

Third-Party Trusts Integrate Estate and Asset-Protection Planning

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A third-party trust (TPT) enables a client to maintain and protect businesses and investments, while reducing potential estate tax liability and exposure to creditors. This article explains how TPTs work and explores strategies for accomplishing these goals.

For several years now, taxpayers have used a combination of trusts, limited liability companies (LLCs), limited liability partnerships (LLPs) and limited liability limited partnerships (LLLPs) as vehicles for owning property. They have proven to be useful as a way to achieve certain gift, estate and asset-protection planning goals. One tool often overlooked in this regard, however, is the irrevocable third-party trust (TPT), which combines the benefits of owning assets and possibly conducting a business, without the drawbacks of estate taxation and accessibility by creditors. This article explains how TPTs are settled, taxed and integrated with other estate planning and asset-protection strategies.

Overview

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A TPT allows a client to place property into a structure via a tax-free sale, while continuing to retain control over the property. The client may continue to use the property and receive distributions of the income or principal therefrom. A trustee has total discretion, without limits, to make these distributions. Also, in most cases, the client personally retains the ability to direct the TPT to make transfers to any other person. The TPT can accom-

plish all this while protecting the property from potential future lawsuits. Further, it is typically designed to hold the property outside of the client's taxable estate.

Although the client will ultimately transfer property to the trust via an installment or other sale, a third party is the TPT's settlor,¹ and the only transferor who can *gift* assets to it; hence, the name "third-party trust." This is critical, because if the primary beneficiary (i.e., the client) were the settlor, the trust would be a "self-settled" trust,² and would not protect assets from the client's creditors in the vast majority of states, regardless of any spendthrift provisions. Thus, when a client *sells* assets to a trust previously settled by a third party, the sale is treated as an arm's-length transaction between the client and the TPT.

The TPT can be designed as a domestic trust or as a foreign trust with stronger asset-protection features, yet be treated as a domestic trust for Federal income tax reporting purposes.

Settling a TPT

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A TPT is typically settled by a relative for the client's benefit. It is an excellent way for a parent to advance an inheritance to a child. The child reaps the benefits of the

¹ The term "settlor" means the person who creates (i.e., settles) and funds the trust via gifts.

² A "self-settled" trust, as used herein, is a trust cre-

ated by its primary beneficiary and funded by his or her gifts (i.e., not transfers for full consideration).

TPT's assets, and the assets are protected from the child's creditors (e.g., in a child's future divorce or other creditor situation). Because the child is a "natural object of his or her parents' bounty," it is unlikely that the TPT would be classified as a sham or nominee arrangement.

The settlor should fund the trust with sufficient assets to avoid any appearance that he or she is making such initial contribution as an accommodation to the client or as the client's agent.³ The settlor should have an independent motive for settling the TPT, such as a parent wanting to advance an inheritance to a child to see how he or she manages the assets. If the child makes prudent decisions as a TPT trustee, then the parent would be more comfortable leaving a larger inheritance to that child at death.

The amount with which the third party funds the TPT should be sufficient to allow the trust to meet its initial payment obligation on any anticipated installment sales the client intends to make to the TPT. There is no safe harbor. However, 10% of the value of the assets the client intends to sell to the TPT may suffice as "seed money."

Managing TPT Assets

A TPT typically has at least two trustees. One is an independent trustee who possesses the power to make distributions and provide benefits to the

client. This avoids a situation in which a client's creditor can access the trust assets by forcing the trustee to make distributions. Also, it avoids providing the client with tax-sensitive powers that could cause the trust assets to be taxable in his or her estate.

As the TPT's primary beneficiary, the client may receive distributions at the complete discretion of the independent trustee. This trustee may also allow the client to use TPT assets (such as living in a TPT-owned home rent-free).

Except for the independent trustee's powers, the client may possess all other powers over the trust assets in his or her capacity as the family trustee, including power over their day-to-day management and reinvestment. As family trustee, the client also has the power to replace the independent trustee if the latter is not fulfilling his or her fiduciary obligations and duties under the trust instrument⁴ (if the TPT is a foreign trust, the family trustee's power can also include the ability to remove or replace the foreign trustee).

The client may also have powers under the trust instrument to veto certain decisions that could otherwise be made by the independent trustee (and foreign trustee, if any).⁵ This results in even greater control over TPT assets without causing them to be included in the client's estate or available to creditors. Some of these veto powers

the trust value increases such that the \$5,000 or 5% amount exceeds the amount contributed to the trust that year, the hanging power amounts from prior years will lapse (per the beneficiary who holds a withdrawal power) to the extent of the greater of \$5,000 or 5%; see *D. Clifford Crumney*, 397 F2d 82 (9th Cir. 1968).

A *hanging Crumney* power is typically used in a TPT because, to be treated as the grantor of a grantor trust under Sec. 678(a), the client must hold such a general power of appointment or have previously held such a power and subsequently released it. Having the TPT qualify as a grantor trust to the client allows the latter to sell appreciated assets to the trust without recognizing gain; see Rev. Rul. 85-13, 1985-1 CB 184.

⁴ See Rev. Rul. 95-58, 1995-2 CB 191 (trust assets were not includible in an estate, even though the decedent could replace the trustee).

⁵ This veto power is not a Sec. 2036 or 2038 power, because the client sold the assets to the trust for full consideration.

EXECUTIVE SUMMARY

■ A TPT is settled by a third party for a client's benefit (e.g., a parent who wants to make an advance on a child's inheritance).

■ The TPT typically has both an independent trustee, who controls benefits and distributions, and a family trustee, who controls day-to-day management and investments.

■ A client can sell assets to a TPT in return for an installment note without taxable gain and, using a variety of strategies, shield the sold assets from creditors and estate tax.

³ If the initial contribution exceeds \$5,000, and the TPT uses a *hanging Crumney* power provision to qualify the contribution as a present-interest gift (a discussion of which is beyond this article's scope), the client may continue to hold a general power of appointment over the *hanging* power at a time when a creditor might attempt to force the client to exercise the latter for the creditor's benefit.

For purpose of this article, a *hanging Crumney* power generally means a beneficiary's power to withdraw amounts contributed to the trust, within a certain time period described in the instrument. Typically, the beneficiary does not exercise this withdrawal right and it lapses. To the extent the lapse does not exceed the greater of 5% of the trust corpus or \$5,000, it will not be deemed a gift back to the trust by the beneficiary; to the extent it exceeds the greater of 5% or \$5,000 (the excess), it is deemed such a gift. To avoid the deemed gift, the trust can provide that the beneficiary will continue to have the right (a *hanging power*) to withdraw the excess; however, the power cannot hang forever. If

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include the power to veto the independent trustee's exercise of (1) trust amendment powers,⁶ (2) a power to remove the family trustee⁷ and (3) a power to delegate certain powers to third parties.

The client, as family trustee, typically also has the power to direct which distributions are to be made to other TPT beneficiaries.⁸ Exercising this power would not be treated as a gift by the client, because he or she does not have sufficient rights or power over the TPT assets. The client can replace an independent trustee who violates his or her duty to act in the TPT beneficiaries' best interests.

Estate Planning

A TPT can also be used as an estate planning vehicle. As long as it does not grant a client a general power of appointment or any other power⁹ over the TPT assets that could subject them to estate taxes at the client's death, they will not be included in the client's estate. Because the client does not contribute assets to the TPT by gift, Sec. 2036 will not apply. The client's only "contributions" are via a sale for full consideration; Sec. 2036 does not apply to transfers made for full consideration.

The fact that the TPT's assets are excluded from the client's estate creates an opportunity to decrease the estate. The client will sell the assets to the trust in return for consideration of equal value; those assets, *and their appreciation*, will be excluded from the client's

estate. If the assets are sold via an installment sale, the value of the installment note held by the client will not appreciate in value. This is important for three reasons: the appreciation (1) occurs outside of the client's taxable estate; (2) is beyond the reach of the client's creditors¹⁰; and (3) may be the source for servicing the interest and/or principal payments on the installment obligation.

Sale of Assets to a TPT

Once a TPT is settled and funded by a third party, a client transfers assets to it in a manner that does not cause it to become a self-settled trust, by selling (as opposed to gifting) them to the trust in exchange for an installment obligation of equal value. The note is typically secured by a pledge of all the assets sold to the TPT, thereby encumbering them. The encumbered assets can include investment assets (e.g., securities, partnership interests or LLC interests), as well as interests in active businesses. However, holding an interest in an active business potentially increases the trustee's liability. As a result, the trustee should consider whether an active business would be better off held in corporate or LLC form, to better protect the TPT from liabilities that could arise due to its direct ownership of business assets. For example, the sale of LLC or partnership interests to a TPT removes "value" from the reach of creditors and from estate taxation, especially in light of the discounts available

for these interests. Such valuation discounts are explained further below. For purposes of this article, however, only investment assets (e.g., LLC interests) are considered sold to the TPT.¹¹

Crafting the Note

Although the income stream (i.e., payments on the installment note) to the client would be available to creditors, they are usually not as interested in receiving small amounts over a long period and, thus, are much more likely to entertain favorable settlement offers. Even if a creditor were to seize the installment note, it is still entitled only to small, intermittent payments and may be motivated to settle for a percentage of the claim.

Even if a creditor could compel payoff of the entire note, the note's face amount reflects only the discounted value of the LLC or partnership interests sold to the TPT. Thus, from the start, the value of the assets protected by the TPT is greater than the value of the note subject to creditor risk. Further, the installment note may require only interest payments for the initial term.

A note might contain terms unfavorable to an intervening creditor. For example, a TPT may be allowed to forgo interest payments and add the forgone interest to the note's principal balance. As a result, the asset in the client's hands (the note) becomes unattractive to creditors.¹² The "unfavorable terms," however, must be negotiated at arm's length between the client and the

⁶ An independent trustee may be granted the power to amend the TPT to a limited degree to allow the trust to continue to carry out the settlor's estate planning goals, as affected by tax law changes.

⁷ For instance, a TPT might grant a foreign independent trustee the power to remove all domestic trustees (including the family trustee) if he or she believes such action is needed to uphold the fiduciary obligation to protect TPT assets. The client/family trustee's veto of the foreign trustee's decision to remove the family trustee would most likely, under the TPT's terms, be nullified if the family trustee's exercise of his or her veto power resulted from duress or compulsion.

⁸ Care in drafting the TPT agreement should be exercised, to avoid allowing distributions to beneficiaries who could be deemed agents of the family trustee.

⁹ However, the TPT document may provide the client the power to appoint trust assets to anyone other than himself or herself, his or her creditors, estate or the creditors of his or her estate, allowing the client to further control such assets without causing them to be included in his or her estate.

¹⁰ Even though the appreciating assets are beyond the reach of the client's creditors, the installment obligation is not (unless steps are taken to protect it).

¹¹ If an active business is sold, the trustee's authority to hold and operate it should be clearly stated in the TPT agreement, as well as the trustee's other powers. For example, the trustee's authority to serve on the business's board should be expressed. This, of course, raises other issues, such as how to resolve conflicts-of-interest when the trustee's actions benefit the business, but not the beneficiaries. For example, the trustee's actions may allow the business to grow, but may also interfere with the TPT's (1) beneficiaries' ability to receive liquid distributions or (2) ability to meet its payment obligations under an installment note. Also, if the TPT's business activities are a potential source of liability, the client should become a primary beneficiary of two separate TPTs, one holding only the business assets and the other holding the passive assets, so that the liability stemming from the business TPT will not taint the passive TPT.

¹² Of course, if it appears that the negotiated provisions could serve as an impediment to an existing or anticipated creditor, then a full fraudulent-transfer analysis should be conducted first, to ensure that the client is not making the transfer with an intent to hinder, delay or defraud anticipated or existing creditors.

independent trustee; each should have separate counsel. For instance, if the independent trustee wants to forgo interest for certain reasons (e.g., he or she believes that the TPT will encounter cashflow problems, or that the interest payments may be better invested elsewhere for a greater return), the client's attorney may seek to include provisions in the note that increase the interest rate each time the trustee elects to forgo an interest payment. In any event, true negotiations should take place, with written records of the correspondence between the respective counsels, evidencing the tradeoffs and compromises to each party to determine the final terms of the installment sale transaction.

If a client wishes to avoid a situation in which the TPT has to immediately liquidate some assets to meet its payment obligations under the note, he or she should carefully consider which assets to sell to the TPT. For example, if the TPT-issued installment obligation requires payments of 5% interest only for the first 10 years and a balloon payment of all principal at the end of the 10-year term, the client should consider selling assets to the TPT capable of producing income in excess of the 5% required to service the interest payments. Provided the TPT assets have appreciated substantially in the 10 years, it can then pay off the note and keep a significant balance. The note's interest rate should at least equal fair market rates for such notes or, if greater, the applicable Federal rate. This ensures that the note's face amount equals its fair market value in present value terms, hence showing that the client received full value for the assets sold to the TPT.¹³ The installment note should be properly executed and evidenced in writing.

Discounting the Sales Price

If a client has difficulty in selecting assets that will produce sufficient income and appreciation to allow the TPT to meet its payment obligations, he or she can discount the sales price. For example, the client could first place the chosen assets into an LLP, LLLP or LLC (collectively referred to as "LLC") and then sell LLC interests to the TPT. Supported by a qualified appraisal, the LLC interests sold to the TPT should qualify for significant discounts. This works well, because the underlying assets in the LLC produce the same level of income regardless of the discount attributed to the LLC interests. As a result, the LLC's income (potentially translated into distributions to its TPT owner) and the value of its underlying assets are more likely to be sufficient to cover the TPT's payment obligations on its "discounted" installment obligation.

If the client's goals include maintaining an income stream from the assets, it may seem as though the "interest-only" installment note that reflects the discounted value of the LLC interest would conflict. However, the interest payments are only the minimum that can be paid to the client; the note can be drafted to allow for principal prepayments, without penalty. Arm's-length provisions can be negotiated so that the prepayment option benefits both parties. For example, the TPT could receive a reduction in the interest rate if a certain percent of the principal were prepaid.

Example: A TPT's installment obligation requires 6% interest payments, but its LLC assets only produce a 5% return. Thus, client X forms a single-member LLC (SMLLC) with assets valued at \$1 million, producing 5% income (\$50,000) per year. The TPT buys a 99% interest in the SMLLC and

receives annual distributions of 99% of its income (\$49,500). The 99% SMLLC interest, representing \$990,000 of the underlying SMLLC assets, is purchased by the TPT for \$594,000 (i.e., at a 40% discount to reflect the TPT's lack of control over the SMLLC assets and lack of ability to market or sell its interests). The installment obligation issued by the TPT for the \$594,000 purchase price requires 6% annual interest (\$35,640), which is easily met by the \$49,500 in annual distributions the TPT receives from the SMLLC. A balloon payment of principal would become due at the end of the installment note's term; at that time, the SMLLC could be liquidated and provide the TPT with ample funds (\$990,000 + appreciation) to pay off the \$594,000 note, leaving sufficient funds in the TPT.

In the example, X has not only protected the appreciation in the TPT assets from creditors, but has also reduced his taxable estate from \$1 million to \$594,000 (assuming X transferred the remaining 1% SMLLC interest to another estate planning structure¹⁴).

Grantor Trust Issues

A sale of an LLC interest to a TPT results in no taxable gain to the client, because the TPT agreement is drafted as a "grantor" trust. For income tax purposes, assets owned by a grantor trust are deemed owned by the individual treated as the "grantor" under the rules described below (here, the client). Thus, the sale is deemed from the client to the client for income tax purposes and, hence, is not a taxable event.¹⁵ However, for a client to be treated as the grantor, the settlor cannot possess any grantor trust powers; under the grantor trust rules, a settlor's grantor trust powers override the client's grantor trust powers.

¹³ See Sec. 7872 and Regs. Secs. 20.2031-4 and 25.2512-4; see also *Edwin H. Frazee*, 98 TC 554 (1992).

¹⁴ For example, if X contributed the 1% SMLLC interest, along with the management powers over the SMLLC, to an intentionally defective irrevocable trust, this interest would also be excluded from X's estate. This may be advisable if X is concerned about a few recent cases that treated partnerships and LLCs formed by a taxpayer as completely includible in the estate if the taxpayer died while retaining general part-

ner or manager powers over the entity (although this new trend of cases has shown some signs of reversal; see, e.g., *David A. Kimbell*, 371 F3d 257 (5th Cir. 2004)). For a discussion, see Eyberg and Raasch, "FLP Planning after *Strangi*, *Kimbell* and *Thompson*," 34 *The Tax Adviser* 750 (December 2004).

¹⁵ See Rev. Rul. 85-13, note 3 supra, which states that a sale by a grantor to his or her grantor trust will not be treated as a sale for income tax purposes.

TPTs can be used as a device through which to conduct business and make investments.

The grantor trust powers are described in Secs. 671–677. In a TPT, the client has a withdrawal power over the settlor’s contributions, but only for a fixed period after the contribution. The withdrawal power eventually lapses, with the client/beneficiary then having some (or all) of the following grantor trust powers: the right to (1) substitute trust property for equal value (Sec. 675(4)(C)); (2) dispose of trust income or principal (Sec. 674(a)); and (3) potentially receive income at the discretion of a nonadverse party, such as an independent trustee (Sec. 677(a)(1)). These post-lapse grantor trust powers must be placed in the trust so that, under Sec. 678(a)(2), the TPT will be treated as a grantor trust as to the client. Specifically, under Sec. 678(a)(1) and (2), for the client to be treated as the grantor for grantor trust purposes (and, hence, able to sell assets tax free to the TPT), he or she must have held a withdrawal power and continue to have a grantor trust power after such withdrawal power has lapsed.

If, however, the client’s spouse is the settlor, the TPT will be a grantor trust with respect to the *client’s spouse*,¹⁶ but a sale by the client to the TPT may still not be a taxable event. If the TPT is designed to benefit the client’s spouse, Sec. 1041 would apply; thus, any reportable gain to the client (or the spouse) would be avoided on the client’s sale of assets to the TPT.¹⁷

Under the grantor trust rules, the TPT’s income is taxable to the client. At first, this may be perceived a negative feature, but, from an estate tax standpoint, it is an excellent way for the client to reduce his or her estate further, while allowing the TPT (free of estate or income tax) to grow in value for the ultimate benefit of successive generations.¹⁸

A TPT does not have to be a grantor trust. If it is not structured as a

grantor trust, it will be taxed as a complex trust and may have both Federal and state income tax obligations. The decision not to draft the TPT as a grantor trust may be warranted if the client does not plan to sell appreciated assets to it. For example, if the TPT will be the recipient of a large inheritance that the client would otherwise receive outright, it would have sufficient assets to warrant protection without the need for additional transfers.

A client may even prefer to use only nongrantor TPTs (see below). A nongrantor TPT may also be appropriate when a client wishes to settle a TPT for the benefit of a spouse, children or other beneficiaries. For example, a client can form a TPT for his or her spouse that gives the latter control over the TPT assets just short of the power to appoint assets to unintended recipients. The spouse can then receive distributions and use them for his or her, and the client’s benefit. The undistributed TPT assets will not be subject to either the client’s or the spouse’s creditors.

Estate Planning and Asset-Protection Techniques

Other strategies are available to shield installment payments payable to a client from potential future creditors, such as having the client contribute the note to another structure, such as an offshore or Nevada spendthrift trust,¹⁹ qualified terminable interest trust²⁰ or a Nevis LLC²¹ with strong

“charging order” protections (i.e., a creditor cannot access the LLC’s assets, only LLC distributions (if any) to the debtor/member). A domestic LLC might also be considered if state law will enforce charging order protection as a creditor’s sole remedy against a debtor’s interest in an LLC (e.g., Arizona).²² The above entities each have their own form of asset protection for the person who forms and funds it (a discussion of which is beyond this article’s scope).

Transferring an installment note to one of these trusts or LLCs, however, will redirect payments away from the client and toward that entity. Such redirection needs to be considered before the transfer occurs. Also, before transferring the note, it should be ascertained whether the transfer would trigger taxable income recognition to the client. Such recognition would be unlikely, however, if the asset sale to the TPT is not subject to Sec. 453 (i.e., if the client elected out of installment sale treatment by reporting the entire gain in the sale year, but recognized no taxable gain because the sale was to a grantor trust). Sec. 453B requires gain recognition on the disposition of an installment note only if the underlying sale was reported under the Sec. 453 installment sale rules.

Using Two Trusts

A client could also have two TPTs, one a grantor trust as to the client, and the other a nongrantor TPT with respect to anyone. This way, the grantor

¹⁶ This is due to the grantor trust provisions that attribute the powers held by a spouse-beneficiary to the settlor-spouse. Because a TPT grants grantor trust powers to the client, if his or her spouse is the settlor, the settlor will be deemed to hold such powers and will be treated as the grantor.

¹⁷ The TPT would need to be carefully drafted for it to be deemed a trust for the benefit of the client’s spouse under Sec. 1041. Also, if the property sold is subject to debt in excess of the client’s tax basis, other rules apply; compare Sec. 1041(e) with Sec. 671 *et seq.*

¹⁸ The settlor should consider allocating his or her generation-skipping transfer (GST) tax exemptions to contributions to the TPT, to avoid the possibility of GST tax.

¹⁹ See Nevada Revised Statute §166.010 *et seq.*

²⁰ See Sec. 2056(b)(7).

²¹ See the Nevis Limited Liability Company Ordinance (1985).

²² See AZ Rev. Stat. §29-341.

trust can receive tax-free sales from the client; the nongrantor TPT can be funded with substantial assets by the client's relative (perhaps from a large advance on an inheritance). Alternatively, the settlor of the nongrantor TPT could fund it with a small amount of seed money for a new business that will grow via the client's management activities as a trustee. Assuming the TPT assets grow substantially, there would be no need for the client to sell assets to the TPT to protect a substantial amount of wealth.

Some clients are more comfortable with such a nongrantor trust, because of the tradeoffs needed to make the trust a grantor trust. The main tradeoff is the need to have the TPT allow the client to hold a withdrawal power over the assets. The client may not want such power, because that will make the trust assets analogous to a self-settled trust²³ or expose them to creditors during the withdrawal period.

Another factor is the tax result that occurs when a domestic TPT converts into a foreign trust. The resulting Sec. 679 trust (assuming there are or could be U.S. beneficiaries) causes the TPT to be a grantor trust with respect to the settlor and, thus, no longer a Sec. 678(a)(2) grantor trust as to the client. If the client had previously sold appreciated assets to the TPT via an installment sale, any previously unrecognized gain may be taxable when the trust converts to a Sec. 679 trust, on the theory that the previous sale to self is now a "completed" sale to a third party. To avoid the possibility of income recog-

inition, the client may consider the following (untested) strategies:

1. Before a TPT converts to a Sec. 679 TPT, the client can borrow funds from an unrelated bank and lend them to the TPT. The TPT then pays off the installment note to the client and the client pays back the bank.²⁴
2. The client can elect out of Sec. 453 when making the sale to the TPT, but report no gain due to Sec. 678(a)(2).
3. The asset can be sold to the TPT for a secured private annuity²⁵ (which is completely taxable in the year of sale,²⁶ but for the "sale to a grantor trust" exception), instead of for an installment note.
4. The client sells only unappreciated property to the TPT.
5. The client's spouse is the settlor and TPT is drafted to qualify for Sec. 1041 treatment.

Conclusion

Clients can effectively use TPTs, which are created by third persons, as a device through which to conduct business transactions and investments. Importantly, the growth and appreciation of the transferred assets will not be included in the client's taxable estate, and creditors will have no access to them. TPTs also serve well as vehicles to receive inheritances that would otherwise be received by clients outright. In essence, they allow clients to hold the benefits of absolute ownership of assets without the negative ramifications of estate taxation and access by creditors.

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²³ The fact that the client could have withdrawn the assets, but instead lets them remain in the TPT, causes concern for those who question whether this is an effective contribution/gift of those assets to the TPT by the client. Provisions under the estate tax, gift tax and trust laws, however, suggest that allowing a client's withdrawal powers to lapse is not a contribution to the trust by the client of an amount not exceeding the greater of \$5,000, or 5% of the trust corpus; see Secs. 2514(e) and 2041(b)(2) and Uniform Trust Code §505(b)(2). The terms "lapse" and "release" differ for purposes of Sec. 2514. The distinction can be critical in this context, but a discussion is beyond this article's scope.

²⁴ This can trigger a "form-over-substance" argument from the IRS, however.

²⁵ A private annuity involves the purchaser making a series of payments, the present value of which will equal the value of the assets sold. The payments are computed by referring to mortality-based annuity tables based on the seller's life expectancy; see IRS Pub. 1457, *Actuarial Values, Book Aleph*, Table 90CM. For example, the older the seller, the larger the payments, because the older seller is predicted to have a shorter period to receive payments.

Private annuities have been used as tools whose value disappears at death. Thus, they can provide a potential estate tax reduction strategy. This is somewhat risky, in that the sale may be reclassified as a transfer with a retained interest.

²⁶ See *212 Corp.*, 70 TC 788 (1978).