ALTMAN
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Estate, Legacy and Business Planning

Balls and Strikes:

Don't Fall Behind in the Count with Regard to your Children's Education

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Savings Tool	Pros	Cons
Uniform Gifts to Minors Accounts (UGMA)/Uniform Transfers to Minors Accounts (UTMA)	• Easy to establish • Inexpensive with regard to maintenance fees • Completed Gift at time of Initial transfer	• Beneficiary has the absolute right to the account upon reaching the age of majority • Beneficiary can spend this money however he or she pleases • For a beneficiary receiving needs-based government benefits, the required outright distribution may cause the loss of these benefits • Once established, beneficiary cannot be changed • Until the beneficiary reaches the age of majority, the custodian has a fiduciary duty to spend the income or principal for the benefit of the minor • If the custodian uses income derived from UGMA/UTMA property to discharge or satisfy, in whole or in part, a parent's or guardian's legal obligation to support or maintain the minor, the income is taxable to the parent or guardian • "kiddie tax" - If the child is under age 18 (under 24 if a dependent, full-time student) all of the child's unearned income above $1,900 (for tax year 2012), including UGMA or UTMA income, is taxed at the parent's income rate
Qualified Tuition Programs (529 Plans)	• Investment in State-sponsored Mutual Funds and amount in 529 Plan is then available for education expenses • Earnings grow tax-free, Distributions tax exempt, if used for "qualified higher education expenses" (QHEEs), which include tuition, fees, books, supplies, equipment, and room and board expenses • Contributions qualify for the annual gift tax and the annual generation-skipping transfer tax exclusions • Not a countable assets when apply for college aid, if parent is not the "owner"	• Contributions are not fully tax deductible (may receive a tax deduction against state income taxes, depending on state of residence) • Money must be used for educational expenses. If used for other purposes, or if there is excess after the beneficiary completes college, then those funds are taxed as ordinary income plus a 10% penalty. • The owner (using the person who set up the 529 Plan) can cancel the 529 Plan and recover the assets • Need to be careful about what happens when "owner" dies. The owner's personal representative now "owns" the 529 Plan, and can change the beneficiary, take the funds, or spend the fund on himself or herself
Coverdell Education Savings Accounts (ESAs)	• Annual Contribution is $2,000 per beneficiary • Donor can contribute to ESA and 529 Plan in same year • ESAs can fund primary and secondary school • Parental control of account until beneficiary reaches age of majority • Change of beneficiary is tax-free, if the new beneficiary is a member of the prior beneficiary's immediate family or a first cousin. • Contributions are a completed gift for gift tax purposes • Funds in an ESA are "owned" by the beneficiary and are includible in the beneficiary's gross estate, not the donor's • Earnings grow tax-free if money used for education expenses	• Only cash contributions • Can only contribute until beneficiary is age 18 • Contributions are not tax deductible • Money must be used by the time the beneficiary reaches the age of 30. If the funds are not used, the earnings will be taxed as ordinary income plus a 10% penalty. • Adjusted Gross Income limits for maximum contributions to these accounts currently is $220,000 for a married couple filing jointly and $110,000 for single taxpayers • Not often used now that there are 529 Plans
Life Insurance	• Flexibility • Option of Tax-deferred loans against the policy's cash value • Withdrawals from a cash value life insurance policy are not subject to income tax until the cumulative withdrawals exceed the cost basis (i.e., the aggregate premium payments on the policy) • Death Benefit received tax-free • Money in a permanent policy is not a countable asset when a child applies for college financial aid	• Cash value in a life policy, if withdrawn, could be subject to income taxes • Does not grow as fast as other education planning techniques
2503(c) Minor's Trust	• Gifts in trust do meet Internal Revenue Code Section 2503(c) qualification as present interest • Trust gives absolute discretion to Trustee • May contribute up to the Annual Exclusion amount (currently $13,000) per beneficiary	• The trust principal and undistributed income must pass to the beneficiary when he or she reaches age 21 • If the beneficiary dies before reaching age 21, any remaining trust principal and undistributed income must be paid to the beneficiary's estate or be subject to a power of appointment. If the assets are distributed to the beneficiary's estate, they will likely pass via intestate succession, often ending up back in the estate of the parent trust-maker where the parent trust-maker will have to disclaim them to avoid estate inclusion) • Donor cannot serve as Trustee, otherwise funds will be includible in the donor's gross estate
Demand (Crummey) Trust	• Allows gifts of future interest to qualify as present interest and be subject to annual exclusion • Assets removed from Donor's estate • Donor may be Trustee if distributions limited to "ascertainable standard" i.e., the health, education, maintenance and support of the beneficiary AND cannot use the assets to satisfy his or her own legal obligation of support	• Is an irrevocable gift • Beneficiary has time period (typically 30 days) to demand distribution of up to annual exclusion • Added complexity because the trust requires separate tax return • Income tax rates for trusts can sometimes be higher than for individuals • Is an irrevocable gift, subject to the flexibility drafted into the trust agreement
Health and Education Exclusion Trust (HEET)	• Property transferred to trust that will not be subject to estate, gift or GST tax-free at any time in the future. • Can provide for health and education expenses for many generations	• Property initially transferred to the HEET is subject to estate or gift taxes, but not GST taxes • At some point, a charity must have a significant interest in the trust, normally will receive part of the income generated by the trust • If no descendants, ultimate Beneficiary is normally a Charity • Cannot be used for any other purpose, such as housing, food, etc.
Direct Payments	• Not subject to gift, estate, or GST tax • Made Directly to educational institution which offers ability to prepay tuition and achieve estate tax reduction	• No income tax deduction • Prepaid tuition arrangements must be nonrefundable

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