

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-80 (4) Revised
Estate and Gift Tax
February 15, 1983

Tax consequences in establishing a custodial gift or transfer of
property under the Uniform Gifts to Minors Act

This memorandum supersedes TSB-M-80(4) Estate and Gift Tax issued July
29, 1980 which should be destroyed.

The Uniform Gifts to Minors Act is contained in Article VII, Part 4 of the Estates, Powers and Trusts Law (EPTL) -- "Gifts to Minors". The Act provides that, during his life, an adult may, by transferring property to a custodian in the prescribed manner, make gifts to a person who is a minor on the date of the gift. Gifts may include (1) money, (2) securities, (3) life insurance policies or annuity contracts, or an interest in (4) real property, (5) tangible personal property, or (6) as a limited partner of a limited partnership. Each gift so made may be made to only one minor, and only one person may be the custodian. The rights, powers, and duties of a custodian include, but are not limited to, (1) collecting and managing the custodial property, (2) paying over to the minor, for expenditure by the minor, or spending for the minor's benefit, so much or all of the custodial property as he deems advisable for the minor's support, maintenance, education and benefit, and (3) keeping records and making them available for inspection.

A "minor", as defined in EPTL, is a person who has not attained the age of 18 years. However, there is a provision in the Act which allows a donor the privilege of extending the trust until the minor-donee attains age 21 by incorporating into the terms of the disposing trust instrument the phrase, " _ _ _ as custodian for (name of minor) under the New York Uniform Gifts to Minors Act until age 21".

A "custodian" is a donor, another adult person or a trust company designated as a custodian in a manner prescribed by the Act. The term includes a successor custodian.

The instrument of transfer must be in the form prescribed in EPTL 7-4.2(a)(1) - (7). These various forms were designed to provide a simple, inexpensive and convenient method of transferring property (by gift) to a minor without the necessity of a long, detailed trust instrument of transfer.

The making of a custodial gift carries with it overlapping gift, estate, and income tax consequences.

Gift Tax

In general, gift tax is imposed on transfers of property by gift made by an individual during his life. A custodial gift made under the Act is irrevocable and conveys to the minor an indefeasibly vested legal title to the property transferred. The transfer will be considered a gift of a "present interest" and eligible for the allowable annual exclusion if both the property and its income:

- (1) may be spent by, or for the benefit of, the minor-donee prior to his/her attaining the age of 18 years, and
- (2) to the extent not previously spent--
 - a. will pass to the minor at age 18, or
 - b. in the event of the donee's death before age 18, will be payable to his/her estate or as he/she may appoint (name) under a general power of appointment (see "Estate Tax" section on back page).

The manner of making a gift to a minor under this Act depends on the nature, or subject matter of the gift. If the subject of the gift is money, a custodial account may be opened by

paying or delivering to a financial institution or broker an initial amount (as may be required) with subsequent additional deposits added thereto, if allowed. Funds are credited to an account in the custodian's name, followed by the words: "As custodian for (name of minor) under the New York Uniform Gifts to Minors Act" (see "Income Tax" section below for further information). If the initial deposit and/or subsequent deposits exceed the allowable annual exclusion during a calendar year, a New York gift tax is due.

If the subject of a gift is a life insurance policy or an annuity contract, a gift is made by causing the ownership of the policy or contract to be registered with the issuing insurance company in the custodian's name, followed by the words: "As custodian for, etc.". The absolute assignment of the policy or contract, and any premiums paid by the donor after such assignment, are determined to be gifts of a "present interest" and subject to New York gift tax if the amount exceeds the allowable annual exclusion.

Although the specific wording and procedures for making custodial gifts are basically the same whether the subject is money, securities, real property, tangible personal property, or a limited partner in a limited partnership, a potential donor should consult with a financial institution, broker, insurance agent, or attorney for specific details on the proper method for establishing a custodial gift.

Estate Tax

A donor should approach the establishment of custodial transfers cautiously. Where a donor (parent or any person) transfers property to a minor-donee under this Act, designating himself as custodian and is acting in that capacity at the time of his death, the value of the custodial property is includible in the donor-custodian's gross estate (this rule does not apply where the property held in custodianship was purchased with funds belonging to the minor). This determination, made in various court decisions, is based on the fact that the custodian has the right to terminate the custodianship at any time by paying over the income and principal to the minor. In addition, if a parent is the donor and is serving as custodian at the time of his death, the custodial property is includible in the parent-custodian's gross estate because he can apply custodial funds in satisfaction of his legal obligation of support (also see "Income Tax" section below).

Since legal title to the transferred property indefeasibly vests in the minor-donee at the time of transfer, the value of the property and any income therefrom not previously spent for the benefit of the minor is includible in the minor's gross estate at the time of his death. The property and any income therefrom will pass to the minor's estate or to persons appointed (named) by him/her under the exercise of the general power of appointment required by the Act.

Income Tax

Custodial accounts are identified by the social security number of the minor. Except as noted below, income from the custodial property is includible in the minor's income and reported on his/her personal income tax return if one is required to be filed (generally when unearned income from interest and dividends exceeds \$1,000 for the year).

Any income from the custodial property used to support a child is taxable to whomever (custodian, donor or other person) is legally liable, under local law, for the support of the child. The parent of a minor may lose the income tax exemption for the minor in any year during which the minor receives more than half his/her support from the custodial property. To the extent that income derived from the custodial property is not includible in the gross income of the parent liable to support or maintain the minor-donee, such income would be taxable to the child, as noted above.