Estate Planning Acronyms for the Remainder of 2012

By James F. McDonough, Jr. on September 24, 2012

As we approach the fiscal cliff and the outcome of the presidential and congressional elections are not clear, individuals are worried about the loss of the $5,120,000 exclusion (the "Exclusion") at the end of the year. In 2013, the Exclusion drops to $1,000,000 and there is no legislative solution at the moment. Unfortunately, one cannot speak "tax" unless one speaks in acronyms. Therefore, this guide may be useful.

"SAT" means Spousal Access Trust which is a trust that is designed to transfer property out of your estate for death taxes but have access to the funds for support. Typically, two SATs are formed and the creator of the trust names the other person as the beneficiary. The trusts cannot be identical, but can be designed to provide substantial benefits to each beneficiary. This technique hedges against the loss of the exclusion without losing access to all of your money. A gift to a spouse remains in the estate of the recipient-spouse because of the marital deduction and is subject to estate tax at death.

"QTIP" means Qualified Terminable Interest in Property and is a trust that qualifies for the marital deduction provided the spouse is the only recipient of income and principal. The twist is that there are rules which state that if you transfer part of the income, you have made a gift of the principal. Thus existing QTIPs can trigger use of the Exclusion with very small gifts of income. One use of the QTIP is to control the ultimate disposition of the trust at the death of the spouse and this does not change.

"GRIT" means Grantor Retained Income Trust where the grantor transfers cash or securities and retains the income stream and attempting the keep the trust assets out of his estate. The effectiveness of GRITs was eliminated by statute which made the entire transfer a gift, unlike the prior rules which reduced the size of the gift by the right to income. GRITs will use the Exclusion against the gift to the trust but the transferor retains access to income and principal from the trust property.

I offer a few more acronyms while omitting detailed explanations.

"DING" means Delaware Incomplete Non-Grantor trust which is designed to avoid income tax in the grantor's state of residence.

"Enhanced GRATs" are Grantor Retained Annuity Trusts that are designed to increase the value of what is transferred to heirs as part if the remainder.

Finally, "Swapback SCINs" are Self Cancelling Installment Notes that are created to absorb the Exclusion through the division of an existing note into two or more notes.