New Planning Opportunity for Florida SLATs

A new law was recently passed in Florida that will allow a grantor spouse of a Spousal Limited Access Trust (SLAT) to be added as a beneficiary of the SLAT following the death of the beneficiary spouse. Please see below for a more in-depth outline of how this new law can affect your estate plan.

What is a SLAT?

A SLAT is an irrevocable trust where one spouse (the grantor spouse) creates and funds the trust for the benefit of the other spouse (the beneficiary spouse) and typically their descendants. Some of the main benefits of a SLAT are that the grantor spouse can utilize their lifetime estate and gift tax exemption at today's exemption level of $12,060,000 per person before the exemption is reduced (as is currently scheduled for 2026). The grantor spouse can remove assets from their taxable estate at today's fair market value, thereby avoiding estate tax inclusion on the future appreciation of those assets. Previously in Florida, one of the main disadvantages of a SLAT was that upon the death of the beneficiary spouse, the grantor spouse would lose the ability to indirectly benefit from the SLAT's assets that previously could have been utilized for the benefit of the beneficiary spouse. However, the new statute specifically addresses this issue.

Effect of New Law

The new law prescribes the ability for the grantor spouse to be added as a beneficiary of the SLAT upon the death of the beneficiary spouse. FL Stat. § 736.0505(3). This means that the grantor spouse will be able to access the assets of the SLAT after the death of the beneficiary spouse while likely keeping the assets of the SLAT outside of the grantor spouse's estate and shielded from the grantor spouse's personal creditors.

Limits of the New Law

The new law will only apply to trusts that are created and funded after June 30, 2022. Moreover, the new law does not allow the grantor spouse to be added as a beneficiary upon divorce, and it requires the beneficiary spouse to be a beneficiary of the SLAT for their entire lifetime, which would likely include any time period following a potential divorce.

In addition, some commentators believe that it is possible that the IRS will nonetheless determine that once the grantor spouse is added as a beneficiary, the assets of the SLAT should be included in the grantor spouse's estate. Although it is too early to be certain, the creditor protection aspect of the new law is similar to that of laws in other states with self-settled asset protection trust statutes, and the IRS has determined that the assets in such self-settled asset protection trusts may be completed gifts and may not be includable in the grantor's estate. Specifically, in Revenue Ruling 77-378, the IRS determined that the grantor of a self-settled asset protection trust can make a completed gift to the trust despite also being a beneficiary of the trust. Likewise, in multiple private letter rulings (which cannot be cited as binding precedent), the IRS determined that the trustee's discretionary authority to distribute income and/or principal to the grantor did not by itself cause the trust to be includable in the grantor's estate.

How to Take Advantage of the New Law

The easiest way to take advantage of the new law is to establish a new SLAT that will be signed and funded after June 30, 2022. With regard to SLATs that are already in existence, there may be ways to implement the new law into your existing estate plan. However, this will require an individualized determination based on the specific provisions of your existing SLAT.

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Please call contact us if you would like to know more about how to implement the new law into your estate plan.