Spousal Lifetime Access Trust (SLAT)

A Spousal Lifetime Access Trust may be an effective strategy for married couples whose strategic planning goals include the ability to provide financial support in a flexible manner. When structured properly, a SLAT will provide access to the assets through the beneficiary spouse, as well as protect the assets from creditors and estate taxation.

What is a SLAT?

A SLAT is an irrevocable trust created by one spouse (the "grantor" spouse) for the benefit of the other spouse, (the "beneficiary" spouse). The primary purpose of the trust is to provide both financial support to the beneficiary spouse and the potential for a tax efficient legacy. The SLAT's trustee may distribute income and principal from the trust as defined in the trust document. Additionally, SLAT assets and their appreciation will be sheltered from estate and gift taxation. A SLAT is funded through an irrevocable gift of assets by the grantor spouse. The grantor spouse will likely utilize their federal gift tax exemption to offset any out of pocket gift tax assessed.

SLAT Tax Considerations:

Income Taxes – SLATs can be structured as a grantor trust for federal and state income tax purposes. The grantor spouse will continue to be responsible for any taxes generated by the SLAT's assets. Income taxes include interest, dividends, and capital gains.[1] Because the grantor maintains responsibility for any income taxes due, trust assets may have a greater level of appreciation as taxes are not deducted from SLAT earnings. Moreover, payment of income taxes by the grantor spouse for the benefit of the SLATs beneficiaries is not considered a taxable gift for gift tax purposes.[2]

Gift & Estate Taxes – SLATs can be managed effectively to leverage a grantor spouse's federal gift and estate tax exemption with the intention of minimizing future transfer taxation. The federal gift and estate tax exemption is currently $11,580,000 per individual (2020). SLAT funding assets, such as closely held stock of a family business, may be subject to valuation discounts which will further leverage a grantor spouse's exemption. Gifted assets should be those individually owned by the grantor spouse only.

Tax Deferral Considerations – SLAT ownership of a life insurance policy may provide significant benefits including tax-deferral of cash value accumulation, income tax exempt distributions of cash value through policy withdrawals and loans (if the policy is not a Modified Endowment Contract), and trust possession of a policy's death benefit which, at the insured's passing, would be received both income tax exempt and sheltered from federal estate taxes.[3]

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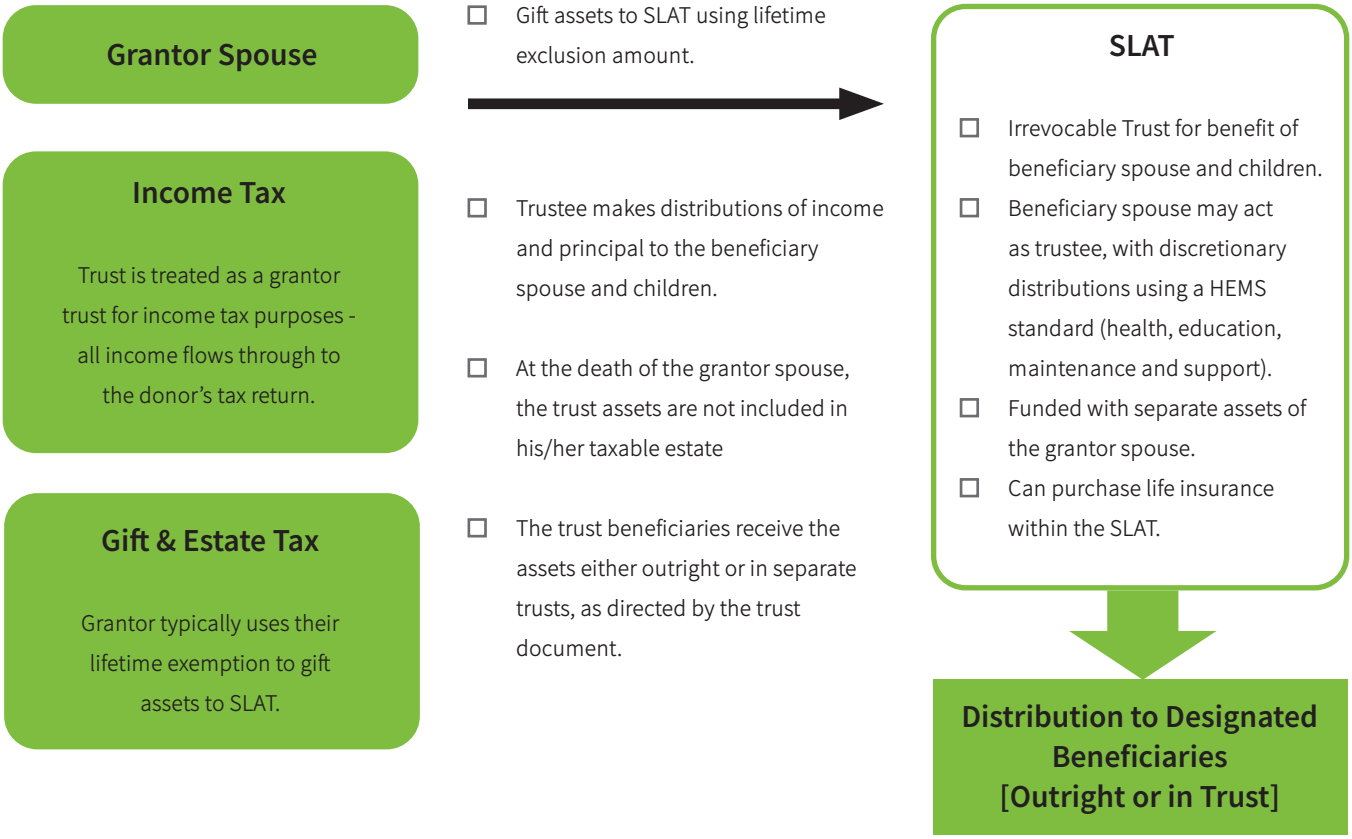
[1] *See Internal Revenue Code Sections 676 & 677.*
[2] *See IRS Revenue Ruling 2004-64*
[3] *Please refer to Internal Revenue Code Sections 101(a) and 2036, 2038, and 2042.*

Spousal Lifetime Access Trust



SLAT Potential Advantages:

- **Gift and estate sheltered assets (with the prospect of access and appreciation)** – The leverage of the grantor spouse's federal gift and estate tax exemption provides the opportunity for the beneficiary spouse to maintain access to trust assets while engaging in planning to provide the future transfer of assets and potential estate tax mitigation.
- **Asset protection** – A SLAT may provide asset protection benefits due to the fact the strategy is irrevocable. Potential protection from creditor claims is dependent upon proper drafting and execution of the trust in accordance with state law and there is no intention of a fraudulent conveyance of assets.
- **Flexibility (from retirement access to legacy planning)** – The beneficiary spouse is not required to take distributions from the SLAT if they are neither needed nor desired. In turn, the modeling of a SLAT in conjunction with the grantor and beneficiary spouse's full wealth strategic plan will provide a framework for determining "best practices" regarding the balance of income needs and legacy planning.
- **Situs/Dynastic Planning Capabilities** – It may be advantageous to consider a trust situs for a SLAT in a state jurisdiction based upon current income tax law and the statutory length of time a trust may be maintained for dynasty planning purposes. A discussion with a legal and/or tax advisor is highly recommended in determining both situs and trust duration.

SLAT Potential Disadvantages:

- **Irrevocable transfer** – SLAT Assets cannot be returned to the grantor spouse as the trust is funded with an irrevocable gift. However, the beneficiary spouse may voluntarily share income and principal with the grantor spouse as part of the family's overall income distribution plan.

- **Reciprocal Trust Doctrine** – While both spouses may create SLATs for the benefit of one another, such strategic planning must not violate the IRS's Reciprocal Trust Doctrine[5] (RTD). SLATs may be drafted at different times, funded with different assets, and contain different terms to avoid the RTD.[4] Consultation with an advanced estate planning attorney is highly recommended to ensure proper design to avoid an RTD violation.
- **Divorce** – In the case of divorce, the beneficiary spouse would be in possession of SLAT assets. However, a SLAT may be drafted to shift assets based upon spousal definition, i.e. "current spouse" or shift to children as contingent beneficiaries.
- **Loss of benefit** – If the beneficiary spouse predeceases the grantor spouse, any indirect access through "voluntary sharing" of income and/or principal would end. Life insurance may be utilized as a hedge to minimize this risk.

Speak to a Regions Wealth Advisor

A SLAT is one of numerous planning considerations that may enhance your strategic plan including providing efficiency to both your retirement income goals and your legacy aspirations. A Regions Wealth Advisor can work with you to determine the long-term impact these strategies may have on your strategic financial planning goals.

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[4] See IRS Revenue Ruling 95-58.
[5] The RTD is a judicial doctrine that can allow trusts to be "uncrossed" when individuals create a trust arrangement that leaves the settlers in approximately the same economic position as they would have been in had they created trusts, naming themselves as life beneficiaries.

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