WISEMAN · BRAY PLLC

ATTORNEYS AT LAW

ESTATE PLANNING NEWSLETTER

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A Great Time For Planning

INSIDE THIS ISSUE:

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Despite the dismal economic reports and slumping economy, the current economic and political climate presents some great opportunities for planning for your heirs and transferring wealth. Although it is often harder to part with your wealth during lifetime rather than waiting until death, it is much cheaper to do so, especially since it does not appear the estate tax will be eliminated any time soon.

Whether or not you or your family faces a significant estate tax burden, there are still some excellent opportunities to help your heirs in this economic climate. The values of nearly all classes of assets are significantly depressed, and interest rates are at historically low levels. The possibilities range from relatively simple to more complex, but we wanted to outline a few of those options.

Gifting of Depreciated Assets

As we mentioned above, it is generally cheaper to transfer assets during lifetime to your heirs or beneficiaries than to transfer them at your death, especially in today's economic climate. Each person can gift $13,000 tax free per year per beneficiary as of January 1, 2009, which means a married couple can gift up to $26,000 per year per beneficiary this year. Additionally, each person has a $1 million lifetime exemption without any federal gift tax. Every gift over $13,000 applied against the $1 million lifetime exemption will be subject to Tennessee gift tax.

With a number of depreciated assets, why not gift depreciated assets or portions of them instead of cash this year? Because the values are depressed, you can likely gift more value to your beneficiary than $13,000 tax free by gifting depreciated assets that will again rise in value in the future. Gifting $13,000 in depreciated stocks this year will likely provide much more economic benefit to your beneficiary over time than if you had gifted the same asset a couple of years ago.

Family Loans

A second effective way to transfer wealth is through a family loan. The IRS allows relatives to lend money to each other at the Applicable Federal Rate (AFR), which is a rate set by the government on a monthly basis. Because the rates are currently well below those for bank loans or mortgages, loaning money to a child or beneficiary can provide them with some needed cash to purchase a home or invest. If the beneficiary invests wisely, he or she may actually have something left after repaying the relative. Additionally, if the beneficiary uses the loan to purchase a home, the beneficiary will profit as long as the home appreciates by more than the AFR. Thus, the lender benefits by potentially reducing his estate tax bill, and the beneficiary benefits by getting some cash to invest and potentially profits if the investment does well.

Charitable Lead Annuity Trusts (CLATs)

If you are charitably inclined, a charitable lead annuity trust may be a great way to reduce or eliminate gift and estate taxes. Like many other individuals and organizations, charities are suffering under the current economic crisis, and gifts are more needed than ever. When a charitable lead annuity trust is established, you place a single asset or a collection of assets into the trust. All annual income must be paid out to charity. However, the balance will go to your heirs or beneficiaries at your death.

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With interest rates so low, the gift tax consequences can be significantly reduced. When the initial gift is made, the IRS estimates the amount that will pass to your beneficiaries and assesses gift tax on that amount. However, the interest rate to determine the amount is currently low. The value on which gift tax is assessed is much lower than the potential gains on the underlying asset over time. Therefore, the underlying asset may be worth much more at your death than the value on which the IRS assessed gift tax.

If you regularly give to a charity or several charities anyway, this can be a great way to continue your giving but also provide for the remainder to pass to your heirs. Additionally, you will not pay income tax or capital gains tax on the earnings from the trust assets because all income is paid to charity. Finally, the principal balance passing to your heirs can far exceed any gift tax consequences.

<u>Grantor Retained Annuity Trusts (GRATs)</u>

A grantor retained annuity trust can provide a significant benefit to your beneficiaries and eliminate any gift tax consequences. Perhaps more importantly, there is very little, if any, downside risk. A GRAT is in many respects like a loan because the grantor transfers assets to the trust and receives annuity payments for the term of the GRAT. At the end of the term, the asset transferred to the GRAT and any gain on the asset passes to the beneficiary. The potential benefit to a GRAT is that any earnings or appreciation beyond a certain rate set by the IRS, which is currently low, passes to your beneficiaries tax free. GRATs can work especially well for assets that are expected to appreciate significantly. For example, suppose you transferred a farm currently to a GRAT for the benefit of your children. You would receive payments of the income from the farm for the term of the GRAT. At the end of the term, the farm and any appreciation would pass to your heirs tax free. If the farm does not appreciate, you nor your heirs have really lost anything. Thus, the worst possible result is that the asset would pass to your beneficiaries without any appreciation, and you would have recouped the full value of the farm through the annuity payments.

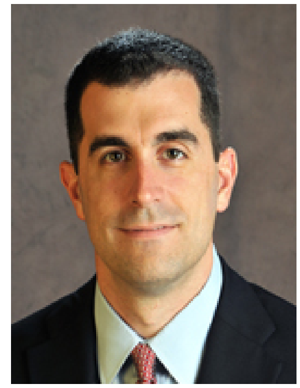
The above list provides an overview of just a few of the great opportunities available despite the current economic situation. For more details or for questions regarding these strategies, please contact our office.

UPDATE ON THE ESTATE TAX

Although there has not been any definitive legislation on the estate tax, the general consensus in the estate planning community from those who have inside contacts in Washington is that the estate tax exemption amount will be $3.5 million on a permanent basis with rates capping out at 45%. Under existing law, the exemption amount is $3.5 million for 2009, there is no estate tax in 2010 and the exemption will revert back to $1 million for 2011 and the years following.

It is also anticipated that the lifetime gift tax exemption will be permanently increased to $3.5 million, which means you would be able to gift up to $3.5 million over your lifetime without paying federal taxes. Tennessee still has a gift tax on amounts over the annual exclusion amount, which is currently $13,000 per beneficiary per year.

As with any legislation, nothing is permanent until it is signed into law. These figures are simply predictions from those who have contact with members of Congress involved in this legislation.



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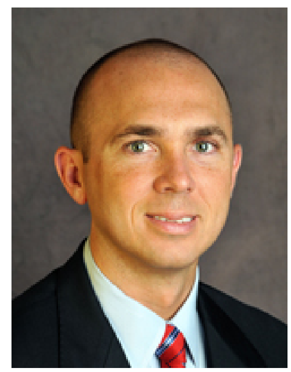

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