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WithumSmith+Brown Tax Services Team's Newsletter

ESTATE & TRUST

FEATURE ARTICLE: Estate Planning: Why Now's the Time

Economic Turmoil Creates Opportunities: **Act Now**



Economic Turmoil By Hal Terr, CPA, PFS, CFP Creates Opportunities

The current downturn in the economy has made many individuals reluctant to discuss estate planning. Some individuals feel that their current estate documents adequately meet their estate objectives, while others with sufficient wealth are reluctant to engage in advanced estate planning. Often they fear they would incur obligations that they would not be able to afford in the future. However, these same individuals may be surprised to learn that their existing estate planning documents are out-of-date and that many advanced estate planning strategies can be tailored to assist them in these difficult economic times.

Since 1997, the amount that one can pass free from federal estate tax has increased from \$600,000 to \$3.5 million. As a result, the existing estate plans that create separate “bypass” and “marital” trusts to take advantage of the estate exemption should be reviewed. Because of the increase in the exemption or decrease in an individual’s net worth, the marital trust may be funded with fewer assets than originally expected when the estate documents were drafted.

An individual who still wants to create an estate exemption trust but is concerned with the surviving spouse having sufficient assets may want to name the surviving spouse as the sole beneficiary of the estate exemption. This enables the surviving spouse to make distributions to the children from the trust during their lifetime. The surviving spouse would have a greater sense of security while retaining many of the benefits of the more common “sprinkle” trusts. Alternatively, an individual’s estate documents could provide for the funding of Disclaimer Trusts which provide flexibility to the surviving spouse for the amount of funding allocated to the estate exemption trust.

Gifts or bequests in an individual’s existing documents that made sense when their net worth’s were higher may



Despite the current economic hardships, opportunities have been created that will benefit you and planning your estate and trust. Here are some suggestions to consider.

- An individual who is planning current or future charitable gifts may consider a Charitable Lead Trust, which enables an individual to pass wealth to family members in addition to charity.
- Advanced estate planning techniques such as a Grantor Retained Annuity Trusts (GRATs), Charitable Lead Trusts or sales to Grantor Trusts could transfer significant wealth as the economy recovers which would avoid the substantial estate tax in the future.
- The current low Applicable Federal Rate (AFR) allows for loans to be made to children (such as those affected by the economic downturn) at very low rates. This allows for parents to provide support to their children without making an actual gift.

While individuals may want to postpone their estate planning until the economy improves, the decline in asset values and interest rates create great opportunities now.

not be appropriate now with the significant decline in asset values. There may be a need to consider liquidity to provide for eventual estate tax liabilities. Specific gifts of assets with the goal of equalizing transfers among family members may find that falling values have made these transfers now substantially unequal. In addition, individuals now concerned for providing for the financial needs of their families in light of the economic downturn are rethinking gifts to charity, either during lifetime or at their passing.

While individuals may want to postpone their estate planning until the economy improves, the decline in asset values and low interest rates may provide individuals with the opportunity to transfer wealth at reduced estate and income tax that will not be available in the future. The interest rate the IRS uses to measure taxable gifts of future interests, the Section 7520 rate, is at a historic low.

Some advanced estate planning techniques require a continuing commitment that may last for years. Individuals concerned about future obligations may still enter into such planning if there is an ability to turn on and off the funding depending on economic circumstances.

While individuals focused on their estate planning in the past when their net worth's were increasing, given the current economic climate it may be more relevant now to review estate planning documents and strategies so that tax minimization and estate distribution goals are met.

- In addition, there are current proposals to make estate planning strategies such as “rolling” GRATs and Family Limited Partnerships unavailable. While these proposals are not new, individuals should not assume that these techniques will exist in the future as the current fiscal and political environment encourages proposals that raise tax revenue.
- One of the most common estate planning strategies is gifting of the annual exclusion, currently \$13,000 per donor per donee. There is an unlimited gift tax exclusion for qualifying payments of tuition or medical care. This exclusion is in addition to the \$13,000 annual exclusion. During better economic times, an individual can continue a regular sequence of annual gifts while reducing or stopping these gifts when the economy declines.
- With the decline in real estate values, you should consider funding a Qualified Personal Residence Trust (QPRT), which would allow you to transfer your residence at a significantly reduced gift tax yet allow you to continue to live in the residence for as long as you wish.

About the author, Hal Terr, CPA, PFS, CFP

Hal is a Senior Manager in the Tax Department at WithumSmith+Brown, PC. Hal Terr is a certified public accountant and certified planner with over fifteen years experience in providing income tax, financial and advanced estate planning advice to corporate executives, closely-held business owners and affluent individuals.

Estate Planning is a Lifetime Process

By Hal Terr, CPA, PFS, CFP

Estate planning is a lifetime process, not simply an after-tax distribution program. You must periodically review your estate planning goals and estate documents to maximize current benefits available due to law changes. Following is a quick checklist of some events or activities that could impact your estate planning needs:

1. Changes in federal and state estate tax law
2. More than two years since you reviewed your estate plan
3. Death or incapacity of a spouse, beneficiary, executor, trustee or guardian.
4. Your marriage, remarriage or divorce, or that of a beneficiary or family member.
5. Birth or adoption of a child or grandchild
6. Serious illness of a family member
7. Financial irresponsibility of a child
8. Move to another state or acquisition of property in another state
9. Acquisition of substantial life insurance
10. Change in business interest or retirement

When President George W. Bush took office, Congress passed the 2001 Tax Relief Act, which introduced federal estate tax reform and repeal. Under current law, the value an individual's estate, which includes taxable gifts passed during lifetime that can pass free of federal estate tax stands at \$3.5 million in 2009. Although the estate exemption has increased over time, the exemption for taxable gifts made during one's lifetime has remained at \$1 million. The maximum federal estate tax rate imposed on the value of an individual's estate in excess of the applicable exemption amount is 45%. Although the current law provides for repeal of the federal estate tax in 2010, it further provides for the reinstatement of the federal estate tax for 2011 and forward with an estate exemption of only \$1 million (indexed for inflation) and a 55% maximum federal estate tax rate.

In response to the 2001 Act, many states, including New Jersey, New York and Connecticut, passed legislation so not to conform to the federal changes. The exemption amounts for these states are \$675,000, \$1 million and \$2 million, respectively. Although Pennsylvania no longer has an estate tax, the inheritance tax still applies.

Legislative action on the estate tax in 2009 seems likely, in view of the otherwise scheduled repeal in 2010 and the reversion in 2011 to pre-2001 estate tax law. Given the current economic environment and the need for the federal government to raise revenue, complete repeal of the estate tax is unlikely.

The expected legislative changes provide an opportunity to review your estate plan and consider revisions and planning opportunities that will affect how your plan distributes your assets under current law and the changes that will likely occur.

THE WS+B ESTATE & TRUST TEAM



Don Scheier, EA
Partner, Tax
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Don is a partner based in our Morristown, NJ, office and has over 30 years of experience in taxation and administration of trusts, estates, foundations and not-for-profit organizations. His involvement in tax planning for high net worth individuals and pre-and post-estate tax planning has been extensive.

A graduate of Brooklyn College, where he earned his bachelor's degree in accounting, Don also completed graduate courses in taxation at Pace College in New York City. Early in his accounting career, he was the supervisor of the trust and estate tax and accounting department of a law firm. In addition, Don was a manager of the Court Accounting Group and supervisor of the Fiduciary Tax Department of a large New York trust company. He also managed his own accounting practice, specializing in personal services planning and tax areas with emphasis on trusts and estates. Don is a member of the New Jersey and New York Societies of the National Association of Enrolled Agents as well as the National Society of Accountants and the International Association of Registered Financial Consultants. He is also a frequent speaker and has presented before the NJSCPA and professional groups. Don is a resource for attorneys and accountants with respect to state taxation and administration of trusts.

Don is a former basketball, baseball and wrestling coach, and he served as trustee for the Congregation Sons of Israel for eight years.

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