted into the document.

Flexible Distribution Clauses. It is difficult to predict future family circumstances. Consequently, the idea of a nongeneral power of appointment and or trust protector are frequently discussed concepts. Due to the fact that we discussed non-general powers of appointment at length earlier, we will turn our attention to the trust protector and other devices that build in flexibility and innovation.

The trust protector is a disinterested third party who is frequently provided the power to amend the trust. The trust protector may protect the trust from changes in the regulations and other unforeseen circumstances including acts or omissions of the trustees. Many grantors prefer to utilize incentive and floating spouse clauses in their Dynasty Trust. Incentive clauses tie trust income distributions to earned income. For example, "The trustee shall distribute $1 of trust income for each $2 of earned income by the beneficiary" or some similar variation. Additionally, income and/or lump sum principal distributions are tied to attaining a certain net-worth. The floating spouse clause on the other hand protects against the divorce of a distant descendant, yet provides for their spouse while they are still married to the Dynasty Trust beneficiary family member. It is the spouse of the day that reaps the benefit of the Dynasty Trust with the floating spouse clause.

It is important to determine whether the trustee should have a basis for denying beneficiary requests such as luxury automobiles, expensive trips or other extravagances. The grantor can provide the trustees additional guidance by defining each of the terms utilized in the distribution standards. For example, the grantor can describe specifically the standard of living to be maintained in providing for a beneficiary's support and the type of educational expenses covered. Additionally, the grantor can provide for distributions for more specific purposes such as the down payment on a home or to assist the beneficiary in a business venture. Personal residence down payments can be tied into amounts contributed by the descendant and his or her spouse.

The Dynasty Trust can also be drafted to assist a descendant who chooses to engage in a worthwhile occupation such as a social worker, Peace Corp worker, teacher, charitable worker and thereby forego the financial benefits that the descendant's entrepreneurial enterprises otherwise would permit them to achieve.

"Single Pot" Trust V. "Family Lines" Trust. The Dynasty trust may be structured as a "single pot," i.e., a continuing sprinkle trust in which principal and income are available to all descendants in the trustee's discretion. The "single pot" approach gives the trustee the flexibility to treat, for example, all descendants equally, whereas they would be entitled to only their respective parents' share if a separate, per stirpes trust approach were used. The single pot trust is usually easier to administer insofar as it will tend to be larger. In particular, the advantage of economies of scale may more easily be achieved for purposes of investments.

However, the grantor may prefer

instead an approach that breaks the trust out along family lines. A separate trust would be created for the benefit of each child and that child's lineal descendants. This approach avoids the conflicts that might arise when different children (or their descendants) compete for a share of the "single pot." Moreover, it encourages additional contributions to the trust, since the person making the contribution will know that his or her contribution will be earmarked for his or her family's share of the trust. The main disadvantage of separate trusts for each family line is that it tends to cause a proliferation of smaller trusts that are difficult to administer and can add to the administrative fees.

Corporate Or Individual Trustee. A Dynasty Trust is an ideal candidate for a corporate fiduciary or co-fiduciary. A corporate fiduciary can provide the trust nexus in a no trust income tax/no rule against perpetuity state as well as providing continuity of management, which is of the utmost importance in a perpetual trust. Moreover, a corporate fiduciary offers neutrality, which can become important where various family members are involved. The trust will extend over many generations, most of whose members are not even known at the time that the grantor establishes the trust, and friction may develop between the various beneficiaries. A corporate fiduciary can act as a shield for the individual co-trustees and/or distribution committee members who are pressured by a descendant to make an ill-advised distribution by refusing to consent. A corporate fiduciary also offers professional management and is more likely to be aware of changes in tax, trust and other laws over the course of the many years that the trust will be in existence.

The grantor may feel uncomfortable naming a corporate fiduciary as the sole trustee of the Dynasty Trust. An individual, either a family member or a trusted advisor, may be named to act as co-trustee. Alternatively, one or more individuals including the grantor may be given the right to remove the corporate fiduciary for appropriate reasons.[30]

Trustee's Power To Terminate Or Amend. The trustee should be given the power to terminate or amend the trust if the continuation of the trust in its original form would be unduly burdensome or otherwise unwise. Termination or amendment could also be authorized if tax or other legislative changes make the continuation of the trust inadvisable. The grantor might state explicitly this purpose in creating the trust and authorize the trustee to terminate or amend the trust if such purposes were being thwarted for any reason.

Charitable Gift-Over. Any well-drafted trust includes a provision for the possibility that the time may come when no beneficiary of the trust is living. In view of the expected longevity of the Dynasty Trust, the use of a charitable gift-over becomes imperative. Since a termination due to lack of beneficiaries could occur literally hundreds of years in the future, it would be advisable to name several alternative charitable takers. Better yet, the grantor could state in detail via videotape his or her charitable intent so that this intent can be carried out by the trustee if none of the charities named by the grantor is in existence when termination occurs.

Trust Assets. The trustee should be relieved of the duty to diversify trust investments. The lack of diversification requirement is especially important insofar as an interest in a family business may be the primary component of the Dynasty Trust. Real estate should be discouraged. Non-resident's real estate in particular would be inconsistent with situs for Dynasty Trust purposes unless held as an interest in a family partnership or closely-held business. Additionally, the appropriate clauses for dealing with possible environmental problems are also an important consideration.

Life Insurance As A Trust Asset. If insurance is contemplated, it is advisable to include language authorizing its acquisition and retention as a trust asset and detailing the trustee's duties with respect to this asset, including appropriate exculpatory language. If "crummey" withdrawal powers are included in the trust, the trustee should be sensitive to the possibility that the powerholder can become the "transferor" for the GST tax purposes as to amounts in excess of the "5 & 5" limitation. In the Dynasty Trust, allocation of the GST tax exemption must be made to trust amounts even though the assets may be qualified for the annual gift tax exclusion.

Spendthrift Clause. One of the main advantages of a Dynasty Trust is that it allows protection against a beneficiary's creditors and a beneficiary's estranged spouse seeking alimony or support upon dissolution of marriage. For this reason it is advisable to include spendthrift language in the trust. The spendthrift clause may be superfluous in view of the discretionary nature of the trust, but it is an added safeguard. If the trustee's discretion is tied to a standard, creditors might be able to reach trust corpus, in which case spendthrift language would be useful. The trustee should be authorized to withhold distributions from any beneficiary who has creditor or marital problems.

Other Drafting Points. The trust instrument should contain language authorizing the trustee to refuse to accept property if the addition of the property to the trust would cause the trust to lose its zero inclusion ratio for GST tax purposes.

If the grantor expects that one or more descendants who are disabled may be beneficiaries of the trust, it would be advisable to include "supplemental needs" provisions to protect the trust principal from the reach of governmental or other care providers.

It is important that the trust instrument grant the trustee the power of sale, so that there will be no violation of the rule against suspension of the power of alienation in South Dakota and Wisconsin.

The trust should of course contain provisions regarding situs and governing state law.[31]

The term "spouse" as used in the trust instrument should be defined in such a way as to take into account possible divorces and remarriages of beneficiaries. Furthermore the term "issue" and/or "descendant" needs to be defined carefully to preclude unusual "adoption" arrangements.

The trust may be drafted as a "defective" trust, i.e., as a grantor trust for income tax purposes. This will cause trust income to be taxed to the grantor. This could be advantageous, as it could reduce the grantor's taxable estate and serve to enlarge trust principal.

Charitable Planning

THE MULTIPLYING EFFECT of the Dynasty Trust can be used impressively with charitable planning techniques.[32] Charitable planning techniques help to enhance the GST tax exemption in unique ways. The powerful use of charitable trusts and family foundations, similar to the techniques used by Jacqueline Kennedy Onassis's estate, can be used with greater effectiveness with a Dynasty Trust. This and other planning strategies can both preserve and share family wealth in ways that can help maintain strong family participation, responsible family involvement in wealth management decisions, and sustain important family values.[33] With proper dynastic and charitable planning, the family can avoid the potentially destructive effects of "affluenza," a condition which often afflicts the children of well-intended wealthy families.[34] However, often overlooked is the fact that dynastic planning techniques are not just for the wealthy. Families of modest networth can also utilize planning strategies like life insurance and pension fund leveraging, charitable planning, and business organizations to create wealth for multi-generational planning. In fact, families with even moderate wealth, whose assets include closely-held businesses, accumulated retirement plans, and other highly appreciated assets often have more to gain proportionately through the use of these techniques than the wealthy.

With the curiosity about the Jacqueline Kennedy Onassis estate plan which, in effect, provided a legal transfer of her tremendous wealth nearly intact to grandchildren through a charitable trust, dynastic planning techniques are on the cutting edge of estate planning issues. The perpetuities trust opportunity takes trust planning to a new, exciting level, representing possibilities to improve even on the Onassis estate plan result. For example, charitable lead trusts can be used in combination with family limited partnership interests and insurance to transfer significant wealth at steeply reduced estate and GST tax, while providing a wonderful income stream to charity. charitable life income plans, like the charitable remainder trust and gift annuity, can be used to achieve charitable goals while achieving significant income, capital gain and estate tax savings that can be used to replace the gift assets in GST tax qualified insurance trusts for family members. Some of the common charitable gift planning strategies utilized achieving tremendous results in jurisdictions without a limitation on the duration of a trust are as follows:

Family Limited Partnership/ Charitable Lead. Mary and John create a family limited partnership. The value of the prepartnership assets are $8 million. John and Mary create four Charitable Lead Unitrusts[35] that will terminate into Dynasty Trusts for their four grandchildren. Since each of these transfers is of a minority interest, John and Mary should receive a lack of control valuation discount. Furthermore, because the interest is a limited partnership, John and Mary should also receive a lack of marketability valuation discount. Assuming that the pre-transfer value of John and Mary's interest transferred to the lead trusts has a fair market value of $8 million and an annual return of 10 percent , the annual income would be $800,000. If John and Mary were to fund the lead trusts with $8 million at an income payout of 8 percent, the trusts would have to be for an 18-year term to achieve a zero inclusion ratio, assuming a $2 million joint GST tax exemption.[36] However, John and Mary will receive a valuation discount on the transfer of the assets to each of the lead trusts. Assuming that John and Mary receive a certified independent appraisal that establishes a valuation discount of 40 percent, they would fund $4.8 million in charitable lead unitrusts. The annual income from the assets will be $800,000 (based on the annual fair market value). The rate of return with respect to the $4.8 million has increased to 17 percent. Assume that John and Mary will set the unitrust rate at 14 percent. Now, the period of time required to achieve a zero inclusion ratio is 6.5 years. John and Mary could fund a Family Support Organization with $4.4 million trust income. Approximately $5.8 million (adjusted fair market value) in appreciated trust assets would pass to the Dynasty Trust after the 6.5-year term. John and Mary would by-pass $4.4 million (55 percent) in estate taxes and $2 million in GST tax and receive an effective 100 percent tax deduction on all income to charity (see Exhibit 5).

Corporate Bail-Out With Charitable Gift Annuity And GST Tax Wealth Replacement. John and Mary, both age 37, own shares in C-Corp, a closely held corporation The corporation will have an accumulated earnings' problem unless something is done to relieve the corporation of the problem. John and Mary transferred all of their shares in C-Corp to fund a family support organization they created with Sea-side Charity, a qualified public charity, in exchange for a lifetime retirement annuity income. The fair market value of the C-Corp share at the date of the gift was $1,100,000 with an original cost basis of $100,000. Upon retirement at 65, John and Mary will receive a guaranteed annual annuity income of $260,700 for both of their lives, part of which is not subject to income taxation. Meanwhile, because of the charitable gift, John and Mary will by-pass $868,000 in capital gains, for a savings of $243,000. John and Mary will receive an income tax deduction of $950,000 that they can deduct against 30 percent of their adjusted gross income over the next 5 years (this savings could be a total of approximately $350,000 or $70,000 annually). John and Mary plan to use all of the income tax savings to fund annual gifts over a period of years to a Dynasty Trust. The trustee of the trust is permitted to purchase life insurance on the lives of John and Mary to benefit their three children and two newly-born grandchildren. Although C-Corp has no obligation to do so, it plans to purchase the stock from Sea-side Charity with this year's excess earnings. The remaining stockholders of Sea-side are John and Mary's three children, who will now own the company outright (see Exhibit 6).

Pension Assets In Charitable And Perpetuities Planning. John has died and left Mary with a sizable estate. The couple has used appropriate planning to shield John's unified credit amount from estate taxation at Mary's death. John has provided for the funding of a testamentary charitable remainder unitrust with his pension assets (in this example, the amount is $1 million). He has named Mary, as his surviving spouse, the income beneficiary of the trust that will last for the duration of the surviving spouse's life. In this case, Mary, who is 20 years younger than John and in good health, will receive a 6 percent unitrust income interest annually for the rest of her life.[37] Mary's income interest will qualify for the marital deduction, and the remainder of the trust will pass to a Family Support Organization created by both John and Mary that will be funded at Mary's death.[38] John's estate receives an estate tax deduction for the eventual gift to charity for the present value of the remainder interest. The estate also avoids receipt of any IRD that would have resulted in an additional 39.6 percent income tax unless the surviving spouse is able to roll over the assets into an IRA. The result in this case is that there is no income, gift or estate tax at the first or second death.[39]

This situation could be used to create a Dynasty Trust to benefit children, grandchildren and future generations if Mary uses a portion of the unitrust income and her annual gift exclusion to fund an irrevocable trust. The trustee could then purchase life insurance on Mary's life or invest elsewhere. Although gifts to the trust may qualify for the annual gift tax exclusion using crummey 5 & 5 limitation, Mary must make allocations from her GST tax exemption for the trust to be forever exempt from GST tax. John could also have used his $1 million GST tax exemption if the use of his $600,000 unified credit amount took the form of a generation-skipping by-pass trust and if he transferred approximately $400,000 of his estate to a generation-skipping QTIP. Then the reverse QTIP election of IRC Sec. 2652 (a)(3) could be made and $400,000 of the decedent's GST tax exemption could be allocated to the QTIP (see Exhibit 7).

Consequently, charitable gift planning in perpetuities' jurisdictions provides tremendous opportunities to use tax incentives to preserve GST tax exempt wealth for future generations while providing significant benefits to charity.

Change of Situs

AS MENTIONED SUPRA, certain states such as Delaware and South Dakota have actively marketed and persuaded individuals who are beneficiaries of existing trusts to either move or create trusts in their respective trust coffers for both tax and non-tax benefits. We will restrict our brief comments to the movement of an existing trust in this section of the article. Furthermore, this discussion will focus solely on the movement of an existing trust to save on state taxes rather than extending the duration of a trust beyond the traditional rule against perpetuities. Generally, our position is that extending an existing trust beyond the common law rule against perpetuities or some variance thereof, such as USRAP, will either destroy the "grandfathered" generation-skipping trust status for those trusts created on or before the effective date of the GST tax or raise havoc for those trusts that were exempt from the GST tax by maintaining a zero inclusion ratio through the utilization of one's $1 million GST tax exemption.

Commencing in 1979, *Trust & Estates* magazine featured a 10-part series entitled the "Change of Situs of a Trust." The article's author, Robert Hendrickson, made the following comment in Part I that we believe is even more apposite today:

> If such important savings are theoretically possible by changing the situs of a trust, it might be argued by a beneficiary that the trustee has an obliga-

Exhibit 5

Family Limited Partnership/Lead Unitrust/ Perpetuities Trust

Family Limited Partnership	→	Discounted Lead Trust' Principal	→	[illegible]
Transfer Value	→	$4.8 Million	→	[illegible]
$4.8 Million	→	(14% Income to Charity)	→	[illegible]
Asset Value $8.0 Million		Support Organization ($4.4 Million)		[illegible]

Exhibit 6

Deferred Gift Annuity with GST Tax Wealth Replacement Insurance Trust *(C-Corp Bail Out)*

Retirement Gift Annuity (John and Mary Age 37)

Original Property $1.1 Million	→	Retirement Gift Annuity $1.1 Million	→	[illegible]
1. Gift to charity and bypass $868,157 gain, Income tax deduction of $954,973		2. Annuity pays $260,700 annual income at age 65. Part is not subject to income tax.		[illegible]
		Insurance Trust $1.1 Million	→	[illegible]

Exhibit 7

One Life Pension Asset Unitrust and GST Tax Insurance Trust

(John Deceased; Mary Age 45)

Original Property $1 Million	→	6% Unitrust $1 Million	→	[illegible]
1. Transfer assets, save 39.6% IRD and estate tax. Receive the marital deduction for the gift to spouse.		2. Unitrust income of 6.00% for Mary's life. First year income of $60K.		[illegible]
		Insurance Trust $1 Million	→	[illegible]

tion to achieve them by changing the situs of the trust in the absence of clear authority for not doing so, or countervailing tax and other costs that might make such change too risky and costly. Once such an obligation is perceived, the development of a body of law critical of trustees who fail to fulfill it is probably not far behind.

With this in mind advisors need to be aware that the opportunity to move a trust to a different jurisdiction to possibly meet the grantor's intent and for the betterment of the trust beneficiaries has existed since virtually the inception of trusts. To fail to recommend this opportunity quite possibly could result in malpractice when one compares the results retrospectively (as is often pragmatically the case), and the savings that were lost from not moving the trust to a more favorable jurisdiction years earlier. Arguably, has not Mr. Hendrickson effectively put advisors on notice?

Today's technological advances absolutely envelop what was available back when Hendrickson first wrote about the idea of changing a trust's situs. Furthermore, the mind set that a trustee needs to live in the same home town as the trust grantors has vanished. This is certainly true when analyzing the "makeup" of today's beneficiaries. It is rare to see adult siblings all stay in the same home town in which they resided during their youth. This is especially the case in multi-generational trust situations. In other words, it is not so imperative that the family's trustee be down by the corner drugstore any longer – so long as the trustee is respondent to the grantor's intent *vis-à-vis* the beneficiaries' needs.

The tax benefits for example, the avoidance or deferral of state income tax on its ordinary accumulated income or capital gain) a state can provide beneficiaries have historically been the motivating factor behind transferring situs of a trust. Each case must be looked at very carefully. California, for example, has a far reaching long-arm statute when one attempts to rid the application of its state income taxes on a trust that has changed situs.[40] And although New York would also appear quite onerous to escape the application of its state income taxes on the New York statute's surface,[41] the case law,[42] income tax regulations[43] and a recent advisory opinion[44] of the New York State Department of Taxation and Finance suggest otherwise. The morale is that it is certainly worthwhile to pursue the issues involved to determine whether a change of a trust's situs is warranted because the tax-dollars saved can be significant over time.

Conclusion

THE DYNASTY TRUST offers much more than family trusts used now by most estate planners in both the traditional and insurance trust context. The Dynasty Trust offers significant long-term flexibility and advantages to individuals throughout the United States who want to establish a tax-favored source of income and capital to future generations of family members. This article has shown that these advantages are especially unique in Delaware and South Dakota. A properly funded Dynasty Trust can be an extremely powerful tool in achieving significant transfer tax and income tax savings across multiple generations. Inter vivos funding of a Dynasty Trust provides unique opportunities that become more limited in testamentary planning and in ordinary family trust situations. As shown in the examples, with the use of powerful planning tools, especially life insurance, family limited partnerships, and charitable split-interest trusts, the $1 million GST tax exemption may be significantly multiplied; thus, the benefits to future generations are geometrically extended in perpetuity without erosion from further transfer tax. As was discussed, special care in drafting is important for Dynasty Trusts, especially in the four "no rule against perpetuities" states. Even those trusts that were created in other jurisdictions, or fall under the GST tax grandfather provisions, can benefit by a transfer to a no income tax, no intangibles tax jurisdiction. Consequently, the Dynasty Trust, in those jurisdictions that offer a favorable trust and tax environment, should be evaluated as a possible component to every estate plan. ◆

End Notes

1. *Barrons*, December 5, 1994, "And Now the Bad News."
2. IRC Sec. 2361(a), 2641(b), 2001(c)(2)(D).
3. See "Estate of the Art", *Investment Advisors* (February 1994), p. 102.
4. *Wall Street Journal*, September 8, 1995.
5. See, Richard Oshins and Jonathan Blattmachr, "The Megatrust: An Ideal Family Wealth Preservation Tool," 1991 *Trust and*

Estates (November). Also see, Pierce H. McDowell, III, "The Dynasty Trust: Protective Armor for Generations to Come," 1993 *Trusts & Estates* (October).

6. Delaware imposes an income tax on its residents. However, it provides a deduction for income accumulated for non-residents. The question may arise whether Delaware's citizens may someday make an equal protection argument under their constitution claiming that they are being discriminated against in favor of non-residents. In any event, a Delaware trustee is required to file an informational income tax return that would report accumulated income and capital gains despite their statutory deduction. See 30 Del. C. Sec. 1138 & 30 Del. C. Sec. 1175.
7. SDCL 43-5-4 provides: The suspension of all power to alienate the subject of a trust is a suspension of the power of alienation. However, there is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has power to sell, either expressed or implied, or if there is an unlimited power to terminate in one or more persons in being. [italics added] Source: Session Law 1983. Source: SL 1983.
8. SDCL 43-5-8 provides: The common-law rule against perpetuities is not in force in this state. Source: Session Law 1983.
9. See 25 Del. C. Sec. 503 et. seq.
10. ID C. Sec. 55-111.
11. See 25 Del. C. Sec. 503(b).
12. See 25 Del. C. Sec. 503(c).
13. Supra, at 6.
14. Id.
15. Delaware imposes a gift tax on its residents. See 30 Del. C. Sec. 1401 et seq. and 30 Del C. Sec. 1103.
16. 12 Del. C. Sec. 3536 and SDCL 55-1-16 et. seq.
17. 12 Del. C. Sec. 3521 and SDCL 21-22 et. seq.
18. 12 Del. C. Sec. 3302 and SDCL 55-5 et. seq.
19. The final revised GST tax regulations clarify whether an event is subject to the GST tax by referencing the most recent transfer that was subject to federal estate or gift tax. This is because the most recent transfer that was subject to estate or gift tax establishes the identity of the transferor, which in turn determines the identity of any skip persons or non-skip persons. Sec. 26.2611-1.
20. Under the proposed regulations, a nongeneral power of appointment was treated as a transfer subject to federal tax with respect to the creator of the power if the power was exercised in violation of the common law rule against perpetuities. See Proposed Reg. 26.2601-1(b)(1)(v)(B)(2).
21. The final GST Tax Regulations issued on December 27, 1995, provide that "the exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the holder of the power (emphasis added) if the power is exercised in the manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period)." Further, for purposes of the regulation, "the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period." The inclusion of the 90-year period in the final regulation was in response to the adoption of the Uniform Statutory Rule Against Perpetuities which has been adopted by a number of states. *Sec. 26.2652-1(a)(4).*
22. The effect of the final regulation is to create a new transferor for generation-skipping tax purposes when a nongeneral power of appointment is exercised in the fashion described in common law and USRAP jurisdictions. The question is, does this regulation apply to states which have no Rule Against Perpetuities? While it is not clear under the final GST Tax regulation just what the IRS's position will be regarding the nongeneral powers of appointment in those states which have not adopted either the common law rule of perpetuities or the USRAP. Example 10 under Sec. 26.2652-1 of the final regulations acknowledges the function of local law for differences interpreting the regulation for common law and USRAP states. Unfortunately, the regulations and examples are silent regarding non-common law rule and USRAP states.
23. See, for example, South Dakota Codified Laws Sec. 43-5-1. Rule Against the Suspension of the Power of Alienation (RASPA). Also see Wis. Stat. Ann. Sec. 700.16(5).
24. Carol A. Harrington, "Integration of the Generation-Skipping Tax with the Transfer Tax System: What We Have Here is a Failure to Coordinate." 1996 Philip E. Heckerling Institute on Estate Planning, University of Miami School of Law, at page 2-17, 2-18.
25. Roy M. Adams, "Economic and Demographic Shift Indicates Fertile Ground for Estate Planners," *Trusts & Estates*, January, 1996, p. 29.
26. Sec. 26.2652-2 provides that "if an election is made to treat property as qualified terminable interest property (QTIP) under Sec. 2532(f) or Sec. 2056(b)(7), the person making the election may, for purposes of Chapter 13, elect to treat the property as if the QTIP election had not been made (reverse QTIP election). An election under this section is irrevocable. An election under *this section is not effective unless it is made* with respect to all of the property in the trust to which the QTIP election applies. See, however Sec. 26.2654-1(b)(1). Property that qualifies for a deduction under Sec. 2056(b)(5) is not eligible for the election under this section."
27. This assumes that the alternate USRAP period was not elected.
28. *Tax Management Estates, Gifts and Trusts Journal*, Vol. 20, No. 4, July-August, July 13, 1995, p. 162.
29. Supra at 5.
30. IRS Rev. Rul. 95-58.
31. See, discussion of situs in Restatement, Second, Conflict of Law Sec. 267-275 (1971). Also see, 5A Scott on Trusts Sec. 598 et. seq.
32. Daniel G. Worthington, Pierce H. McDowell, III, T. Joseph McKay, "The South Dakota Difference: Family Wealth Preservation through Charitable and Dynastic Planning," *South Dakota Series, Vol. 1/No. 3*, November 1995.
33. See, Paul L. Comstock, "Financial Parenting Through a Family Foundation," *Trusts & Estates*. August, 1992. "With the proper

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MEETINGS

May 1-3

Mokan's Midwest Trust and Financial Services Conference. The Doubletree Hotel, Overland Park, KS. For more information please call (314) 636-8151 or (316) 221-1650.

May 4-6

15th Semi-Annual Society of Asset Allocators and Fund Timers, Inc. Conference. Dallas Marriott Quorum Hotel, Dallas, TX. For more information please call (303) 989-5656.

May 17

23rd Annual Estate Planning Seminar. Co-sponsored by The Corpus Christi Estate Planning Council and Texas A&M College of Business. Airport Holiday Inn, Corpus Christi, TX. For more information please call (512) 994-2434 or (512) 994-5900.

May 20-June 7

Planned Giving Intensive Institute. Sponsored by The National Planned Giving Institute at the College of William and Mary. The College of William and Mary Campus, Williamsburg, VA. For more information please call (800) 249-0179 or fax (804) 253-4421.

May 23-24

Planned Giving Days in Washington '96. Sponsored by The Planned Giving Study Group of Greater Washington DC. Key Bridge Marriott, Arlington, VA. For more information please call (301) 445-2714 or fax (301) 445-2724.

June 17-19

National Planned Giving Institute Seminar: Designing Your Gift Planning Program. Sponsored by The National Planned Giving Institute at the College of William and Mary.El Pamar Center, Colorado Springs, CO. For more information please call (800) 249-0179 or fax (804) 253-4421.

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training from parents, however, these children can find themselves with an understanding of how to deal with their privileged status. A family foundation created while the children are young and used as a financial parenting tool can be invaluable in assisting parents to achieve that end. . . All participating family members will experience the pride of community recognition for the good works through the foundation and will receive respect and admiration from outside sources that are credible."

34. See, Jerry L. McCoy, "Family Foundation–A User's Guide" (Non-Tax Edition), *28th Annual Philip E. Heckerling Institute on Estate Planning*, University of Miami Law Center, Matthew Bender & Company: New York, 1994; Paul L. Comstock, "Uses of Family Foundations," Presentation at National Conference on Planned Giving, Indianapolis, Indiana (October 1993), quoting a term originally attributed to the Whitman Institute of San Francisco.
35. Because of the ETIP rules, special rules regarding GST taxation of charitable lead annuity trusts, and recent changes in the calculation of the state and gift tax deduction for charitable annuity trusts, the charitable lead unitrust is the preferred tool in Dynasty Trust planning. Sec. 1.7520-3(b)2, 20.7520-3(b)2 and 25.7520-3(b)2.
36. For comparison purposes, both the 18-year and the 6.5-year Lead Unitrust calculations assume a present value interest adjustment factor of 6.8 percent.
37. The income interest for a standard or type I unitrust is a fixed percentage of the fair market value of trust assets valued on an annual basis. Since trust assets are expected to appreciate, the unitrust income interest is more likely to act as a hedge on inflation.
38. A "Supporting Organization" is a separate entity (corporation or trust) established as an affiliate of one or more publicly supported charities. IRC Sec. 509(a)(3); see, Rev. Rul. 75-436, 1975-2 C.B. 217, and Rev. Rul. 76-401, 16-401, 1976-2 C.B., 175.
39. However, Mary will pay income tax on the income she receives from the unitrust during her life.
40. Cal. Rev. and Tax Code Sec. 17742 (West 1994).
41. N.Y. Tax Law Sec. 605.
42. Mercantile Safe-Deposit and Trust Company v. Murphy, 19 A.D. 2d 765, 242 N.Y.S.2d 26 (N.Y. App. Div. 1963), aff'd 15 N.Y.2d 579, 255 N.Y.S.2d 96 (1964 Mem.).
43. 20(A) Official Compilation, Codes, Rules & Regulations of the State of NY Sec. 105.23 (Dept. of State 1995).
44. N.Y. State Dept. of Taxation and Finance, 1994 N.Y. Tax Lexis 310 (April 8, 1994).

Contact Information

If you have any questions or would like any additional information, please do not hesitate to call or e-mail us at the numbers and addresses listed below. We also invite you to visit our website at www.sdtrustco.com. We hope to have the opportunity to work with you!

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