VIDEO TRANSCRIPT: Spousal Lifetime Access Trusts

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Bruce van Vreede:

Hello everyone! Welcome back to our series on Estates, Gifts, and Trusts. I am Bruce van Vreede, Director of Marketing with Brady Ware, and I'm here with Mark Kassens. Mark in charge of our Estates, Gifts, and Trusts practice. Mark, we've been covering some other subjects, but today we are talking about SLATs. Can you tell us more about that? What does "SLATs" mean?

Mark Kassens:

Sure. So a SLAT is a Spousal Lifetime Access Trust. This trust is an irrevocable trust created for the benefit of the creator's spouse during their lifetime and to their remainder beneficiaries. It shifts assets from the donors or state and is able to use their lifetime exemption.

Bruce van Vreede:

Why a SLAT? When would somebody want to employ this type of trust?

Mark Kassens:

It's a vehicle to use their lifetime exemption before it resets in 2025. So that's why they're more popular now than they ever have been. They keep the access to the assets in the marital unit, and because the spouse has access to it. It's similar to a credit shelter trust, but it's funded while the donors still alive. It's not part of a living trust that that splits up when they pass away, and it's not intended to qualify for the marital deduction. So it will not be included in the surviving spouses estate either. It's irrevocable: once you set it up and fund it, it cannot be changed. So you're stuck with it after it's funded, which can create problems in cases of divorce. If there is some off chance that the marital unit is going to fall apart--especially soon after this trust is set up--you need to have language in there to define what your spouse is. And that can be done; it's not a no-win situation. In that case, you can have language for that just in case the unfortunate happens.

This is a grantor trust for tax purposes, which means all the income is taxed to the grantor. It's basically ignored for tax purposes. The grantor pays the income tax on it, but again in the case of a divorce, that falls back on the grantor. So the spouse is living high on the access of the trust, and the grantor is the one paying the tax bill. You have to have a trustee, like you do in other trusts. And the donor spouse really shouldn't be the trustee. They can be, but it creates other barriers that you have to put in place and restrictions on distributions and such. So it's really better to have an independent trustee. And the donor should not be the trustee either. That really is a problem. It's just not allowed.

So when you do these, how can you lose? "My spouse gets access to this, and why don't they just do the same thing for me, and then really nothing changes?" You really can't do that, and the IRS has what's called a reciprocal trust doctrine that allows them to basically ignore the trust, and then all those assets would be back in the Estate.

You really don't want to fund identical trusts one right after another. Don't do it. What you need to do is have the trust be different in some way, so the beneficiaries are different, or the distribution lines are different, or trustees are different. And there should also be a lapse in in the time between when they're created. If you're doing it on the same day, that doesn't look good, and the IRS won't look upon that very well, either.

Let's see what else do we need to talk about? What if you don't have enough assets to really fund the trust? The marital unit might be all in joint accounts or most evidence joint accounts, so how do you move it? "I want my spouse to set up this lifetime access trust. They don't own anything." Well if you gift that stuff to your spouse, and then turn around and put it into the trust like it just happened in one step, the IRS can basically say, "You know what? That intervening step didn't happen." It's called the Step Doctrine. There has to be time between the gifts--when they're made to the spouse--to fund their state before they fund that trust because if you don't, then the IRS can basically disregard the whole thing. There has to be a time lapse in there. There has to be some aging of the assets under the spouse's control--sole control, not under joint control.

I think those are the big things with the SLAT. I mean they're really a neat vehicle for using this lifetime exemption, and like I said, these have uses outside the lifetime exemption. But this is the really big push now to use that almost $13 million dollar limit before it resets to $6.5 million a few years from now.

Bruce van Vreede:

Give us an example of what kind of impact you are seeing with SLATs.

Mark Kassens:

Under current law, the lifetime exemption is $12.92 million dollars uh so you have almost $13 million dollars of assets in your state, and let's assume that let's assume that grows at five percent over the next couple years. Then we pass away in 2026, and that net worth has grown to $15 million dollars--being at five percent growth rate year over year. Let's assume that we didn't do anything, and we have that $15 million in our estate. That lifetime exemption--let's say it's back down to $6.5 million (it might be a little bit more than that a couple years from now depending on inflation in the next couple years)--but let's say $6.5 million. If we had that $15 million in our estate without using this vehicle or another similar trust that can move that lifetime exemption out, that tax would be $3.3 million. That's pretty substantial!

It's 40 percent biased estate tax rate, and you get to the highest rate after a million dollars of taxable estate. So instead of moving $15 million to our beneficiaries to our arears, we've moved just under $12 million, and all of that $3 million has gone to the United States Treasury. It's a pretty impactful way to move that much money, and it really makes a difference. All it takes is a little planning. You have to have these thoughts in mind. You have to have the documents in hand. You have to have it funded. But a little planning goes a long way. $3 million dollars on just a $15 million estate is pretty substantial.

Bruce van Vreede:

Definitely. That's a pretty strong impact to set this up, implement it, and to have it done correctly.

Thanks again, Mark, for walking us through the SLATs. We'll be back with another edition as we work our way through the estates, gifts, and trusts series, just talking through what benefits they have for you.

As always, feel free to reach out to us if you have any questions.

Mark Kassens, CPA [view bio]

765.966.0531

mkassens@bradyware.com

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