

ESTATE PLANNING OPPORTUNITIES IN A POLITICALLY UNCERTAIN, ECONOMICALLY TURBULENT AND LOW INTEREST ENVIRONMENT

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Estate planners are aware that the current “conditions” in the United States are different than they have been for many decades. The Federal estate tax, under current law, is scheduled to be repealed in 2010 and then be “operative” again in years thereafter but with only a \$1 million tax exemption and (subject to an adjustment for inflation) GST exemption. In addition, the wealth lost by Americans has been greatly eroded over the past months. The Federal government’s third party debt more than doubled from 2001 to 2009 and is forecast to increase at least at the same rate over the next few years- hence, the government is in a financial crisis of significant portions. Not surprising, several proposals to garner more tax revenues have been introduced. Some of these relate to estate, gift and generation-skipping transfer taxes. Also, interest rates used for estate and gift tax purposes, which affect many estate planning “strategies”, are at their lowest level in decades. The current economic climate has created opportunities for estate planning, both because asset values are depressed and the interest rates are low.

It is generally accepted that lifetime transfers are more “efficient” from an estate tax perspective than are death time ones. Also, it is usually best to transfer property when its value is low (as values are today compared to the recent past and, more important, as they are likely to be in the future). Several strategies, which are discussed below, work better when IRS interest rates are as low as they are now. It appears likely that some of these planning opportunities will be diminished by the adoption of future legislation or regulations. These conditions present opportunities that likely have never been presented before for property owners to engage in estate planning. As such, property owners might want to consider one or more of the following planning options:

Grantor Retained Annuity Trust

Using a grantor retained annuity trust or GRAT, the grantor makes a gift of property while retaining the right to payments of a portion of the property (annuity) during the term. This strategy allows for a reduction of the value of the gift for gift and estate tax purposes. While short term GRATs are generally favored, primarily because the grantor must survive the term of the GRAT for the gift to be effective, longer term GRATs benefit under a low interest rate environment by “locking in” the low interest rates to reduce the gift values for gift and estate taxes. Accordingly, a younger client, likely to survive a longer term GRAT, may want to consider a longer term GRAT when interest rates are low.

Charitable Lead Annuity Trust

This trust is used to make a charitable gift of a stream of annuity payments, followed by a tax free or tax favored gift to the family remainder beneficiaries. Since gift values, which are determined at the inception of the CLAT, have the potential to lock in a long term low interest rate at inception. Any increase in actual earning of the trust during its life will provide additional tax favored benefits to the remainder beneficiaries.

Qualified Personal Residence Trust

This trust is used to make a future gift of residential property with a right to occupy the property retained by the grantors for a specified period. The reserved right to occupy the property greatly reduces the value of the gift for gift and estate tax purposes. In a low interest environment, the value of the taxable gift is further reduced because the grantor also has reserved a right to receive back the property if the grantor dies during the term. As a result, this increases the overall value of the grantor's retained interest, and consequently reduces the value of the gift. This fact presents an opportunity to older grantors for whom the retained interests can otherwise drop significantly with higher interest rates; thereby increasing the value of their gifts for gift and estate tax purposes.