UTMA and Other Ways of Transferring Assets to Minors

UTMA

UGMA (Uniform Gifts to Minors Act) was the old act in Utah and only allowed gifts of cash or securities to minors. UTMA (Uniform Transfers to Minors Act) is the new act (enacted in Utah in 1990–§75-5a-110 *et.seq.*) and allows pretty much anything–cash, stocks, partnership interests, real estate–to be transferred (by gift, bequest, power of appointment, beneficiary designation) to minors.

Under UTMA, a trust is not created. Rather, documents and accounts are renamed. This is done by naming the custodian followed in substance by the words: "as custodian for . . . (name of minor) under the Utah UTMA."

Under UTMA, a custodian can sell and distribute assets or make withdrawals from accounts to or for the benefit of the child while the minor is under age 21, so long as distributions are not used to satisfy the obligations of a parent to support the minor. While the child is under age 21, the assets are indefeasibly vested in the minor and can only be used for the benefit of the minor.

When the child reaches age 21, said child has sole, unfettered rights to the custodial assets.

Parents who have tried to reclaim or retitle funds have been convicted of first degree larceny.

Two reasons not to name the grantor as the custodian: (1) If the grantor is also the custodian and dies before the child reaches age 21, the fair market value of the assets is includable in the grantor's gross estate. (2) Where a parent is the grantor and custodian, the UTMA funds cannot be used for any expenses that the parent is already obligated to pay for–courts in all states have ruled that this often includes private school and college tuition. If someone other than the grantor/(parent) is named the custodian, then these two issues are not a problem.

Advantages

UTMA gets assets (and future appreciation) out of a grantor's estate because the transfer is considered a gift of a present interest under §2503 of the Internal Revenue Code. UTMA accounts are easy to establish and administer. Also, the child is responsible for any income tax (a child's minimum standard deduction is $600), subject to Kiddie Tax Rules (see below). Further, there is no trust and thus no trust income tax forms (1041) to file.

Disadvantages

Regardless of the amount or the child's maturity level, the child gets the money outright at age 21. If the child's income (including income from UTMA funds) is over $1,400 and the child under 14, kiddie tax can defeat the income tax advantages (the income is taxed at the parent's/grantor's income tax rate). Also, UTMA accounts may make a child ineligible for educational financial aid (the UTMA funds are the child's asset). Further, again, case law in all states shows that parents who are acting as custodians and appear to be able to afford to send their children to college cannot use UTMA funds for education (college is part of the parent's support obligation).

An Interesting Idea

In "Curtailing a Child's Access to Custodial Accounts to Avoid a 21-Year-Old Millionaire" it has been suggested that the parents form an LP or LLC prior to the child's 21st birthday and invest the custodial accounts in the LLC. The parents name themselves managing members and disallow liquidation or withdrawal rights. Control is retained while passing title. A little gutsy end-run around both state UTMA statutes and gift tax regulations under the IRC. I would feel in a strong position representing an adult child in this kind of situation.

Section 2503(c) Trusts

These are similar to a UTMA account; money can only be used for the child and the child still gets the funds at 21. Two major differences: (1) a trust must be created and 1041s filed; (2) if the minor dies before reaching age 21, the assets must be payable to the minor's estate or as the minor appoints under a general power of appointment," not to the grantor's estate.

Section 2503(b) Trusts

Easier to administer than Crummey Trusts. Income must be distributed annually. Principal funds do not need to be distributed when the child reaches 21; however, funds not distributed to the child are deemed part of the grantor's estate (in computing estate taxes) upon the death of the child or the death of the grantor.

Crummey Trusts

Crummey Trusts are an option for larger amounts. Assets are transferred to an irrevocable trust. Each time such a transfer takes place, the minor (or court appointed guardian) has 60 days to withdraw funds, but once the 60 days pass, the money stays in the trust and is distributed pursuant to the trust terms until the end of the trust term, which can be decades (or longer) beyond the time the minor reaches age 21.

Advantages

Crummey Trusts qualify as a gift of present interest. Unlike UTMA transfers, they can continue past age 21. Also, one trust can be used to benefit several children or grandchildren. Additionally, these trusts have wide flexibility in allowing various distribution options.

Disadvantages

(1) Filing Form 1041. (2) Ensuring that notices regarding rights of withdrawal are sent and waivers received (options available). (3) The income is taxed on a pro-rata basis between the child and the trust, depending on various issues (e.g., (1) minor only has an ownership interest during those periods when withdrawals are possible and (2) distributions of income to minor can change things up). These issues are easily handled by a good CPA, but they are complex enough for the uninitiated that a CPA is required.