

## **2020 TAX ALERT**

Client Name  
Client Address  
Client City, State, Zip Code

Since 2018, a taxpayer has been able to transfer to his or her children up to \$10mm of assets free of federal gift or estate tax. That exempt amount has been indexed for inflation each year since inception and is now \$11.58mm. If you are married, the exemption doubles to over \$23mm which translates to only 200,000 families in the US (with a current population of 330mm) being subject to a transfer tax when their wealth passes to the second generation.

This generous personal exemption expires the end of 2025 (returning to \$5mm). However, a change in administration this year could also affect this exemption. Presidential candidate, Joe Biden, has released a plan to return the personal exemption to the range of \$3.5mm to \$5mm, eliminate the “stepped up” cost basis for estate assets at death, increase the personal income and capital gains tax rates to 39.6%, increase the estate tax rate to 55% and, worst of all, trigger a capital gain tax on the unrecognized appreciation of any assets held in a decedent’s estate at the time of death.

In the face of this potential economic devastation, there are certain actions that should be taken by a family to preserve their wealth.

1. Create and fund (via gift) an Asset/Divorce Protection Trust for each child (or other family member) prior to the end of the year. The gifted funds are then removed from your taxable estate, albeit you have also lost the use and control of those assets.

2. For our clients who are married, each spouse should create and fund (via gift) a Spousal Lifetime Access Trust (“SLAT”) with a special power of appointment. This cross gifting removes these assets from a couple’s taxable estate but still permit each spouse direct or indirect access and use of the gifted funds for their lifetime. Our intent is to make these gifts to the trusts now with the ingenious right to cancel the gift strategy should the estate tax laws not be revised by the spring of next year. Please view the attached diagram to better understand the nature of cross gifting to a SLAT.

3. For single clients (who are widowed) with a Marital Trust, the trust can be modified to trigger a gift (and thus use your personal exemption this year) while you still continue to enjoy the trust income and principal for the remainder of your life.

These ideas are further explored in a video that can be viewed on our website at [www.NaplesEstateLaw.com](http://www.NaplesEstateLaw.com). Now is the time to act! There will not be enough time to create and fund such a plan if you wait until after the elections. Thank you.

### NOTE TO OUR READERS

This Client Alert is intended to convey to you the principal considerations of certain estate planning techniques as they apply to common situations. For that reason, we have deliberately simplified technical aspects of the tax law in the interest of clear communication. Under no circumstances should you rely solely on the contents of this Alert for technical advice or reach any decisions with respect to these techniques without further discussion and consultation with Wilson & Johnson and your other tax advisors.

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# SPOUSAL LIFETIME ACCESS TRUSTS

(with a special power of appointment)

**Husband**

**Husband Gifts up to \$11.58 unified credit to Trust fbo Wife & Descendants**

## Irrevocable Trust fbo Husband

**Trustee:** Husband \*

**Beneficiaries:** Husband (initially) receives income and principal distributions based on HMS\*\* and he has 5&5 power\*\*\*

**Power of Appointment:**

- Lifetime POA – held by Husband (during lifetime of Husband and Wife), then held by independent 3<sup>rd</sup> party (CPA, Attorney, Financial Advisor) following Husband's death
- Testamentary POA – none

**At Husband's death:**

- If POA not exercised and Wife is living, the trust principal is held in pot trust fbo descendants
- If POA not exercised and Wife is not living, the trust principal passes to children &/or descendants

## Irrevocable Trust fbo Wife & Descendants

**Trustee:** Wife \*

**Beneficiaries:** Wife and Descendants (initially) receive income and principal distributions are based on HEMS \*\*

**Power of Appointment:**

- Lifetime POA – held by Wife (during lifetime of Husband and Wife), then held by Independent 3<sup>rd</sup> party (CPA, Attorney, Financial Advisor) following Wife's death
- Testamentary POA – held by Wife

**At Wife's death:**

- If POA not exercised and Husband is living, the trust principal is held in pot trust fbo descendants
- If POA not exercised and Husband is not living, the trust principal passes to children &/or descendants

**Wife**

**Wife Gifts up to \$11.58 unified credit to Trust fbo Husband**

\* Preferably have an independent trustee to avoid reciprocal trust doctrine

\*\* Health, education (if applicable), maintenance or support

\*\*\* Power to withdraw up to greater of \$5,000 or 5% of trust principal annually (the 5&5 power is also added to avoid reciprocal trust doctrine)