

Family Gift Trusts

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

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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.

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 \$5,490,000 for federal gift tax purposes in 2017), if the gift trust is written in a certain way and required gifting procedures are followed.

These trusts are typically used when the benefactor/donor has a taxable estate of \$5,490,000 or above (for deaths occurring in 2017), and are usually created as a second step after first creating a revocable trust. The leading case for these family gift trusts is Cristofani v. Commissioner 97 T.C. 74 (29 July 1991). See also the Action on Decision in Cristofani, and Crummey v. Commissioner 397 F. 2d 82 (9th Cir. 1968).

These family gift trusts can use the annual federal gift tax exclusion for gift and estate tax free annual gifts of up to \$14,000 (adjusted sometimes in future years) 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 \$56,000 each year and can decide each year what, if any, amount to add (up to the \$56,000 limit each year). The amounts gifted into the gift trust are then not includable in the taxable estate of the person making the gift, if required procedures are followed. This would generally save 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 \$5,490,000 in 2017.

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.

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