THE FAMILY BANK TRUST
Advanced Planning for Couples

INTEGRATED
WEALTH STRATEGIES by the law offices of Steven R. Owens, PC

Steven R. Owens, J.D.
Attorney and Counsellor at Law
6041 South Syracuse Way, Suite 103
Greenwood Village, Colorado 80111

Family Bank Trust - Basics

- ***Several ways to gift to spouse:***
  - Gifts to citizen spouses may be *unlimited* pursuant to the *unlimited marital deduction* (not available for gifts to non-citizen spouses).
    - Can be outright or in trust
    - If in trust, spouse must receive *all of the income*
    - Either way, the entire amount *will be included in spouse's estate*

Family Bank Trust - Basics

- ***Several ways to gift to spouse***
  - ***Outright*** **annual exclusion gifts in the amount of $12,000 (2008 figures)**
    - **Non-citizen spouses are entitled to $128,000 (2008).**
    - **It makes *no sense* to gift *outright to a spouse***

Family Bank Trust - Basics

- ***Several ways to gift to spouse***
  - ***Best of all*: gift to a Family Bank Trust (F.B. Trust)**
    - **Use the donor spouse's *annual gifting exclusion* to gift to an irrevocable trust he/she has created for his/her spouse**
    - ***Not the unlimited marital deduction***
      - **That would cause inclusion in the donee spouse's estate**

Family Bank Trust - Basics

- ***Basic Structure***
  - **Annual Exclusion Gift - Two Rules:**
    - **First, *insure gift of a present interest* by allowing the donee spouse a *temporary withdrawal right***
      - **If the gift is not withdrawn in that time period, the trust assets (including the gift) can only be distributed pursuant to the terms of the trust.**

Family Bank Trust - Basics

- ***Basic Structure:***
  - **Annual Exclusion Gift - Two Rules:**
    - **Second—Must meet *5 & 5 Rule***
      - **Each year's gift must be *no more than greater of $5,000 per year or 5%* of the trust property**
      - **Section 2514(e)**
      - **And less than $12,000 per year**

Family Bank Trust - Retirement

- ***Effective as retirement account***
  - Create a nest egg or rainy-day account
  - ***Disadvantages*** **Compared to a Qualified Plan:**
    - Funded with after-tax dollars
      - No Income Tax Deduction
    - Income taxes must be paid on income generated in the trust

Family Bank Trust - Retirement

- ***Advantages as a retirement account***
  - ***Much more flexible*** **than a qualified plan—no complicated rules**
    - ***No penalty*** **for early withdrawal**
    - No required minimum distributions-no mandatory elections
  - ***Any assets can easily be held*** **in a F.B. Trust, such as real property, FLP interests, corporate stock, etc.**

Family Bank Trust - Retirement

- ***Advantages as a retirement plan***
  - No administrator required
  - *Not subject to estate taxation*
    - Neither at the donor nor at the donee's deaths
  - Qualified retirement plans are subject to both income and estate taxes
  - *Avoids brutal erosion* by both income and estate tax

Family Bank Trust - Taxation

- ***Allocation of income tax***
  - *At the time of the creation* of the F.B. Trust, the trustmaker decides who pays the income taxes
    - Can be a *"non-grantor"* trust
      - The trust files a tax return and *pays its own taxes*
      - Caution--trust rates *can be* higher

Family Bank Trust - Taxation

- ***Allocation of income tax***
  - Can be a ***"grantor trust"***
    - ***The Trustmaker is responsible for paying the income taxes***
    - **The trust files an informational tax return**
    - **Trustmaker reports income on his/her 1040**
    - **IRS finally acquiesced in Revenue Ruling 2004-64 (July 2004)**

Family Bank Trust - Taxation

- ***Allocation of income tax***
  - **The *assets within the trust grow tax-free* because the grantor pays the taxes**
    - **Incredible benefit—earnings grow without being subject to tax**
    - ***An additional gift* to the trust which is not subject to gift tax liability**

Family Bank Trust – Protections

- ***Creditor Protection***
  - The assets within the F.B. Trust are *generally protected* from the claims of creditors
    - Claims against the donor spouse
    - Claims against the donee spouse
    - Claims against the remainder beneficiaries *(maybe),* depending upon the trust provisions

Family Bank Trust - Protections

- ***Divorce Protection***
  - The donor *may want to consider*:
    - The donee spouse's interest in the trust may *terminate upon divorce*
    - The trust assets would flow for the *benefit of the remainder beneficiaries* (children, etc.)
    - The donee spouse's interest may *terminate upon a remarriage after the donor's death*

Family Bank Trust - Dynasty

- ***Use of the GST Exemption ($2,000,000 in 2008)***
  - **GST exemption may be used to**
    - **Keep the assets *creditor protected***
    - **Divorce protected for descendants**
    - ***Free from estate taxation* for future generations**
    - **Can create a *Dynasty Legacy***

Family Bank Trust - Dynasty

- ***Use of the GST Exemption***
  - ***Must comply* with certain requirements:**
    - ***Every year* file a gift tax return**
    - ***Allocate gifts* to donor's GST exemption**
  - ***Disadvantage is* that if the assets are used for donee spouse, some of the GST exemption may be wasted**

Family Bank Trust - Growth

- ***Possible Growth***
  - This strategy is for ***clients with moderate wealth*** & those with ***high net worth***
  - If a gift of the annual exclusion amount is not made to a person in any given year, it is ***forever*** given up
  - Cannot later make the gift
  - ***"Use them or lose them"*** opportunity

Family Bank Trust - Growth

- ***Possible Growth:***
  - Annual exclusion gifts can ***grow remarkably***
  - Particularly if the income tax liability is deflected to the donor
  - ***How much, let's see…***

Family Bank Trust - Growth

Possible Growth:

Six Percent Growth		Ten Percent Growth	
Year 5	$29,877	Year 5	$33,526
Year 10	$69,904	Year 10	$87,656
Year 20	$221,728	Year 20	$ 355,593
Year 30	$532,119	Year 30	$1,115,158
Year 35	$777,824	Year 35	$1,869,845

With absolutely no gift or estate tax consequence!

Assumptions: Donor makes maximum contribution each year under 5 + 5 rule and pays all income taxes; beneficiary makes no withdrawals and lets trust build as much as possible.

Family Bank Trust - Growth

- *Possible Growth*
  - Those numbers are pretty good, but
  - Can be even better with the *Super Charged Family Bank Trust (the Supercharged F.B. Trust)*
  - Recall, the 5 and 5 rule limits our contributions in the early years,

but…

Family Bank Trust - Supercharged

- ***The Supercharged F.B. Trusts:***
  - **If the donor transfers the amount of $240,000 into the trust, the 5% limit thereafter *allows us to put $12,000 per year into the F.B. Trust* from the beginning, rather than only the $5,000 during the early years,**

    and
  - **You can create two such trusts: One by each spouse**

Family Bank Trust - Supercharged

- ***The Supercharged F.B. Trusts***
  - **The donors each utilize a portion of their lifetime gifting exemption (of $1,000,000) for a $230,000 gift**
  - **Thereafter, the donors can each transfer the *maximum annual gifting exemption* into the trust each year (+ $11,500 in the first year)**
  - **What does this do to the numbers?**
  - ***Let's see…***

Family Bank Trust – Supercharged

Two Supercharged F.B. Trusts

Six Percent Growth		Ten Percent Growth	
Year 5	$690,836	Year 5	$820,936
Year 10	$1,055,950	Year 10	$1,469,870
Year 20	$2,198,422	Year 20	$4,198,150
Year 30	$4,244,416	Year 30	$11,274,606
Year 35	$5,811,444	Year 35	$18,305,608

With only $460,00 of the couple's unified credit being used!

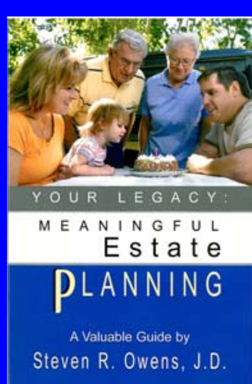
Assumptions: Donors each make one $230,000 supercharge contribution and one $11,500 contribution, and thereafter each one makes an $12,000 contribution each year. The donor pays all income taxes; the beneficiaries make no withdrawals and let trust build as much as possible.

Family Bank Trust - Leverage

- ***Leveraging Even More***
  - **Under the previous numbers, *if the grantors live 30 years and get 10% return on investment*, there will be $11,274,606 in the trust (after paying lots of income taxes)**
  - ***Is there a way to:***
    - **Lock in high amounts of benefit from the very first day?**
    - **Avoid having to pay any income tax?**

Family Bank Trust

- ***Clients love F.B. Trusts***
  - *The donee spouse* **(as trustee of his or her respective trust)** *can retain control* **over the distribution and investments**
  - **Rainy day fund**
  - *Good creditor protection*
  - *No estate tax* **liability**
  - *No gift tax* **liability**



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