

## THE EVOLUTION OF PLANNING NEEDS - OVERVIEW

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The planning opportunities this year are enhanced by the permanent high gift, estate, and generation-skipping transfer tax exemptions, all being \$5,250,000 for transfers occurring in 2013. At this time low but increasing asset value and ridiculously low AFR rates (the lowest interest rates that can be used with certainty that the IRS will not challenge the adequacy of the interest rate for estate planning purposes) combine with the \$5,340,000 in 2014 to make this the **golden era** of wealth transfer planning. Certainly the traditional techniques are in play. Intentionally income tax defective trusts (with or without sales of discounted assets) and Grantor Retained Annuity Trusts (GRATs) remain excellent planning arrangements today. Qualified Personal Residence Trusts (QPRTs) are less enticing because interest rates are so low that the present value discount for gifts of future rights are the smallest ever. QPRTs can make sense if the donor believes that the value of the residence will substantially increase over the selected term. In the wind one can hear distant drumbeats. There is perhaps (or perhaps not) a growing consensus to curb or eliminate discounts for gifts of interests in family holding entities and to prohibit short term or zeroed out GRATs. The author's sense is that existing structures to the extent then funded will be grandfathered if in place by an effective date that might precede the enactment of legislative changes.

In addition, the new Obamacare 3.8% tax on Net Investment Income along with the 3.6% higher marginal rate on highest income bracket that is effective this year over the next lower bracket makes **income tax avoidance or deferral** commensurately more valuable. State tax issues also add to complicate matters, but those issues are beyond the scope of this discussion.

Finally, there is the news from the front. There is an ongoing war in the courts pitching creditors against debtors who have implemented asset protection plans. Recent cited cases have been mostly won by the debtors. But then again, the best creditor successes will never be heard. What follows are discussions about the following topics:

PORTABILITY— INHERITING THE SPOUSE'S ESTATE TAX EXEMPTION.  
SELECTED STATE TRUST LAW REGARDING CREDITOR RIGHTS  
ASSET PROTECTION TRUST LAW AND LITIGATION  
SPOUSAL LIFETIME ACCESS TRUSTS  
NON RECIPROCAL TRUSTS  
TRUST PROTECTORS  
HOW TO STEP UP BASIS IN IRREVOCABLE TRUST ASSETS AND SAVE  
GST TAX FROM NONEXEMPT INDIRECT SKIP TRUSTS