

Family Gift Trusts

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

- 1. Family Gift Trusts and Taxes**
- 2. Terms of use of this article**

Family gift trusts allow parents, grandparents, aunts, uncles and others to make annual gifts for children, grandchildren and other loved ones over the years in a specific way that allows the annual gifts to accumulate in a gift trust. Up to \$15,000 per year can go into the trust from each person making a gift to the trust for each person for whom a \$15,000 gift is made. So, the more children and grandchildren, the higher the amount that can go into the trust.

The annual gifts can accumulate in the gift trust to go to the family member or loved one at the death of the person making the gift, or could even stay in the gift trust after the death of the person making the gift as a “family safety fund” for one or more loved ones. In New Hampshire, there is no limit as to the generations of family members who can benefit. The gifts made into the gift trust are not included in the taxable estate of the benefactor (up to a total of \$11,580,000 or \$23,160,000 for a married couple for federal gift and estate tax purposes in 2020), if the gift trust is written in a certain way and required gifting procedures are followed. These exempt amounts are adjusted yearly. These exempt amounts are scheduled to expire at year-end 2025, unless Congress changes the exempt amounts.

These gift trusts are used when the benefactor/donor has a taxable estate above the exempt amount, and are usually created as a second step after first creating a revocable trusts with estate tax provisions in them. The leading case for these family gift trusts is Cristofani v. Commissioner 97 T.C. 74 (29 July 1991). See also the Action on Decision in Cristofani, and Crummey v. Commissioner 397 F. 2d 82 (9th Cir. 1968).

These family gift trusts can use the annual federal gift tax exclusion for gift and estate tax free annual gifts of up to \$15,000 per donor for each beneficiary per year. So, for example, a married couple with two children can gift into a family gift trust up to \$60,000 each year and can decide each year what, if any, amount to add (up to the \$60,000 limit each year). The amounts gifted into the gift trust are then not includable in the taxable estate of the person making the gift, if required procedures are followed. This could save up to approximately forty percent of each dollar gifted into the gift trust, if the required gift and estate tax trust rules are followed, and the assets of the person making the gift exceeds \$11,580,000 for tax years 2020-2025 subject to Congressional change.

Other types of family gift trusts include trusts authorized in the Internal Revenue Code at IRC 2503(c), IRC 2503(b), IRC 7520, IRC 2702, IRC 529 and IRC 429A. It is also possible to do a family gift trust in combination with charitable giving.

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

If a person’s estate is comfortably below the exempt amount, then focus on the capital gains tax may be more important.

Terms of use of this article

This article is designed to provide research information to be used in conjunction with other research deemed necessary in the exercise of independent professional judgement. John makes

no warranty or guarantee concerning the applicability, accuracy or reliability of the content of this article. Individual circumstances need to be discussed in detail. No recipient of information from this article should act or refrain from acting on the basis of any information or materials contained in this article without seeking legal advice on the law and on the particular facts and circumstances at issue from an attorney licensed in the recipient's state chosen by the recipient and in accordance with a written engagement letter. Also, the information contained in this article may not reflect the most current legal developments and should not be relied upon as an indication of any future results. The information and materials on this website have been prepared and made available for general purposes only and is subject to various differing interpretations. The transmission and receipt of information contained in this article, to clients or otherwise, do not constitute the rendering of legal advice or other professional advice or services on any matter. No endorsement or approval is made of any website. Liability to any person for the consequences of anything done or omitted to be done by that person wholly or partly in reliance upon the use or contents of this article are hereby expressly disclaimed. THIS ARTICLE AND ITS CONTENTS (INCLUDING INFORMATION AND MATERIALS CONTAINED HEREIN) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Without prior written consent, you may not link material in this article with a website or materials of any other entity, or associate or frame material on this site with a website or materials of any other entity.

02/2020