New Estate Planning Techniques

The Megatrust[SM]: An Ideal Family Wealth Preservation Tool

This new technique takes full advantage of the $1 million Generation Skipping Transfer Tax exemption

By **RICHARD A. OSHINS**
Oshins & Gibbons
Las Vegas, NV
and
JONATHAN BLATTMACHR
Milbank, Tweed, Hadley & McCloy
New York, NY

Historically, the United States wealth transfer system has been principally designed to erode the concentration of multi-generational wealth. From a policy standpoint, leveling and reducing the economic differences of members of society is generally deemed socially attractive. Further, in addition to the desirability of a more equal distribution of wealth, from a sociological perspective earned wealth is favored over inherited capital and "(i)n the view of some, it is inequitable or socially undesirable to tax the transfer of earned wealth as heavily as the transfer of wealth that was itself earlier inherited."[2]

Under our tax laws and property structure, however, properly structured inherited wealth is a far more valuable commodity than wealth earned and saved. Although it is true that in general neither our transfer tax system nor our property law system distinguishes between wealth a transferee taxpayer owns and re-transmits, and wealth which is earned and subsequently transferred, proper planning can change these general rules.

Money In Trust[3]

Estate planners are familiar with the general concern and misconception of non-lawyers that trusts are created by lawyers to keep the objects of the transferor's bounty from the enjoyment of property they believe should rightfully be theirs. Estate planners are quite aware that property transmitted by trust can confer significantly greater benefits than can be derived from property owned outright, not only with regard to tax savings but also from the claims of creditors, including an estranged spouse in a divorce context. From the beneficiary's perspective, it is difficult to envision any rights in property owned outright that cannot also be provided in a trust through proper drafting, particularly by the imaginative design of trustee powers, and powers of appointment.[4] As a trustee, for example, the beneficiary can have complete managerial rights and significant ability to use and control the trust property, although he also has a power of withdrawallimited[5] by an ascertainable standard. By giving the primary beneficiary a special power of

appointment, potential complaints of a successor beneficiary with respect to the administration of the trust can be easily dealt with as a practical matter. As Professor Ed Halbach has often stated, "a power of appointment is also a power of disappointment."

Effective and efficient planning for family wealth transfers encompasses all or most of the following goals.

1. Control -Preserving control for the senior family members.
2. Management -Providing for effective management.
3. Tax Savings -Saving {and/or deferring) taxes, including income, gift, estate and generation-skipping transfer taxes at all government levels.
4. Flexibility -Maintaining maximum flexibility to react to changing family needs, economic situations and tax and other law changes.
5. Creditor Protection -Protect family wealth from unnecessary evaporation resulting from divorce and other creditor problems.
6. Leveraging -Taking advantage of leveraging and valuation concepts.

Additional benefits may be derived by conferring tax sensitive powers upon an independent trustee, especially the decision to sprinkle or retain income in a discretionary trust. Consequently, provided the trust design is properly conceived, the informed client should change his or her visceral reaction to: "I'd rather receive property in trust than receive it outright."

The Megatrust^{SM} is designed to accomplish all of these goals by taking full advantage of the $1 million GST exemption under IRC Sec. 2632(a) that the authors believe is one of the most valuable commodity available to estate planners.

Although the estate planner's arsenal of tax avoidance strategies has been severely reduced, several vehicles such as charitable lead unitrusts and life insurance are still available to leverage both the unified credit and the GST exemption.

Megatrust^{SM} Concept In General

The Megatrust^{SM} is designed to permit the passage of significant wealth through multiple generations without the imposition of transfer taxes, even though the trust beneficiaries have a beneficial enjoyment in the trust property similar to outright ownership.

A property owner will place property into a trust, electing to allocate a sufficient amount of his or her GST exemption against the transfer so that the trust is wholly exempt from the Generation Skipping Transfer Tax (GSTT).[6] The trust is structured to last the maximum term permitted by law. Rather than having the trust term measured solely by the lives of the descendants of the creator of the trust, it could also be measured by the lives of the descendants of a well-known person or persons, subject only to the constraints of the rule against perpetuities. Consideration might also be given to doing some "forum shopping." By arranging for there to be sufficient contact with a state which

does not have a rule against perpetuities, the trust creator can avoid such a limitation. This may be accomplished in several ways: for example, by selecting a trustee or co-trustee in an appropriate jurisdiction or placing assets in the friendly foreign jurisdiction. The jurisdiction selected for the term of the trust need not be the same jurisdiction which governs other aspects of the trust as long as there is sufficient contact with each jurisdiction.[7]

The trust will be managed with avoidance of wealth transfer taxes as a primary consideration insofar as it is consistent with the objective of providing comfortably for the trust beneficiaries. Distributions will be permissible, but might not be made even though retention might be undesirable from an income tax planning standpoint (e.g., the trust is in a higher effective income tax bracket than the beneficiary) because such distributions would augment the beneficiaries' taxable estates, and, thus, would be considered as "leakage" from a transfer tax perspective. The trustee should take into account the transfer tax considerations prior to such distributions, and be encouraged to provide the "use" of trust assets rather than to make distributions, in the absence of a compelling reason to deviate from this policy. The trust beneficiaries will be expected to pay for their own "consumables." Thus, the Megatrust[SM] will form an "asset pool" providing multigenerational benefits for the descendants (and perhaps the spouse[8]) of its creator.

Prior to the GSTT, many estate planners did not recommend taking advantage of the ability to avoid the application of tax on successive generations through the creation of long-term trusts which would last through multiple generations. With the enactment of the GSTT, more attention is being given to utilizing such trusts to escape the heavy tax burden.

One of the most fundamental estate planning techniques is the use of a "bypass" trust to avoid inclusion of the amount protected from tax by the unified credit or, for clients willing to pay some gift tax, the amount of unused GST exemption. The primary reason for the creation of most bypass trusts is transfer tax avoidance. The rationale for the creation of a bypass trust also supports extending the term of the trust for the life of descendants. In fact, anticipated growth inside the trust would typically protect a greater amount from the transfer tax base in a trust for children and more remote descendants than in a trust that terminates upon the death of the surviving spouse. This fact, coupled with the income tax savings which result, makes the Megatrust[SM] even more valuable to those descendants.

The Economics

The compounding effect of the Megatrust[SM] coupled with the avoidance of transfer taxes for multiple generations can lead to some extraordinary results. The following chart illustrates the differences in result for a $1,000,000 contribution into a Megatrust[SM] that will last for 120 years and outright transfers subject to an estate tax of 50 percent every 30 years.[9]

The savings potential is often greater than illustrated since the example ignores the fact that property received outright will probably be reduced further due to (1) divorce settlements, (2) creditor problems, and (3) the fact that assets are less likely to be dissipated in a trust than if held outright even if the invasion rights in a trust are extremely broad and generous. In addition, the leverage feature increases the longer the trust continues. For example, if the trust term in Exhibit 1 were ex- tended another 30 years to 150 years, at 8 percent the value of the trust corpus would grow from $10,252,992,943 to $103,172,350,067 rather than the $3,224,135,940 if a Megatrust℠ were not used.

Special Megatrust℠ Features

In order to maximize flexibility, creditor protection and transfer tax savings, the Megatrust℠ should be designed as a discretionary trust under which the trustee will have broad powers not only to distribute or accumulate income and principal to, but also to provide the use of trust assets for, the trust beneficiaries subject to a set of guidelines. Although income tax savings can be achieved in Megatrust℠ planning, the principal motivating tax feature of the Megatrust℠ is the avoidance of transfer taxes. The primary transfer tax savings with respect to the assets in the Megatrust℠ are: (1) the trust assets, if retained in the trust, are not subject to transfer taxes for the duration of the trust; and (2) the accumulation of income "inside" the trust will increase the transfer tax savings because the income retained will also escape transfer taxes. The wealth preservation aspect of the Megatrust℠ is quite apparent when these transfer tax avoidance opportunities are added to (i) the fact that assets in the Megatrust℠ are protected from divorce and other creditor claims and (ii) the increased capital preservation tendency inherent in the trust vehicle, (i.e., assets owned in trust are less likely to be dissipated than are assets owned outright).

Consequently, it is anticipated that few, if any, distributions actually will be made in the absence of compelling reasons to make them. The beneficiaries individually will be expected to absorb most family expenditures such as food, schooling, vacations, etc. Moreover, the beneficiaries, as a general rule, will be expected to utilize their own funds on consumable or wasting assets, since the use of protected funds inside the Megatrust℠ would be wasteful. For beneficiaries who are not skip persons, such as the transferor's children, these expenses might be funded by use of trust assets in trusts not protected by the GST exemption. Medical and educational expenses which escape the GST tax as a result of Sec. 2611(b)(l) should also be paid by the non-exempt trust.

The trustee of the Megatrust℠ should be encouraged to acquire assets for the "use" of the beneficiaries rather than to make distributions to them (which in turn would result in the beneficiaries' acquisition of appreciating assets in their own names) in order to optimize the trust's multi- generational wealth accumulation goal. In furtherance of this objective, the trust should contain specific language to permit investments in assets such as residential real estate, artwork, jewelry, and the like, which have significant appreciation potential. For example, if a beneficiary wishes to acquire a home, the trustee could purchase the home as an as- set of the Megatrust℠, rather than distribute funds to the

beneficiary who would then utilize such funds to acquire the home personally. As a result, the beneficiary will have the use and enjoyment of the real estate without the transfer tax problems. Further, the property would be insulated from divorce and other creditor claims against the beneficiary .

The "use" of trust property should be income tax neutral to the trust beneficiaries, since" ...there appears to be no income tax concept similar to Section 7872 dealing with the rent-free (or rent reduced) use of property, as opposed to the "rent-free" (interest free) use of money ".[10] Because the mere free use of property should not result in imputed income to the beneficiary, the trustee should be given broad discretion in permitting the "use" of trust property rather than making distributions. However, charging rent that will be accumulated as trust property might be a more efficient course of action from a transfer tax perspective.

In drafting the document, attorneys should resist the temptation to draft too "tightly," as flexibility is extremely important. The trustee should be authorized to retain income even though the trust income tax bracket may exceed that of the beneficiaries and such retention would be counterproductive from an income tax standpoint. Thus, precatory language providing that the trustee may take into account both immediate and future income and transfer tax consequences should be contained in the trust indenture.

Although distributions to beneficiaries from the Megatrust[SM] are not generally contemplated, they should be permitted by the trust instrument, since the beneficiaries might need the trust assets for basic living expenses (or even luxuries if the beneficiaries are not able to adequately provide for such items themselves)[11]. Indeed, tax considerations might dictate that a transfer should be made. For example, income tax planning may suggest that a distribution be made even though such a distribution might be counter-productive from a transfer tax point of view. The tax results should be balanced by the trustee, realizing that the income tax is imposed immediately while the transfer tax is deferred into the future, allowing accordingly for leveraging for many generations.

Distributions also might be particularly beneficial where the beneficiary otherwise would not be able to take full advantage of his or her unified credit or GST exemption. The transfer from the trust of low basis assets to trust beneficiaries may be especially appropriate in such instance in order to obtain a basis step up at death under IRC Sec. 1014(a).

Additionally, savings are available in the beneficiaries' own estates through the Megatrust[SM][12]. First, because they will have the financial security of the trust assets, the beneficiaries can avoid transfer taxes by consuming their personal assets,

By taking full advantage of the GST exemption,
the MegatrustSM design should:

1. Extend the term of the trust as long as possible, terminating it only to avoid violating the rule against perpetuities, if any;
2. Structure and operate the trust in a manner that will not be wasteful; and
3. Leverage the exemption through the use of estate planning strategies designed to deflect more in value from the tax base of the transferor to the transferee than would occur if a straightforward cash gift was made.

EXHIBIT 1

The Economics

Annual After- Tax Growth	Value of Megatrust[SM] After 120 Years	Value of Property If No Trust
3.00%	34,710,987	2,169,437
4.00%	110,662,561	6,910,410
5.00%	348,911,561	21,806,999
6.00%	1,088,187,748	68,011,734
7.00%	3,357,788,383	*209,861,774*
8.00%	10,252,992,943	640,812,059
9.00%	30,987,015,749	1,938,688,484
10.00%	92,709,068,818	5,794,316,801

which results in the reduction of their taxable estates. Second, the availability of the trust assets for the benefit and use of the beneficiaries will also enable the beneficiaries to increase the transfer tax savings by "defunding" their estates through gifts to their descendants or through the creation of their own Megatrust,[SM] with a perpetuities period which presumably would extend the trust termination past the original trust's term.

Another feature which is recommended for the Megatrust[SM] is the extensive use of powers of appointment to deal with changing family circumstances, economic conditions and laws, particularly tax law changes. Typically in a Megatrust,[SM] separate discretionary trusts are created on a per stirpital basis for each branch of transferor's family. However, a single "pot" trust may be used, either through the entire trust term or until attainment of a certain age by the youngest descendant of the senior generation. The primary beneficiaries will typically be the senior generation family member or members, and they generally also will be the holders of special powers of appointment.

Consideration should also be given to providing powers of appointment to third parties to increase flexibility and enhance the trust's ability to adapt to the changes which are bound to occur during the trust's existence which is expected to last well in excess of 100 years. Such flexibility is important to meet changing legal, tax, economic and family circumstances. One enticing approach is for a power to amend the trust to be given to someone other than a grantor or beneficiary. This will add tremendous flexibility to the estate planning which may be accomplished with a Megatrust[SM] without any adverse tax consequences to any of the parties, including the powerholder, as long as the power

holder does not have a general power of appointment.[13] As a result, by using a trusted, cooperative special trustee, the trust can be virtually a revocable-irrevocable trust.

Because the very essence of the Megatrust[SM] is to provide the trust beneficiaries with access to family wealth (often with as much enjoyment and control as possible within the confines of the tax law) without the adverse tax, creditor protection, and divorce consequences, another variation often inherent in the Megatrust[SM] concept is to negate the "prudent person" rules. This approach would be particularly compelling where the transferor (or power holder) would be inclined to give the property outright to the beneficiaries, but has selected the trust vehicle because of anyone or more of the tax or other benefits that trusts generally offer. Thus, a provision authorizing acquisition of non-traditional investments (such as art work, jewelry, or vacation homes), which have significant appreciation potential and "use" value but are traditionally not assets which a so-called "prudent" trustee would acquire, would be appropriate to add to the trust. Additionally, a duty of diversification is not appropriate for a transferor who seeks to pass the family business through multiple generations by use of a Megatrust[SM] and, therefore, in those jurisdictions where such a duty may exist that duty might be waived. In such an instance, careful attention should be given to coordinating the trustee provisions (e.g., through the use of special trustees or giving each family branch representation on the board of directors). Exculpatory language also should be considered, particularly where the trustee is the primary beneficiary, or the primary beneficiary consents to a transaction even if the transaction contains high risk and return strategies.

Surprisingly Broad Application

The initial reaction might be that the Megatrust[SM] should only be considered for wealthy clients who are willing to embark on a major gift giving program. However, with the proliferation of large life insurance sales, many families potentially will have significant instant wealth and will be candidates for a Megainsurancetrust[SM]. In addition, other Megatrust[SM] candidates include individuals who seek asset protection. As our society has become increasingly litigious, asset protection has increased in its importance to many of our clients, particularly physicians, many of whom are "going bare" by giving their property to their spouses in order to insulate such property from the claims of creditors. An inter vivos "Spousal Megatrust[SM]" might be a superior alternative. By making the spouse a discretionary beneficiary, the grantor may be able to obtain indirectly the beneficial enjoyment of the trust property through that spouse, as long as the marriage remains stable.

As a method of addressing the possibility of marital discord which might occur subsequent to the funding of the Megatrust[SM], consideration should be given to conditioning the spouse's participation in the trust benefits by adding the requirement that he or she be married to, and living with, the grantor at the time of distribution or death of the grantor and, further, by defining the "spouse" as the one who is married to the grantor at the time of distribution or death. This allows a new spouse to become a beneficiary of the trust in the event of a remarriage after a death or divorce.[14] Additionally, by giving

the donee spouse a special power of appointment broad enough to include the donor spouse (e.g., to anyone other than the donee spouse, the donee spouse's estate, creditors of the donee spouse or his or her estate), the property may be returned to the creator of the trust. Of course, to the extent the power is exercised "outright" in someone's favor, the tax savings and future creditor protection are lost. To prevent the use of the power in a manner undesirable to the trust creator, its exercise might be made subject to the consent of a third party. The use of a "Spousal Megatrust[SM]" (i.e., a Megatrust[SM] for a class of beneficiaries which includes the grantor's spouse) should not result in inclusion of the trust assets in the estate of either spouse. Indeed, this approach has been widely used in the drafting of life insurance trusts.[15]

One of the benefits often not given adequate consideration in family estate planning is creditor protection. Trusts generally provide protection for their beneficiaries (other than a grantor-beneficiary) against creditors and from disgruntled spouses and ex-spouses of the beneficiaries. Megatrusts[SM] may accomplish this result on a multigenerational basis. With the increasing number of divorces in to day's society, many clients find that the ability to protect assets from spouses of their descendants in case of marital discord is an extremely compelling reason for establishing a trust. As a general rule, the more discretionary the trustee's power, the more creditor-proof the trust will be. The use of a discretionary trust, where distributions are subject to the absolute discretion of an independent trustee (i.e., the trustee has the authority to postpone or avoid distributions to a beneficiary who is involved in creditor, marital or other problems), can be very useful. Such a trust has been described as " ...the ultimate in creditor and divorce claims protection even in a state that restricts so-called 'spendthrift trusts' since the beneficiary himself has no enforceable rights against the trust."[16]

Management of the Megatrust[SM] with a view towards maximizing creditor protection is consistent with transfer tax avoidance. The discretionary ("sprinkle" or "spray") trust is the technique which best achieves both of these goals. To obtain the greatest transfer tax benefits, income and principal should be retained in the trust and reinvested to increase the transfer tax savings.

Future Interest Gifts

Use of Unified Credit and GST Exemption. Trusts which use the unified credit, and perhaps pay some tax so that the full GST exemption is utilized, are the best vehicles for the Megatrust[SM]. This will be particularly appropriate where, because of the terms of the trust, transfers to the trust are gifts of a future interest. Using the full $1 million GST exemption will require paying about $153,000 in federal gift tax if both the unified credit and the GST exemption are still completely "intact." Several proposals to reduce the unified credit have been made in Washington. In addition, for those with wealth bases of over $10 million, the savings benefit of the unified credit is "recaptured."[17] Thus, it may be wise to consider using the credit before it is lost. The Megatrust[SM] is an ideal vehicle to use to exploit the unified credit and GST exemption.

Present Interest Gifts

During the past several years, the directing of gifts into a single discretionary trust with multiple powers of withdrawal which would lapse after a period of time if unexercised was a frequently used technique. Prior to the amendment of IRC Sec. 2642(c) by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), this approach offered an excellent opportunity to significantly defund an estate, because all gifts which qualified for the gift tax annual exclusion had a zero inclusion ratio for GSTT purposes. As a result, the transferor could provide a large asset base for the "use" of the family unit which would escape taxes for multiple generations. Probably the most predominant assets contributed to such a trust were (a) cash which, in turn, was used to pay life insurance premiums, and (b) minority and fractional interest gifts which take advantage of the various discounting methods. If a "hanging Crummey" power was used, significant annual gifts could be placed into the trust which would pass through multiple generations without the imposition of a transfer tax.

The single multigenerational pot trust approach has to be reconsidered based on three recent developments. First, the IRS has taken the questionable position that "hanging Crummey powers are invalid." Secondly, TAMRA has amended IRC Sec. 2642(c), which reduces some of the effectiveness of "Crummey power" transfers by denying GST exclusion to most transfers to trusts, even though the transfers are protected for gift tax annual exclusion purposes. Lastly, the IRS has adopted the position that for income tax purposes, the power holder will be treated as the owner, under IRC Sec. 678, of a portion of the trust in the year that the power is exercisable, and since the lapse of the withdrawal power is tantamount to a release, such release will generate "grantor trust" income tax ownership exposure to the power holder for the duration of the trust.[18]

However, careful planning can restore much of the benefits available prior to these developments. First, special language should "revalidate" the effectiveness of hanging Crummey powers.[19] Second, even though IRC Sec. 2642(c) now limits exclusion from GSTT for annual exclusion gifts, the transferor may allocate his or her GST exemption to such transfers. Hence, they will be made free of gift tax by reason of the annual exclusion (obtained by the Crummey powers of withdrawal) and GSTT by allocation of the GST exemption.[20] Third, as will be discussed more fully below, taxing income of the trust to the Crummey power holders can provide an opportunity for them to make, in effect, additions to the trust which will be transfer tax exempt, thereby allowing the trust to grow to larger proportions than if the income were taxed to the trust.[21]

Because of the uncertainty regarding the income tax results for trusts which are funded through the use of Crummey withdrawal powers, planners who desire predictability and certainty may be inclined to forgo the use of annual exclusion gifts to a Megatrust[SM], particularly if the annual exclusion gifts may be used elsewhere. Irrespective of the choice selected, the authors suggest that a single trust not be funded by both Crummey type annual exclusion gifts and other gifts such as those against which the unified credit is applied or where a gift tax is paid. Creating two or more trusts is the preferable route. The multiple trust approach will avoid an accounting nightmare where the income tax

treatment depends upon the funding approach. In addition, the multiple trust alternative offers far more flexibility in tax planning. Where acquisitions require capital in excess of one of the separate trusts, a partnership is necessary between the trust funded by annual exclusion gifts and the one that is not is a possible solution.

Defective Megatrust^{SM} Gambit

Since the grantor trust rules for income tax purposes differ from those for estate tax purposes, the Megatrust^{SM} can be intentionally designed as a grantor trust for income tax purposes only, so that the grantor will be taxed on the income. Because the grantor will be taxed on income earned by the trust, there will be a dual transfer tax benefit: (1) a reduction in the grantor's taxable estate, and (2) an enhancement of the multigenerational growth pattern of the Megatrust^{SM}. This course of action will result in an addition to the trust which escapes the transfer tax system, including the GSTT.[22]

One approach which has considerable merit is the use of a "defective" Megainsurancetrust^{SM} . The funded irrevocable life insurance trust has been underused as a viable planning technique. Significant ancillary estate defunding benefits can be derived by placing income-producing property inside a Megainsurancetrust^{SM}, wherein the property will create an income stream to fund life insurance premiums. This income, however, will not be reduced by the tax it generates, because the income will be taxed to the grantor rather than the trust.

When the Megainsurancetrust^{SM} is a grantor trust for income tax purposes and is funded using the unified credit, it is clear the grantor will be responsible for the income taxes (and the family unit will receive the transfer tax savings). Where Crummey withdrawal powers are used, however, the income tax result is uncertain. If, as some commentators suggest,[23] the trust is a grantor trust, the result will be the same as for trusts using the unified credit.

If the IRS's position that the powerholders should be subject to income tax ultimately prevails, the result is still superior to an unfunded trust for several reasons. The beneficiaries theoretically should be in either the same or a lower bracket than the grantor. Additionally, the beneficiaries will absorb the "leakage" in the income tax payments which the trust would have paid had it not been subject to the IRC Sec. 678 exception to the grantor trust rules. If the IRS view is sustained, the beneficiaries' taxes could be funded by annual exclusion gifts directly to the beneficiaries (or by distributions from the Megatrust^{SM}, a route which would generally be considered undesirable but would not be any worse than if the trust itself was taxed).

Moreover, to take advantage of the IRS's position that the Crummey beneficiaries are taxed for income tax purposes, a trust which is fund- ed by annual exclusion gifts (such as a life insurance trust) could acquire an asset (i.e., a house or vacation home) and could "rent" the house or vacation home to the person or persons who held the Crummey powers. The rental income will increase the Megatrust's^{SM} growth rate. However, since the powerholder will be the grantor for income tax purposes, there will be no income tax

consequences with regard to the rents received by the Megatrust^SM.[24]

The Megatrust^SM offers unique opportunities to create a "family asset pool" which may be enjoyed by the creator's family into perpetuity without shrinkage caused by transfer taxes or loss due to divorce or other creditor claims. It should become an integral part of the creative estate planner's arsenal.

FOOTNOTES

1. The Megatrust^SM is a service mark held by Jonathan G. Blattmachr and Richard A. Oshins, and licensed to Alfred J. Olsen and Susan K. Smith.
2. McNulty, "Fundamental Alternatives to Present Transfer Tax Systems." Death, Taxes and Family Property, ABA (1977).
3. Oliver Wendell Holmes, "The Autocrat of the Breakfast-Table" (1858).
4. See Oshins, "Megatrust^SM: Representation Without Taxation," NYU 48th Inst. on Fed. Tax. (1990) for an extensive analysis on the design of the Megatrust^SM.
5. See Treas. Reg. Sec. 20.2041-1(c)(2) (a general, or "taxable" power of appointment does not include one the exercise of which is limited by an ascertainable standard relating to support, maintenance, education and health.)
6. See Blattmachr, "Getting it Clean, and Keeping It Clean (another Generation Skipping Adventure)," 49th Annual Institute on Taxation, Ch. 8, (1991).
7. Keydel "Revocable Trusts Revisited" 18th Miami Institute on Estate Planning Sec. 1103.5 (1984). Laws concerning spendthrift trusts and public assistance might also be examined in the forum shopping process, depending on the needs of a particular client.
8. The spouse of the creator may be included among the beneficiaries, but careful attention must be given to the income tax consequences since the grantor will be taxed on the income unless distributions may be made to the spouse only with the consent of an adverse party. See IRC Sec. 677(a)(1).
9. It is arbitrarily assumed that the property would be taxed every 30 years as it appears to be a reasonable assumption that each successive generation would survive the preceding generation by such period.
10. Pennell, "Income Shifting After TRA '86," 46th New York Inst. on Fed. Tax 1988, Ch. 50 at Sec. 50.07(a). Pennell states that, "It is notable that, until adoption of Section 7872, the interest free use of money was not an income taxable event, and that it took an act of Congress to change that result. There is no similar act of Congress to establish an income tax consequence to the analogous rent-free use of property. What little authority there is supports this conclusion (except in the context of a corporation owning a residence and allowing a shareholder to reside therein with dividend treatment). More closely related to the present situation is a trust holding a residence and allowing a beneficiary to reside therein, with no DNI carryout as if the free use of the residence were tantamount to an income distribution."
11. In some cases, the trustee might consider making loans (with or without interest) to a beneficiary rather than making distributions. Loans with interest will usually be preferable from a transfer tax perspective since the interest will in- crease the base of the wealth transfer tax exempt trust.

12. For those beneficiaries who do not have transfer tax problems, distributions can be made from the Megatrust^{SM} to them, with a view to- ward their recycling the property in their own (the beneficiaries') Megatrust^{SM}. The beneficiaries have their own unified credit and GST exemptions. This distribution plan also may be tax effective as an income tax planning device, both for income splitting and basis adjustment purposes.

13. See IRC Sec. 2041(a).

14. These provisions should not result in the trust assets to be includible in the estate of the grantor-spouse. Cf. Rev. Rul. 80-255, 1982 C.B. 272.

15. See, e.g., Blattmachr and Slade, "Building an Effective Life Insurance Trust," 129 Trusts and Estates 29 (May, 1990).

16. Keydel, "Trustee Selection and Removal: Way to Blend Expertise With Family Control," 23 U. Miami Inst. on Est. Plan., Ch. 4 at '11409.1 (1989).

17. IRC Sec. 2001(c)(3). See, Blattmachr and Slade, "The Unified Credit -Some Fundamentals and Other Related Matters," The Chase Review
(April 1991).

18. PLR 9034004.

19. See, Blattmachr and Slade, "Building an Effective Life Insurance Trust," supra, for a discussion of special language to avoid the effect of this ruling.

20. See, Oshins and Brody, "Representation Without Taxation, Megatrust^{SM} and Megainsurancetrust^{SM}," 42 Ann. USC Inst. on Fed. Tax. (1990).

21. Of course, the trustee may choose to distribute to the beneficiary an amount equal to the income taxes the beneficiary would have to pay on the "imputed" income if it will be a burden for the beneficiary to pay it himself or herself.

22. To preclude any argument that the IRS might make that the grantor is entitled to reimbursement for the taxes he or she pays under state law, and is therefore, making a gift to the trust, by not enforcing his or her right to the re- imbursement, language precluding such reimbursement might be placed in the trust instrument.

23. See, for example, Price, "The Uses and Abuses of Irrevocable Life Insurance Trusts," 14 U. Miami Inst. on Est. Plan., Ch. 11 at '111110.4 (1980); Weisz, "Supertrust," Farnsworth Publishing Co. (1978); Keydel, "Irrevocable Insurance Trust: The Current Scene," 10 U. Miami Inst. on Est. Plan., Ch. 10 (1976).

24. Rev. Rul. 85-13,1985-1 C.B. 184.