

Estate Planning In A Distressed Economy

As we are all aware, the last few weeks have been tumultuous in many ways. In particular, the stock market, after reaching all-time highs in the beginning of 2020, has undergone a dramatic reversal and at the moment is down close to thirty (30%) percent, with certain sectors down significantly more. While we do not have a crystal ball and cannot predict when the downward cycle will end, depressed asset values offer a unique opportunity to make substantial gifts at significantly reduced gift tax values.

Separately, the Tax Cuts and Jobs Act was passed into law in December 2017 and dramatically altered the federal estate, gift and generation-skipping transfer tax landscape. In particular, the estate, gift and generation-skipping transfer tax exemptions were significantly increased (currently being \$11,580,000 per person). These increased exemptions are not permanent, however, are scheduled to sunset on December 31, 2025, and could, in fact, be scaled back even earlier if the Democrats take control in the upcoming election.

From a gift tax perspective, the increased exemption, coupled with depressed asset values, presents a rare opportunity to make significant gifts at reduced gift tax values. This is, therefore, an exceptional time to consider (i) making outright gifts, (ii) making gifts to "dynasty" trusts, and/or (iii) making gifts to grantor retained annuity trusts (GRATs).

While outright gifts are the fastest and easiest way to make gifts, such gifts are the least desirable because the gifted assets will be includible in the recipient's estate for estate tax purposes and will be available to the recipient's creditors.

In contrast, if gifts are made to a dynasty trust, the gifted assets, and any appreciation, will not be includible in the recipient's estate for estate tax purposes and will not be available to the recipient's creditors. In fact, if the dynasty trust is created in a jurisdiction that allows the trust to be perpetual (such as Delaware), and generation-skipping transfer tax exemption is allocated to the gift, the gifted

property and all of the appreciation on such property will be removed from the estate and gift tax system forever.

While a dynasty trust can be an excellent estate planning tool, its utilization is limited in that one cannot gift more than his or her remaining gift tax exemption amount to the trust without incurring a gift tax. Alternatively, one may simply wish to transfer only future appreciation. In each such case, a GRAT will be a more desirable approach. By way of brief background, a GRAT is a statutorily sanctioned trust whereby one transfers property in trust and retains the right to receive a series of payments for a predetermined period of years. The remaining property left in the GRAT after the annuity term (i.e., all appreciation in excess of the "\$7520 Rate" or "hurdle" rate, which will be a mere 1.2% beginning on April 1), will pass to the beneficiaries at no appreciable gift tax cost.

Most commonly, a GRAT is "zeroed-out" for gift tax purposes because the remainder interest (the gift amount) is valued at zero for gift tax purposes; thus, no gift tax is payable and no gift tax exemption is used in connection with the funding of the GRAT. Of course, to the extent that the investment return exceeds the \$7520 Rate, the excess will remain in the GRAT after all annuity payments are made, thereby effecting a tax-free gift.

Finally, and quite separate and apart from the above, this is also an opportune time to ensure that your larger estate plan remains in order. In particular, we suggest that you consider any changes that have occurred since you last addressed your estate plan and that you ask yourself whether the individuals that you have appointed to serve as your executor, as your trustee, as your minor child's guardian, etc., remain appropriate for those roles. We firmly believe that the peace of mind that will come from knowing that your estate plan is in order will contribute to a healthy mental state in these otherwise uncertain times.

Please let us know if we can help in any way, please wash your hands and please stay safe.

Gideon Rothschild
Co-Chair
212.554.7806
grothschild@mosessinger.com

Daniel S. Rubin
Co-Chair
212.554.7899
drubin@mosessinger.com

Carole M. Bass
212.554.7877
cbass@mosessinger.com

Kaitlyn Blanchard
212.554.7838
kblanchard@mosessinger.com

Michael Greenberg
212.554.7656
mgreenberg@mosessinger.com

Alan H. Kupferberg
212.554.7805
akupferberg@mosessinger.com

Allison Lee
212.554.7573
alee@mosessinger.com

Irving Sitnick
212.554.7821
isitnick@mosessinger.com

Ira W. Zlotnick
212.554.7870
ira.zlotnick@mosessinger.com

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