

## *The Benefits of 529 Plans*

**By Mindy Menke, J.D.**

The cost of college tuition is sky-rocketing, and financial aid is more difficult to come by. The New York State College Tuition Saving Program, more commonly referred to as New York's 529 plan, may be an excellent way for grandparents to assist their grandchildren in paying for college, while reducing the size of the grandparents' estate and the likelihood of an estate tax.

A 529 plan is an educational saving program authorized by Congress in 1996 to help families save for future college costs. Every state has one or more 529 plans in place. The plans are typically established for the benefit of a child or grandchild, but can also be established for nieces, nephews, or other "permitted beneficiaries" as specified in the IRS code. Once the plan is in place, contributions are made to the account. The investments in the plan grow free of federal income tax, and New York residents who use the New York 529 plan can receive a tax deduction of up to \$5,000 per year (\$10,000 for those that are married and file jointly). Previously, only the owner of the plan could contribute to their 529 account, but on May 27, 2008 Governor Patterson signed legislation that allows a non-owner to contribute to a 529 plan; however the non-owner cannot claim a New York State income tax deduction for his or her contribution.

When funding the plans, grandparents can utilize their annual gift tax exclusion and contribute \$13,000 (or \$26,000 for a married couple) per grandchild without depleting their unified credit or incurring a gift tax. 529 plans also offer a special five-year election, where an individual can contribute as much as \$65,000 to a plan (or \$130,000 for a married couple), provided that no other gifts utilizing the annual exclusion are made to the same beneficiaries during the five-year election period. That being said, there is a limit on how much can be gifted to a 529 plan. In New York, the aggregate value of gifts made to the plan cannot exceed \$235,000.

Under the tax code, contributions to the plans are considered completed gifts. Therefore, once grandparents make a contribution to the plan, those monies are no longer "owned" by the grandparents, but are outside their estate for estate tax purposes. However, the plan owner must give up all control over the gifted funds. The plan owner retains the authority to change the beneficiary of the plan to a "qualified family member," who may be another child, grandchild, or other qualified family member.

Besides the tuition assistance provided by the 529 plan funds, there are additional benefits to the beneficiary. If the plan owner is a grandparent, the assets in the plan will not negatively affect the beneficiary's ability to obtain financial aid and do not have to be disclosed on financial aid applications. However, if the plan is owned by a parent, the assets in the plan must be reported on the federal financial aid application (FASFA).

When considering a 529 plan, many people are concerned about what happens to the assets in the plan if the beneficiary does not go to college. In such event, the plan owner has two options: they can change the beneficiary to another qualified family member who is or will be attending college, or they can take the money out of the 529. If the money is taken out of the 529 plan, any earnings on the growth will be taxable to the plan owner at his or her ordinary income tax rate, plus a ten percent penalty.

As part of a comprehensive estate plan, a structured 529 gifting program is an excellent way to reduce the value of an individual's taxable estate, while providing much needed educational support for grandchildren and other family members.

*Mindy Menke is an associate with the Middletown law firm of Blustein, Shapiro & Rich, LLP. Ms. Menke is a member of the National Network of Estate Planning Attorney, and the New York State Bar Association (Trusts and Estates Section. She can be reached at (845) 692-0011 or at [mmenke@mid-hudsonlaw.com](mailto:mmenke@mid-hudsonlaw.com). The information in this article is for general information purposes only and is not, nor is it intended to be, legal advice, including legal advice for Internal Revenue Code purposes as described in IRS Circular 230.*