

# TENNESSEE JURISDICTION A POPULAR OPTION FOR SLAT PLANNING

November 24, 2020



With 2021 on the horizon, Spousal Lifetime Access Trusts (SLATs) have become a popular estate planning tool. The SLAT provides structure, flexibility and stability around family wealth with significant potential tax savings.

## What is a SLAT?

A Spousal Lifetime Access Trust (“SLAT”) is an irrevocable trust created by one spouse for the benefit of the other. Other family members, including children and/or grandchildren can benefit as well. The grantor, or “donor spouse,” uses their lifetime gift tax exemption to make a gift to the SLAT, and the “beneficiary spouse” is named as a current beneficiary.

While the donor spouse gives up his or her right to the property transferred into the trust, the beneficiary spouse maintains access to that same property. While these trusts are irrevocable, there is significant flexibility in structuring depending on the clients’ needs.

For example, the trust can be drafted to allow only the beneficiary spouse to access funds during his or her lifetime, while children and grandchildren benefit after the beneficiary spouse’s death. Or, the SLAT could be designed to permit distributions to the beneficiary spouse and children at the same time.

## Tax Considerations in the Current Regime

Many commentators expect the estate and gift tax exemption to be reduced by the new administration. With the uncertainty of the 2021 tax regime, many estate planners are making the case to clients that they should use all or a portion of their estate and gift tax exemption prior to year-end. In 2020, the estate and gift exemption is \$11,580,000 per individual; however, there is some speculation that a new administration could seek to reduce this amount by more than half in 2021.

At the current level, the exemption is generous and provides planning flexibility. It can be used during life or at death and does not need to be used all at once. When structured correctly, these assets and their future value fall outside of the estate tax regime. The exemption can be used with liquid or illiquid assets.

To increase the after-tax effectiveness of an asset transfer, many families use assets with significant appreciation potential. In the case of a SLAT, assets that are not paid out to the beneficiary spouse remain in the trust and can continue to grow free of estate and gift taxes while being available for the next generation. Thus, especially in an uncertain environment, a SLAT can be both an effective wealth structuring tool and a good estate tax planning vehicle.

SLATs are taxed as grantor trusts for income tax purposes. This means that the “donor spouse” pays the income taxes of the trust. This important feature can enhance the effectiveness of the trust by allowing the assets to grow without the drag of income taxes. As a result, more of the assets flow to the next generation.

## Factors to Consider

A SLAT is one of many tools that practitioners use to help structure family wealth. However, there are significant considerations in using a SLAT in one’s estate plan.

- **Irrevocable Trust.** The transfer must be a completed gift which means that the grantor cannot retain a beneficial interest in the trust. While the grantor loses ownership of the asset, the SLAT will not be included in the grantor’s estate. The primary beneficiary is the beneficiary spouse, although children and other descendants may be named as beneficiaries.
- **Choice of trustee.** The donor spouse should NOT serve as trustee. A beneficiary spouse may serve as a trustee, but only so long as the power to make distributions to him or herself is restricted by an ascertainable standard defined in the trust. Some families have a corporate trustee serve in this role. It is common for the spouses or beneficiaries have the power to change or remove trustees.

- **Many types of assets can be used in a SLAT.** For those relying on SLAT assets for current income needs, there must be a thoughtful allocation of assets within the portfolio. It is important to make sure that the need for income from the assets is balanced with growth potential. This ensures the long-term effectiveness of the SLAT's estate tax features.
- **Asymmetrical Language in Dual Trusts.** For those families where each spouse may be using SLATs for the benefit of the other as part of overall family wealth planning, there needs to be a tangible difference in terms between the trusts. If not dissimilar enough, the two trusts could be taken together by the IRS (The "Reciprocal Trust Doctrine") and the positive estate planning tax impacts reduced. Commonly used differences include different beneficiaries, trustees, assets and jurisdictions. Tennessee is an ideal choice for one of the trusts, due to its favorable tax laws and other progressive trust features.
- **The Impact of Joint Property.** As previously discussed, a SLAT can be funded with a variety of assets. However, it is important for the donor spouse NOT to fund the SLAT with assets jointly owned with the beneficiary spouse. This would reduce the effectiveness of the transfer planning by creating the appearance that the beneficiary spouse is making the gift to the trust.
- **A SLAT is best used in stable marital situations.** A SLAT works when the estate planning and marital income needs are aligned and coordinated. Divorce would effectively cut off the donor spouse's indirect access to the SLAT's assets. Improperly drafted, the trust could continue to support an estranged spouse.

As 2021 approaches, the popularity of SLATs continues to grow as wealth preservation and transfer vehicles. They are an excellent tool for locking in the current generous estate and gift exemptions for the benefit and enjoyment of future generations.

[For more on the Advantages of the Tennessee Jurisdiction, click here.](#)

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