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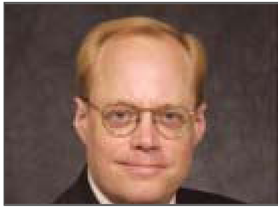

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THE TAX LAWYER

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With Trusts, 'Crummey' Is Good

We don't like to contemplate our own deaths. But slightly less objectionable are current strategies to reduce exposure to gift tax, get assets in loved ones' hands, and protect against estate taxes. If your estate is less than $5 million (or $10 million with your spouse) you may ***think*** you no longer need to worry about any of this. But we don't know if that will remain so.

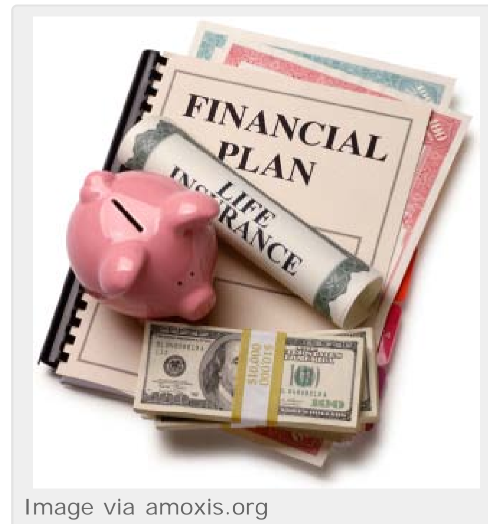

Image via amoxis.org

The estate tax could come back with a vengeance in 2013. A "Crummey" trust takes its name from a famous tax case involving Reverend Crummey, who was probably teased mercilessly growing up. See *Crummey v. Commissioner*. To follow in his footsteps, set up a trust and have it buy a life insurance policy on your life. Someday when you die, the trust will receive the insurance proceeds and pay them out to the beneficiaries listed in your trust.

To pay the annual premiums on the policy, you can put in up to $13,000 per person for your family members. Since you are essentially buying a policy that benefits your family, those premium payments would normally be considered gifts to your beneficiaries. However, done properly, you pay no gift tax on those payments, and when you die the trust will receive the policy proceeds free of estate tax.

The big catch is administrative. Technically, the trustee of the trust should send out "Crummey letters" each year informing beneficiaries they can withdraw the gifted amount during a specified window, perhaps 30 days. Usually, the beneficiary leaves the money in the trust. But the IRS considers it a tax-free gift only if the person has the right to take it in the short term. An annual Crummey letter proves it even if none of the kids follows up on it—as you generally hope they won't.

The Crummey power idea—giving the beneficiary the right to withdraw money which you hope they will never exercise—can be added to various other trusts too. However, the place most people fail is in bothering to send out the annual letters, and documenting that they did. One recent Tax Court case, *Estate of Turner v. Commissioner*, didn't spoil the deal over the failure to send letters, but you can't count on the IRS agreeing with that result. Get reliable professional help with such trusts, and make sure the duty to send out the annual letters is very clear so it doesn't fall between the cracks.

For more, see:

Crummey Trusts Still Smart, Say Advisers

Beware New Estate Tax Election

Estate Legal Settlements: Rose-Colored Hindsight?

Will Ohio Estate Tax Repeal Trigger More?

Estate Planning Law Changes You Need To Know

It Pays To Plan For Future Estate Tax Changes

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