Opportunities in Estate Planning During the COVID-19 Crisis

In the last several weeks we have seen the drastic impact of the COVID-19 crisis on our health, way of living and the economy. While these times may feel uncertain, there are still many factors in your control and even opportunities for those who seek them out. This is especially true as it relates to your estate plan.

The current environment of low interest rates and depressed asset values presents several unique estate planning opportunities for individuals to make the most of their hard-hit assets and leverage the transfer of wealth and business interests.

Federal Gift Tax Exemption and Annual Exclusion Remain at All Time Highs

In 2020, the federal gift and estate tax lifetime exemption amount is $11.58 million per individual, and the annual exclusion for gifts is $15,000 per recipient per year.

These figures will remain in effect until 2026, when the lifetime exemption will “sunset” and revert back to approximately $5 million (as adjusted for inflation), barring any intervening legislation before then. The IRS has also clarified that individuals making gifts prior to 2026 can do so without concern that they will lose the tax benefit of the higher exclusion level if the current law sunsets.

Depressed Asset Values = Opportunity for Tax Advantaged Transfers

Whether you want to leverage your annual exclusions, preserve your federal exemption or limit your gift tax exposure, the depressed asset values and business interests provide an opportunity to make tax advantaged transfers to other individuals or trusts and allow any future growth to occur outside of your estate.

While outright gifts are certainly an option, the transfer of appreciable assets and interests to certain trusts can provide additional benefits and tax advantages that are intensified under the current depressed value conditions.

Trust instruments such as Grantor Retained Annuity Trusts (GRAT), Charitable Lead Annuity Trusts (CLAT) and Intentionally Defective Grantor Trusts (IDGT), are just a few examples of low risk vehicles that facilitate tax advantaged transfers of appreciable assets while reducing your taxable estate. The advantages of these options are further amplified when the interest rates used in determining the taxability of such transfers are lower.

Low Interest Rates = More Efficient Tax Advantaged Transfers

In response to the slowed economy, we have seen various interest rates being lowered to stimulate economic growth and to encourage borrowing and investment. This includes reductions in interest rates like the IRS § 7520 Rate and Applicable Federal Rates (AFR) that directly affect the taxability of transferring wealth and business interests.

Historically Low IRS § 7520 Rate: The IRS § 7520 Rate, a rate used to determine the gift tax consequences of transfers to trusts like GRATs and CLATs, has reached a historic low of 0.8% in May 2020. This is down from 2.8% in May 2019, and 3.2% in May of 2018.

Simply stated – the current § 7520 Rate presents an opportunity to make larger gift-tax advantaged transfers to your beneficiaries.

Low Applicable Federal Rates: We have also seen drastic reductions in the Applicable Federal Rates (AFR), which are used to determine interest charged on below-market value loans and promissory notes.

May 2019	May 2020
Annual AFR Short-Term: 2.39% Mid-Term: 2.37% Long-Term: 2.74%	Annual AFR Short-Term: 0.25% Mid-Term: 2.37% Long-Term: 1.15%

Low AFR makes this a good time to consider issuing or restructuring loans to family members while also reducing your taxable estate. This method of transfer is most successful if the assets appreciate over the course of the loan in excess of the applicable AFR.

For owners of closely held businesses, it may also be a good time to consider transferring your closely held business interests to your family members or successors. Tax advantaged transfers of business interests can be accomplished by strategic gifting plans or by a series of sales. While circumstances will vary for each individual and his or her business, in many cases, low AFR will permit larger tax advantaged transfers.

Higher Deductions for Charitable Giving = Rewards for Reducing Your Estate While Giving More to Those in Need

The recently enacted Coronavirus Aid, Relief and Economic Security Act (CARES Act) encourages individuals and corporations to "give more" by increasing tax deductions for charitable donations.

For individuals who itemize deductions on their income tax returns, the Act suspends the adjusted gross income (AGI) deduction limitation, allowing individuals to receive a charitable deduction of up to 100% of their AGI. For corporations, the limitation on deduction has been increased from 10% to 25% of taxable income.

Non-itemizing individuals are not left out, as the CARES Act permits an above-the-line deduction for up to $300 in charitable donations made in 2020 by individuals.

Hard-Hit Retirement Accounts = Opportunity for Roth IRA Conversions at Reduced Cost

In addition to the strategies above, depressed asset values have made Roth IRA conversions an effective strategy for both estate reduction and wealth transfer at a lower cost to your beneficiaries. This may be something you have already considered in light of the SECURE Act, which became effective on January 1, 2020. (Read more on the SECURE Act here).

Depressed market values reduce the amount of taxable income that would be recognized as part of the conversion, along with the added benefit of allowing depressed assets to grow and/or regain their values tax free.

This guidance is designed to provide a brief general overview or potential estate planning strategies. If you have any questions about this Information Memo, please contact any of the attorneys in our Trust and Estate Practice Group, or the attorney in the firm with whom you are regularly in contact.

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