The Completed Gift Nevada Asset Protection Trust: A Unique Way for People to "Have their cake and eat it too"

By Kristen E. Simmons & Heidi C. Freeman

Nevada has long been a favorable jurisdiction for the creation of asset protection and estate planning structures. Under a recent IRS Private Letter Ruling (PLR), PLR 200944002, a person can now create a trust for his/her own benefit that is not only protected from creditors (upon the expiration of the statute of limitations) but is also outside of the person's estate for estate tax purposes. The completed gift Nevada Asset Protection Trust essentially allows people to "have their cake and eat it too."

What is a Nevada Asset Protection Trust (NAPT)?

Nevada is one of twelve states that allow a person to establish a self-settled spendthrift trust. A self-settled spendthrift trust protects the trust assets from the settlor's (the creator's) creditors, while still allowing the settlor to benefit from the trust assets. Originally introduced into law in 1999, NRS Chapter 166 outlines the laws regarding the formation and maintenance of Nevada's version of the self-settled spendthrift trust.

The major requirement for the establishment of a NAPT is that there must be at least one Nevada trustee. The Nevada trustee may be either a Nevada resident or a bank or trust company with trust powers and a physical presence in Nevada. The Nevada trustee must have the power under the trust agreement to maintain records on behalf of the trust and coordinate the preparation of the trust's income tax returns. Additionally, at least part of the administration of the trust must physically occur in Nevada.

In all jurisdictions that allow the creation of self-settled spendthrift trusts, there is a statute of limitations period that must expire before the assets of the trust are protected from the settlor's creditors. Nevada has the shortest statute of limitations period of the twelve states that allow such a trust. The Nevada statute of limitations period is two years from the date assets are transferred by the settlor to the trust (as to future creditors), or the later to occur of two years from the date assets are transferred by the settlor to the trust or six months from the date that the creditor learned of or reasonably should have learned of the transfer (as to current creditors). Note that there is a four-year statute of limitations period if the transfer to the NAPT is deemed a fraudulent conveyance. Discussion of the fraudulent conveyance laws are beyond the scope of this article.

What is a completed gift NAPT?

Traditionally, NAPTs have been used as pure asset protection devices for clients. When combined with other asset protection structures, such as Nevada LLCs, the NAPT can put a person in a much better bargaining position if the person is sued. However, with the IRS issuance of PLR 200944002, the NAPT can now be structured in a manner that is beneficial for both asset protection and estate tax savings purposes.

PLR 200944002 ruled that a self-settled spendthrift trust established under the laws of Alaska was not to be included in the settlor's estate for estate tax purposes. Alaska

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has similar laws to Nevada (with the exception of Nevada's shorter statute of limitations period for creditor claims). It should be noted that PLRs are only binding as to the requesting taxpayer and do not establish precedent upon which other taxpayers may rely. However, PLR 200944002 does outline and provide guidance as to the IRS' current position regarding completed gift self-settled trusts.

A completed gift NAPT is a type of NAPT that is structured so that transfers by the settlor to the trust are treated as gifts by the settlor to the trust for federal gift tax purposes. This is done by ensuring that the NAPT does not give the settlor any powers that would cause a transfer by the settlor to the trust to be "incomplete." For example, the settlor would not be permitted to have a power of appointment over the trust assets.

Uses of the completed gift NAPT

The benefit of the completed gift NAPT is that it moves assets outside of the settlor's estate for both creditor and estate tax purposes, while still allowing the settlor to have beneficial use and enjoyment of the trust assets. All of the growth on the initial assets transferred by gift to the NAPT will inure to the benefit of the settlor and other beneficiaries of the trust, but will not be subject to further gift or estate taxation. Additionally, the completed gift NAPT may be structured as a dynasty trust, so that assets in the NAPT can continue generation to generation without subsequent estate or generation-skipping transfer taxation. Nevada law allows a dynasty trust to last for up to 365 years.

Ideal assets for contribution to the completed gift NAPT are assets that will appreciate in value. The completed gift NAPT is also an ideal replacement for a traditional irrevocable life insurance trust (ILIT). A traditional ILIT is an irrevocable trust that owns life insurance on the settlor's life and is not included in the settlor's estate, but of which the settlor may not be a beneficiary. The completed gift NAPT may own life insurance on the settlor's life even though the settlor is a beneficiary, while still keeping the insurance out of the settlor's estate. The cash flow generated from the assets transferred by the settlor to the NAPT can pay the life insurance premiums and, as the cash value of the insurance policy grows, the trustees of the NAPT (not the settlor) may access the cash build-up of the policy and reinvest it as they see fit (including acquiring assets with the cash build-up that the settlor can then use as a beneficiary of the trust).

The IRS guidance from PLR 200944002, although not binding, opens up new planning opportunities for people who are otherwise resistant to planning to reduce their estates because of a concern of giving away property. The completed gift NAPT allows a person to establish a trust that provides estate tax savings, but with the added security that the assets are available to the settlor if the settlor needs the assets to live a comfortable life. C

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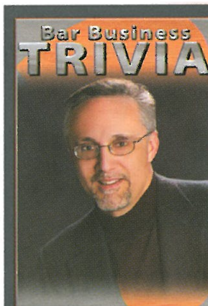

Freaky Trivia

Two actors, same role, One portrayed the part in a movie, one on television. They died one day apart in the same year. Name the actors and the role they shared.

The first respondent to email the correct answer from the Marketplace page at www.clarkcountybar.org, wins two tickets to the Meet Your Judges Mixer, on June 10, 2010.