

November 2011

TO: CLIENTS AND THEIR ADVISORS

RE: INTENTIONALLY DEFECTIVE GRANTOR TRUST (IDGT) - A VALUABLE ESTATE PLANNING TECHNIQUE

An advantage of making gifts is to freeze the value of the gifted assets as of the date of the transfer while future appreciation escapes inclusion in the donor's estate. An IDGT created by the donor "buys" appreciable assets from the donor in exchange for a promissory note ("Note"). The assets owned by the IDGT generate cash flow needed to make the interest payments back to the donor over the life of the Note. The current historically low interest rates make this a very attractive planning technique. The terms of the Note can be designed based upon the nature of the assets being purchased, current interest rates and other relevant factors.

Additional advantages/highlights of the IDGT technique are as follows:

- § Income Tax: The IDGT income is taxed 100% to the donor, which is why the trust is referred to as "defective" for income (but not gift or estate) tax purposes. The payment of the income tax on the trust income by the donor is an additional gift not subject to gift tax because it is the donor's legal obligation to pay the tax.
- § Valuation: The value of the IDGT is not included in the donor's estate—only the "fair market value" of the Note as of the date of death.
- § Transactions: The donor can either borrow from or lend to the IDGT, even to fund Note payments; exchange assets with the IDGT and make additional contributions to the IDGT.

Overall, the flexibility of the IDGT provides many advantages over a grantor retained annuity trust (GRAT). Many of the provisions available for an IDGT would be prohibited or severely limited for a GRAT.

Our office is available to assist you or your clients in exploring these and other sophisticated gift and estate tax planning opportunities, including family limited partnerships, qualified personal residence trusts and charitable scenarios, which will assist in the preservation of wealth for future generations. Our other areas of specialization include tax dispute resolution, real estate, business law representation and retirement planning issues.