

Generation Skipping Planning

NJ Generation Skipping Estate Planning Lawyers

Many of our New Jersey clients wish to provide for the financial needs of their grandchildren. Sometimes they do so by making direct gifts to the grandchildren. This often gives grandparents great joy to see their grandchildren enjoy the fruits of their labor while they are living, rather than simply leaving the grandchildren money in a Last Will and Testament.

For those clients who expect that an estate tax will be due upon their death, or upon the death of their children, making gifts to grandchildren can also provide the benefit of skipping a level of taxation — the tax that would be due at a child's death when the property would otherwise go to the grandchildren. Because many of our clients in New Jersey have large estates and successful children, gifts to grandchildren are becoming much more popular.

Because this so-called “generation-skipping” for estate tax purposes can erode the revenues the Federal government would otherwise receive from the Federal Estate Tax, Congress enacted the Generation-Skipping Tax on lifetime gifts and bequests that skip a generation. Until 2010, there was Generation-Skipping Tax on transfers to “skip persons” where the aggregate lifetime gifts exceed \$3.5 million. Married couples could treat a transfer as made one-half by each spouse. In effect, this results in a doubling of the exemption. During the year 2010, there is a temporary suspension of the Generation-Skipping Tax. The Generation-Skipping Tax is scheduled to return in 2011.

Generation-skipping gifts and bequests that exceed the exemption amount are taxed at a rate equal to the highest estate tax rate (55% in 2011). Frequently, our New Jersey clients make lifetime gifts that are intended to qualify for the gift tax annual exclusion (currently \$13,000). Often these gifts are not subject to the Generation-Skipping Tax.

Sometimes the grandparent wants to protect the gift from the present control of the grandchild. In those cases, New Jersey trusts, or trusts established in other states, can be designed to hold these gifts until more appropriate ages.

As mentioned above, the tax applies to any transfer from a "transferor" to a "skip person." A "skip person" can be an individual, but certain trusts may also be considered "skip persons." Individuals who are two or more generations below the transferor are considered to be "skip persons." This includes grandchildren and great grandchildren and also grandnieces and grandnephews. A trust will be considered a "skip person" only if no non-skip person holds an interest in it and only if no non-skip person may receive a distribution from it. If a transferor's child dies before the transferor, the predeceased child's descendants are moved up by one generation and are no longer considered "skip persons."

The tax applies to three types of transfers. One is referred to as a "taxable termination." This is a transfer to a skip person upon termination of a trust. Another is a "taxable distribution." This is any other transfer from a trust to a skip person. Finally, there is the "direct skip" which is a transfer directly to the skip person.

The exemption from the tax can be allocated among several different transfers. For instance, if \$7 million is going to be transferred in trust, it can all be put in one trust with \$7 million of assets. Then \$3.5 million of the exemption can be allocated to the transfer. In effect, this trust is only exempt to the extent of one-half of its value. All taxable transfers from the trust to a skip person will incur tax at 50% of the GST tax rate. Alternatively, \$3.5 million could be put in one trust (Trust A) and \$3.5 million in another trust (Trust B). Then \$3.5 million of the exemption could be allocated to Trust A. Trust A would then be totally exempt and all distributions from it would be free of the tax. All distribution from Trust B, if made to a skip person would be subject to the full tax. The trusts can be designed in such a way that Trust A would be designed to primarily benefit skip persons (grandchildren) and Trust B would be primarily or exclusively for the benefit of non-skip persons (children).

Contact a New Jersey Estate Planning Attorney Now

Given the complexities of Generation-Skipping Trusts in New Jersey, we advise you to [contact](#) one of our experienced estate planning or tax attorneys at [973-627-7300](tel:973-627-7300) at Einhorn Barbarito today. We handle estate and trusts issues throughout New Jersey.