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The Nebraska Uniform Gifts to Minors Act

Charles J. Kimball
University of Nebraska College of Law, knpc@qwestoffice.net

THE NEBRASKA UNIFORM GIFTS TO MINORS ACT*

I. INTRODUCTION

For years attorneys have been plagued by obstacles when their clients make gifts to minors. The purpose of this study is to point out some of these difficulties and to discuss the Uniform Gifts to Minors Act (hereinafter referred to as "The Act") which has been adopted in many jurisdictions, including Nebraska.[1]

Major difficulties are the inability of the minor to deal freely with property, and the widespread and justifiable hesitation to deal with infants. A leading writer in the contract field summarized the general common law as follows:

> An infant's contracts are valid and binding so far as an adult with whom he contracts is concerned, and the infant can enforce them. However, they cannot be enforced against the infant if he wishes to avail himself of his privilege of avoidance by pleading his infancy.[2]

This problem becomes especially acute when a donor wishes to transfer securities because it is generally imperative for effective management that stock certificates be easily transferable. The objects of the Act are: 1) to provide a simple method of making gifts to minors which is standardized and orderly and 2) to satisfy the provisions of the 1954 Internal Revenue Code relating to the annual gift tax exclusion of $3,000 and to have the income from the gift taxable as a separate entity in the hands of minor.

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[1] UNIFORM GIFTS TO MINORS ACT (1956). The Nebraska version may be found in NEB. REV. STAT. §§ 38-1001 to -1010 (Supp. 1959). This act was drawn by the National Conference of Commissioners on Uniform Laws and is patterned after the MODEL ACT CONCERNING GIFTS OF SECURITIES TO MINORS which was sponsored by the New York Stock Exchange in 1955 and has been adopted in several states. For a typical enactment see COLO. REV. STAT. §125-4-1 to 125-4-12 and § 57-3 (Cum. Supp. 1957). Forty-three states have adopted the Uniform Act, seven states have the Model Act and two of these latter have expanded it to cover gifts of money. The Wisconsin Uniform Act covers even gifts of life insurance. See WISC. STAT. ANN. § 319.62 (West 1958).

[2] SIMPSON, CONTRACTS § 68 (1954).

II. EXAMINATION OF POTENTIAL SOLUTIONS

A. Guardianship As A Solution

One possible solution to the problem is formal guardianship. This, however, is often too expensive and cumbersome. Furthermore, the restrictions placed on a guardian by statute, though desirable in providing protection for the minor, often make this choice impractical. For example, in Nebraska when the gift is money to be invested or securities to be actively managed, the guardian is limited to those investments specified by statute.[3]

B. Trust As A Solution

Another possibility when making gifts to minors is the creation of a trust. If the gift is large, it is advisable to use a trust device since it can be drafted to accomplish all the desirable results achievable under the Act without incurring the tax disadvantages inherent in the Act. In addition, the trust has certain other advantages over the Act. For example, in contrast to the provisions of the Act, with a trust the donor is not restricted to giving securities or money[4] and it is possible to have plural beneficiaries and trustees.[5] Further, the Act requires that the custodial property be turned over to the minor at age twenty-one.[6]

Although a trust has many advantages, it also has certain disadvantages. The typical trust instrument is not a simple document and can only be drafted by one having expert legal training. It is also recognized that the management expenses may be substantial unless an uncompensated trustee is used and no bond required. Also, use of a trust often requires annual fiduciary tax returns[7] and perhaps a return from the minor beneficiary.

[3] NEB. REV. STAT. § 24-601 (Reissue 1956). This section contains a long and detailed list of what must certainly be classified as the least speculative investments.

[4] NEB. REV. STAT. § 38-1002(1) (Reissue 1960).

[5] NEB. REV. STAT. § 38-1002(2) (Reissue 1960).

[6] NEB. REV. STAT. § 38-1004(4) (Reissue 1960).

[7] INT. REV. CODE OF 1954, § 6012(a) (4). Miller, *Appropriate Forms of Gifts to Minors*, N.Y.U. 16th INST. ON FED. TAX 765, 776 (1958).

C. Less Formal Methods As Solutions

Certain informal methods to solve the problem have been tried with varying degrees of success. For example, donors have registered securities in the name of a nominee.[8] However, this method has several pitfalls. First, unless the donor is very careful to relinquish control and express his intention, he may find he has not made a completed gift; and secondly, insufficient protection may be provided for the minor.[9] An outright gift to the minor is another possible solution, but is disadvantageous because the legal restrictions placed on the minor make it impractical for him to deal with the property in transactions with third persons. Also, this method would not suffice if the donor believes that the minor lacks sufficient maturity to be entrusted with the property.[10]

The minor is treated as an adult in a United States tax regulation allowing a minor who is competent enough to sign his name to invest in and cash savings bonds, and in the Nebraska statute[11] which allows a minor to maintain a savings bank account.

III. THE ACT—EFFECT

By the simple act of registering a gift in accordance with the provisions of the Act, a donor incorporates in his gift sections 38-1001 to 38-1010 of the Nebraska Revised Statutes and grants to the custodian, and persons dealing with him, the powers, rights and immunities provided therein.[12]

A. Giving Stock in Registered Form

The Nebraska Statute provides that if the gift is stock in registered form the donor may register it in his own name or in the name of another adult person, an adult member of the minor's family,[13] a guardian of the minor, or a trust company followed,

[8] NEB. REV. STAT. § 24-604 (Reissue 1956).

[9] This problem is discussed in greater detail in Note, 69 HARV. L. REV. 1478 (1956).

[10] 31 C.F.R. § 315.51 (1959).

[11] NEB. REV. STAT. § 8-161 (Reissue 1954).

[12] NEB. REV. STAT. § 38-1003(2) (Reissue 1960).

[13] See 9B U.L.A. 184 (1957) where the commissioner's note suggests that the last class be left out if the enacting state wants to open the eligible custodians to any adult person. Nebraska has included the language

in substance, by the words: "As custodian for (name of minor) under the Nebraska Uniform Gifts to Minors Act."[14] The Act[15] does away with any requirement of delivery to the custodian.

If the securities are not in registered form, *i.e.*, bearer securities, the donor cannot designate himself custodian and he must make delivery accompanied by a simple statement of gift or deed of gift in substantially the following form:

GIFT UNDER THE NEBRASKA UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Nebraska Uniform Gifts to Minors Act, the following security (ies); [insert description]

(signature of donor)

(name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above named minor under the Nebraska Uniform Gifts to Minors Act.

Dated: (signature of custodian) [16]

If the original gift is not securities in bearer form, then the donor may remain custodian even though the property is later invested in bearer securities.[17]

B. Giving Money

Section 2-a-3 of the Act permits gifts of money to the custodians for immediate or ultimate investment, thus making it possible for the donor to take advantage of the annual gift tax exclusion. And yet the investment is delayed until the market is more favorable and allows the custodian to exercise stock rights or to "round out"

"an adult member of the minor's family" but apparently does not intend to limit "another adult person" because the two are separated by a comma.

[14] NEB. REV. STAT. § 38-1002(a)(1) (Reissue 1960).

[15] UNIFORM GIFTS TO MINORS ACT § 2-2-1 (1956).

[16] NEB. REV. STAT. § 38-1002(1)(b) (Reissue 1960).

[17] Tenney, *Gifts to Children, A New and Realistic Method*, 2 PRAC. LAW. 19, 28 (No. 7, 1956).

a block of securities. A gift in this form will also avoid a double stock transfer tax.[18]

If the subject of the gift is money, the donor should deliver it to a broker or a bank for credit in the name of a member of the aforementioned statutory class as custodian for the minor under the Nebraska Act.[19] If the donor is buying securities to give to a minor, he should pay for the securities with his own funds, inform his broker of the custodian's name and of the minor's name, and the applicable state law. There will be a transfer tax due on gifts of securities though not on gifts of money.[20] Federal gift tax laws, of course, are applicable.

C. Conflict Problems

Conflict of laws problems suggested by interstate transactions under the Act should not be too burdensome. Forty-three of the states have adopted the Act, two have amended the Model Act Concerning Gifts of Securities to Minors to cover gifts of money,[21] and five still have the Model Act in its original form. All the enactments are very similar. Further, in practically all situations, the law of the state under whose statute the gift is registered should and probably would control.

D. Section by Section Analysis

When the Act was drafted, the commissioners set out certain material which they considered optional. Therefore, a brief discussion of the optional portions adopted by Nebraska and the probable reasons for their inclusion, together with references to the commissioners' notes, should be helpful.

1. *Choice of a Custodian*

In section 38-1002(1)(a), which corresponds to section 2-a-1 of the Act, our legislature adopted a form which probably provides the widest possible choice of custodians. It probably permits any

[18] See note 13 *supra*, at 185.
[19] NEB. REV. STAT. § 38-1002(1)(c) (Reissue 1960).
[20] See Tenney, note 17 *supra*, at 30.
[21] See note 1 *supra*.

adult person to act in this capacity, although there may be some question as to whether it must be an adult member of the minor's family.[22]

2. *Powers in Trust*

Since Nebraska recognizes powers in trust, the Legislature included in section 38-1004(9) the language "and holds as powers in trust" to indicate the legal status of the custodian in the light of existing law.[23]

3. *Investment Standard*

Under section 38-1004(5), the custodian must manage the minor's property in accordance with the *prudent man test, i.e.,* as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital. The custodian is not limited to the legal list[24] in his choice of investments. Section 38-1005(5) states that an uncompensated custodian will be liable only for bad faith, intentional wrong doing, gross negligence or breach of the prudent man rule. It should be noted that this section does not mention a compensated custodian.

The last portion of section 38-1004(5) indicates that if the custodian retains the stock originally given him as custodian he will not be liable even if he is imprudent in so doing. It is interesting to ponder just how far this imprudence may be permitted to continue, short of bad faith or gross negligence, before the custodian will encounter liability. The broad protection, however, may induce some people to assume the role of custodian who otherwise would be unwilling to do so. This situation is analogous to the typical tort rescue case where generally the potential rescuer need not do anything, but if he does he must do it as a reasonably prudent man.

The protection afforded the custodian appears to be founded on the premise that if the donor wants the protection for the minor that trusteeship and guardianship offer he should use those devices.[25] An unhealthy situation exists when a custodian can allow

[22] See note 13 *supra.*

[23] 9B U.L.A. 184 (1957).

[24] See note 3 *supra.*

[25] See Note, 62 DICK. L. REV. 356, 360 (1958). This article contains a general discussion of the investment standards under the Uniform Act.

the minor's stock to slip into worthlessness (if that is the interpretation to be given these sections of the Act). Nevertheless, this situation is not without counterpart in other areas of the law and is consistent with the idea that the donor waives some protection of fiduciary law when he uses the Act.

Generally, trustees when investing must exercise the care and diligence which would be pursued by a man of ordinary skill and prudence in management of his own affairs, with the primary object of preserving the fund.[26] It is suggested that our court might draw on the case expounding the above rule to give color to the "prudent man rule"[27] in the Act. The custodian, however, is not a trustee and for reasons heretofore mentioned probably should not be held to the same standards.

4. *Custodial Compensation*

The Act, section 5(c), provides four standards to determine what compensation, if any, the custodian shall receive. In contrast, Nebraska's enactment, section 38-1005(3), provides only the following two: (1) direction of the donor when the gift is made or (2) an order of the court.

5. *Exonerating Provisions*

Section 6,[28] which has been the subject of considerable discussion, was included to free third persons, especially transfer agents, from liability when dealing with the custodian. It provides that an issuer, transfer agent bank, broker, or other person dealing with any person *purporting* to act as donor or custodian is relieved from the responsibility:

> (1) of determining whether the purported custodian had been duly designated; (2) of determining whether any purchase, sale or transfer to or by any person as custodian is in accordance with or authorized by the act; (3) of inquiring into the validity of any instrument or instructions by a person purporting to act as donor or custodian; or (4) of seeing to the application, by any person purporting to act as custodian, of any money or other property paid or delivered to him.[29]

[26] First Trust Co. of Lincoln v. Exchange Bank, 126 Neb. 856, 254 N.W. 569 (1934).

[27] See NEB. REV. STAT. § 38-1004(5) (Reissue 1960).

[28] NEB. REV. STAT. § 38-1006 (Reissue 1960).

[29] Note, 33 IND. L. J. 242, 257 (1958).

This section assures the donor that third persons are not absolved from the responsibility to identify the person who represents himself as being a custodian.[30]

6. *Stock Transfer Procedure*

Practical considerations dispel most fears that a thief or converter will secure possession of the minor's stock or proceeds and abscond. The transfer agent will make sure that: (1) the signatures on the assignment form on the back of the certificate, or on an accompanying power, correspond with signatures on the face; (2) the transfer taxes (state, if any, and Federal) have been paid; and that (3) the signature has been guaranteed by a New York bank or by a bank with a New York correspondent. This is the most effective deterrent to wrongdoing because the general practice is to require that responsible people guarantee the signatures and they will make sure that the proper person is transferring.

E. Tax Consequences

An exhaustive discussion of all the possible tax problems concerning the Act is beyond the scope of this paper; only a few of the major tax matters are considered.

1. *Gift Tax*

The stage was set for the arrival of the Act by a revenue ruling and by an Internal Revenue Code section in 1954. The ruling stated that an unqualified and unrestricted gift to a minor, with or without the appointment of a legal guardian, is a gift of present interest; and that disabilities placed on minors by state law should not be considered decisive in determining whether a donee has the immediate enjoyment of the property or the income therefrom for Federal gift tax purposes.[31] The code section established that a donor can take advantage of the annual $3000.00 gift tax exclusion[32] and not have the gift considered one of a future interest if it meets

[30] 9B U.L.A. 190 (1957).

[31] Rev. Rul. 54-400, 1954-2 CUM. BULL. 319.

[32] *Id.* § 2503(b). The exclusion, annual or lifetime, will be doubled if the donor is married and his wife consents to and joins in the gift. See *Id.* § 2513.

the requirements of subsection (c) of that section. These requirements are met if the property and income:

(1) may be expended by, or for the benefit of the donee before he is 21,

(2) will to the extent not so expended—
   (A) pass to the donee when he becomes 21, or
   (B) if the donee dies before age 21, be payable to his estate or as he may appoint under a general power of appointment as defined in section 2514 (c).[33]

The act was drafted to meet these requirements.

A 1956 revenue ruling[34] stated that a gift of stock under the Colorado Model Act[35] was not a gift of future interest and qualified for the annual Federal gift tax exclusion. A later ruling[36] makes it clear that the same result can be achieved under the Act. A possible future gift tax liability for the parent-custodian on the termination of the custodianship has been suggested. Since the custodian has the power to apply custodial funds for the benefit of the minor regardless of other support or funds available,[37] the termination of this power might constitute the release of a general power of appointment[38] within the meaning of section 2514 of the 1954 Code.[39] To guard against this possibility the donor-parent should, if at all practical, name someone other than himself custodian. If that is impractical, then the donor should file a gift tax return for each calendar year during which a gift is made to reveal the relationship and start the statute of limitations running; or better yet, he should relinquish all power to use the minor's custodial property in discharge of his support obligation,[40] if that is possible under the Act.[41] Liability probably is more likely to occur if the custodian owing the duty of support actually does use the custodial property to relieve his support obligation. Gifts under

[33] INT. REV. CODE OF 1954 § 2503(c).

[34] Rev. Rul. 56-86, 1956-1 CUM. BULL. 449.

[35] See note 1 *supra*.

[36] Rev. Rul. 59-357, 1959-2 CUM. BULL. 212.

[37] NEB. REV. STAT. § 38-1004(2) (Reissue 1960).

[38] General power of appointment as defined in that section is "A power which is exercisable in favor of the individual possessing the power."

[39] INT. REV. CODE OF 1954 § 2514. See also Tenney, *Using The Custodian Statute As a Planning Device*, N.Y.U. 16th INST. ON FED. TAX 937, 944 (1958).

[40] Tenney, *Tax Considerations in Gifts to Minors Under New State Custodian Laws*, 5 J. TAXATION 348, 349 (1956). Note, 33 IND. L. J. 242, 263-4 (1959).

[41] There may be serious doubt as to whether the parent-custodian could alter the Uniform Act in this manner.

guardianship would not incur this risk but gifts in trust would if the trustee had the same power to apply the funds as the custodian apparently has.[42]

An important factor for the donor to remember is that even if the annual and lifetime exclusions are exceeded and a gift tax incurred, it will usually be much lower than the estate tax because (1) gift tax rates are never more than three fourths of the estate tax rates and (2) the property is taken from presumably higher estate-tax brackets and placed in lower gift-tax brackets.[43]

2. *Income Tax*

Income from the donated property generally is taxed to the donee. However, if income from the property is used in full or partial discharge of any person's legal obligation[44] to support the minor donee, that income is taxed to that person.[45] The ruling which laid down this principle was surprising in that it taxed the amount used for support to the one owing the duty of support even though he had no part in the custodianship. For example, suppose Grandfather *X* gives 500 shares of stock to grandchild *Y* naming its father *Z* as custodian. *Z*, who owes the legal duty of support, expends $500 of the dividend income for the minor's clothes. If the $500 is within *Z*'s obligation under the local law then the money is taxable to *Z* as income. The money would still be taxed

[42] Judicial construction of the custodian's powers under the Uniform Act could answer this question before the Commissioner has a chance.

[43] MONTGOMERY, FEDERAL TAXES § 22-2 (37th ed. 1958).

[44] In determining whether the legal obligation exists, there is one regulation that should be considered. The obligation is said to exist, "if, and only if, the obligation is not affected by the adequacy of the dependent's own resources," under state law. Therefore taxation of income to the parent depends upon the child's right to support under local law. Treas. Reg. § 1.662(a)-4 (1956); see also Savage, *Comparative Advantages and Disadvantages of Support Trusts and Uniform Gifts to Minors Statute Gifts,* N.Y.U. 17th INST. ON FED. TAX 1097, 1100 (1959).

[45] Rev. Rul. 56-484, 1956-2 CUM. BULL. 23; affirmed in Rev. Rul. 59-357, 1959-2 CUM. BULL. 212. The later ruling expressly mentions the Uniform Act while the former was based on a transfer involving the Model Act. See also INT. REV. CODE OF 1954 § 667(b) which says that income from a trust will not be taxed to the grantor just because it could be used to support one to whom the grantor owes the legal duty of support, except to the extent it is so applied. See also § 678(c) which applies the same rule to the trustee where he has the duty to support. See Savage, note 44 *supra,* at 1104.

to Z if mother A or cousin B had been named custodian and in the same manner had expended part of the custodial property.

A leading tax authority questions whether this ruling will be given the wide effect suggested by its broad language.[46] The ruling has also received a great deal of criticism based on the theory that the Treasury is incorrect in assuming the custodian can really discharge the parent's support obligation by applying the custodial property to the minor's needs.[47] Though the Act[48] gives the custodian broad discretion in handling the custodial property, the support, it is argued, will come ultimately from the parent.

The child could probably recover the amount of any custodial property used for his support by the parents; but as a practical matter this recovery will seldom be sought and it has been suggested that perhaps, on this basis, the Treasury's position is justified.[49] The ruling is capable of upsetting the income tax planning of the parent if (1) he is unaware of the ruling and its scope or (2) the custodian's use of the minor's property is incorrectly thought not to "discharge" a parental duty.

The ruling seems to run contrary to a Tax Court decision[50] and an earlier revenue ruling.[51] In the former the court declared that a parent, who is not the trustee of a support trust created for his son, will not be taxed on income from the portion contributed by the cestui's grandfather. The earlier ruling established that income from stock would be taxed to the minor where it was registered in the name of the parents merely because state law prohibits registration of stock in a minor's name and all income or capital gains were placed in a separate bank account.

From a review of the gift and estate tax rulings it appears that the principal ruling discussed[52] may represent a concession to the father in not attempting to tax him on income from the cus-

[46] See 1 CCH 1960 STAND. FED. TAX REP. § 303.467. This work contains an excellent explanation of the ruling and discusses Code sections which may suggest limitations on its applications.

[47] Note, 9 DRAKE L. REV. 32, 35 (1959).

[48] NEB. REV. STAT. § 38-1004(2) (Reissue 1960).

[49] See Tenney, note 39 *supra,* at 944.

[50] Frank E. Joseph, 5 T.C. 1049 (1945), See also Stauroudis v. Commissioner, 27 T.C. 583 (1956).

[51] Rev. Rul. 55-469, 1955-2 CUM. BULL. 112. See also I.T. 3932, 1948-2 CUM. BULL. 7; and Helvering v. Horst, 311 U.S. 112 (1940). See Forbes, *Gifts to Minors,* 19 MONT. L. REV. 106 (1948).

[52] Rev. Rul. 56-484, 1956-2 CUM. BULL. 23.

todial property not used, but available for use to support the minor.[53]

The Act offers a small tax saving when compared to a trust. Where there is an outright gift, the minor may take advantage of a $600 deduction[54] plus his standard deduction.[55] If a trust is used and the income is not currently distributed, there is only a $100 exemption. However, if the income is currently distributed the exemption is $300.[56] The donor might desire to use single or multiple trusts in conjunction with the Act to gain advantage of as many exemptions as possible since each trust may be a separate taxpayer in a separate tax bracket.[57] If the gross annual income from custodial property is over $600 and is taxable to the minor, then, of course, he must file his return and it is the duty of the parents, or other persons exercising parental control over the minor, to sign the return.[58]

3. *Estate Tax*

The donor may wish to use a trust to prevent the subject matter of the gift being included in the gross estates of the donee's parents. This may easily happen under the Act[59] because if the minor dies before age twenty-one the property is paid to his estate. Since a minor cannot make a will in Nebraska, the property thereafter usually passes to the parents. The tax credit for prior transfers[60] is limited to the tax actually paid by the former estate, and this amount may be less than the amount the added property increases the tax on the latter estate. A trust can also prevent

[53] To find this spelled out see Miller, *supra* note 7 at 765, 776-7. It is there suggested that even a donor-custodian, who is not the father could incur income tax liability on the theory of Helvering v. Clifford, 309 U.S. 331 (1940). This fear could be dispelled by use of a trust which does not mention anything about the purposes for which the money is to be used. The two articles in this volume are excellent discussions of the Act.

[54] INT. REV. CODE OF 1954 § 151(b).

[55] *Id.* § 141.

[56] *Id.* § 642(b). See also note 47 *supra*, at 36.

[57] Coplin, *Trusts For Minors*, N.Y.U. 14th INST. ON FED. TAX 361 (1956).

[58] Treas. Reg. § 1.6012-1(4) (1956). See also Treas. Reg. § 1.6012-3 (1959).

[59] NEB. REV. STAT. § 38-1003 (Reissue 1960).

[60] INT. REV. CODE OF 1954, § 2013(c). See also Note, 45 IOWA L. REV. 390, 398 (1960).

property from passing through a minor's estate if he dies before age twenty-one.

In a recent ruling[61] it was decided "the value of property transferred by a donor to himself as custodian for a minor donee, pursuant to the provisions of the model custodian act is includible in the donor's gross estate for Federal estate tax purposes in the event of his death while acting as custodian before the donee attains the age of twenty-one." The ruling applies a section of the 1954 Code[62] enacted to cover the trust estate situation and embodies the principle that since the custodian has the right to pay the custodial principal or income to the minor donee or to withhold enjoyment of the property from the donee until age twenty-one, such control renders the property includible in the donor's estate as a transfer in respect of which he has retained a power to alter, amend, revoke or terminate. This is true even though the minor has a vested interest that will pass to his heirs at his death.[63]

This ruling has not escaped criticism, because when a donor complies with the Act he has done as much as he can to make a completed gift of the stock or money to the child.[64] Some writers believe that the trust cases[65] relied on by the Commissioner are not analogous in that under the Act the gift is "irrevocable and conveys to the minor an indefeasibly vested legal title to the security or money given"[66] and at age twenty-one he gets the gift with no strings attached. Perhaps if the child's mother were made custodian the above problem could be alleviated;[67] at any rate, it would seem advisable to make the custodian someone other than the donor. The donor, if also the custodian, runs a considerable risk of having the property included in his gross estate and the risk is even greater if the donor-custodian also owes the duty of support to the minor-donee.[68] Again it would be wise for the donor-custodian, if legally possible,[69] to relinquish the power to

[61] Rev. Rul. 57-366, 1957-2 CUM. BULL. 618.

[62] INT. REV. CODE OF 1954, § 2038(a)(1).

[63] United States v. Lober, 346 U.S. 335 (1953). See also INT. REV. CODE OF 1954, § 2041(b)(1), and Miller, note 7 *supra*, at 779-80 (1958).

[64] Note 47 *supra*, at 37.

[65] Commissioner v. Estate of Holmes, 326 U.S. 480 (1946); United States v. Lober, 346 U.S. 335 (1953).

[66] NEB. REV. STAT. § 38-1003(1) (Reissue 1960).

[67] See note 47 *supra*, at 39; this note suggests other possible estate tax consequences which have not yet come of age.

[68] See Tenney, note 17 *supra*, at 25.

[69] Note 41 *supra*.

use the custodial property to discharge the support obligation, thus equating himself with a parent guardian.[70]

Custodianships may also incur adverse estate tax consequences under yet another Code section[71] where the facts adapt themselves to an argument that when the custodian died he had a general power of appointment within the meaning of that section (*e.g.*, to appoint to discharge his obligation of support). A possible solution is a trust authorizing the trustee to invade the principal, but not including any language about spending the corpus for support and maintenance. One writer expresses an opinion that this type of language increases the prospect of adverse estate tax consequences.[72] This, however, may be more discretion than the settlor wishes to give the trustee.

The donor also may have the gift taxed in his estate if it falls within the "contemplation of death" rule[73] which states that a gift given within a three year period ending with transferor's death is includible in his gross estate. The rule creates a rebuttable presumption which may be overcome by showing that the predominant reasons for the gift were motivated by contemplation of life rather than of death. Thus, a motive to save income taxes or a showing that the gift was part of an estate plan would not indicate contemplation of death, while a motive to save estate tax would.[74] The value of property deemed transferred in contemplation of death is the value at the estate tax valuation date and not at the time of the transfer. Also, neither income from the property so transferred nor property in which the income has been invested is included.[75]

Further assurance that the donor may escape the effect of the contemplation of death rule is suggested in that: "Gifts of the size for which the custodian state is most useful are not likely to be deemed in contemplation of death even if made within three years of death, particularly if they represent part of a series of such annual gifts."[76]

The Uniform Gifts to Minors Act as adopted in Nebraska

[70] See Tenney, note 40 *supra*, at 350. See also Widmark, *Security Gifts to Minors*, 95 TRUST & ESTATES 698 (1956).

[71] INT. REV. CODE OF 1954, § 2041(b)(1).

[72] See Miller, note 7 *supra*, at 779-80 (1958).

[73] INT. REV. CODE OF 1954, § 2035.

[74] MONTGOMERY, FEDERAL TAXES § 21-9 (37th ed. 1958).

[75] *Id.* § 21-8.

[76] Tenney, *supra* note 39, at 946.

though not a panacea, serves a utilitarian purpose in providing a vehicle for making small gifts of stock and money with minimum expense and inconvenience.

Charles J. Kimball, '62