Protecting Your Wealth in an Uncertain Economy

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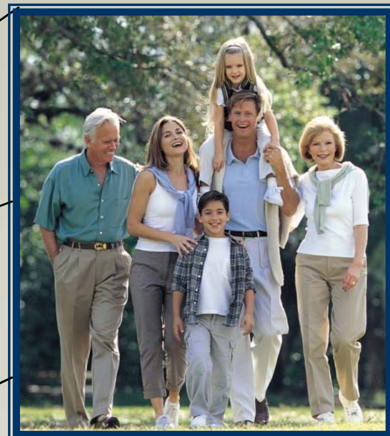
INTRODUCTION

SMITH, GAMBRELL & RUSSELL, LLP:
PROVIDING FOR FAMILY
& FUTURE GENERATIONS

Understanding Estate Taxes Today

Unique Wealth Transfer Planning Opportunities

Asset Protection Planning



- Estate & Gift Tax Planning
- Income Tax Planning
- Fiduciary / Trust / Estate Litigation
- Fiduciary Accounting Services for Trustees & PRs (NY, NJ, CT clients only)
- Domicile and Income Tax Planning
- Decedent Administration Services
- Business Succession Planning
- Family Legacy & Philanthropic Planning

2001 Estate, Generation-Skipping Transfer and Gift Tax Law

- Between 2001 and 2009 rates decreased and exemptions increased
- George W. Bush made a campaign promise to repeal the "death tax" and to deliver on this promise the estate and GST tax was "repealed" in 2010
- Because of the "Byrd Amendment" the 2001 tax law could last no longer than 10 years, and in 2011 the 2001 laws will reappear
- In 2001, the theory was that the American people would become used to the higher exemption and lower rates or the repeal of the "death tax" forcing Congress to continue the lower rates and higher exemptions or the repeal of the estate tax before 2010
- "Everybody" believed Congress would enact corrective legislation before 2010, but that did not happen

Estate, Generation-Skipping Transfer and Gift Tax Exemptions and Rates

	2009	2010[1]	2011[1]
Estate Tax-Rate	45%	n/a	55%
- Exemption	$3.5M	n/a	$1M
GST Tax-Rate	45%	n/a	55%
- Exemption	$3.5M	n/a	$1.35M[2]
Gift Tax-Rate	45%	35%	55%
- Exemption	$1M	$1M	$1M
Step-up in Basis	Yes	No	Yes

[1] Assuming no new tax laws.

[2] Estimated. Adjusted for inflation.

Basis of Assets Inherited in 2010

	All to Children	All to Spouse
Total Taxable Estate	$10M	$10M
Original Basis	$2.7M	$2.7M
General Basis Adjustment	$1.3M	$1.3M
Spousal Basis Adjustment	$0	$3.0M
Total Basis	$4.0M	$7.0M
Potential Gain	$6.0M	$3.0M
Approximate Tax (20%)	$1.2M	$0.6M

Estimate of Tax Consequences for a Person Whose Estate Leaves All Property to Children

	2009	2010 [1]	2011 [1]
Total Taxable Estate	$10M	$10M	$10M
Basis	$2.7M	$2.7M	$2.7M
Approximate Estate Tax	$3M	$0	$5M
Potential Capital Gains Tax (20%)	$0	$1.2M	$0

[1] Assuming no new tax laws.

Estimate of Tax Consequences for a Married Person Whose Estate Leaves All Property Outright or in Trust for Surviving Spouse

	2009	2010 [1]	2011 [1]
Total Taxable Estate	$10M	$10M	$10M
Basis	$2.7M	$2.7M	$2.7M
Approximate Estate Tax (Marital Deduction would apply)	$0	$0	$0
Potential Capital Gains Tax (20%)	$0	$600K	$0

[1] Assuming no new tax laws.

Alternative Provisions for Documents[1]

- Assuming no estate or GST taxation is in effect at the date of my death, I would like my assets to be distributed as follows: … .

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- For persons living in states with an inheritance tax, more involved provisions are needed. These states are Connecticut, the District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee or Washington.

[1]Assuming no new tax laws.

Need to Review Estate Planning Documents[1]

		Urgency
1)	Unmarried with all assets left to children or other specific beneficiaries	Low
2)	First marriage with high basis assets	Low
3)	First marriage with low basis assets, meaning over $1,300,000 of appreciation	Moderate
4)	For second or later marriages with children by former marriage	High
5)	Any estate planning documents with references to tax terms, such as Marital Deduction, estate tax exemption, GST planning, charitable remainder trusts, charitable lead trusts	High
6)	Anyone living in Connecticut, the District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee or Washington	High
7)	Anyone who is elderly, in poor health or has significant wealth	High

[1] Assuming no new tax laws.

ESTATE PLANNING OPPORTUNITIES DUE TO ESTATE TAX REPEAL

Changes in Estate Planning Documents

– Formula clauses in Wills or Revocable Trusts prepared prior to 2010 may not work

– Revisions to consider
  - All property to a trust for the benefit of surviving spouse and children, if no state estate tax
  - All property to a trust for the surviving spouse, especially if there is a state estate tax
  - Eliminate specific outright bequests to the surviving spouse, such as the home

Estate Planning Opportunities Due to Estate Tax Repeal (cont.)

– **Taxable Gifts**
  - 35% gift tax rate
  - Especially if large gifts are planned anyway
  - Especially if valuation discounts are anticipated
  - **Caution: retroactive en-enactment of higher gift tax rates**
  - **Caution: may want to avoid taxable gifts if death is likely this year**

Estate Planning Opportunities Due to Estate Tax Repeal (cont.)

– **Outright Gifts to Grandchildren or More Remote Descendants**
  - No generation-skipping transfer tax ("GST") right now, so possibility that there will never be GST tax imposed on transfer
  - **Caution**: **Retroactive re-instatement of GST tax**
  - Problem: concern about ability of donee to property manage the property due to age, creditor problems, marital problems, etc.
  - One potential solution: contribute assets to an LLC and then gift the LLC interests to the donee. LLC Manager would manage assets, make investment decisions
  - **Caution: If GST gift is in trust, there could be a tax problem at distribution**

– **Gifts to Spouse Not Expected to Survive this Year**
  - Such gifts may pass free of estate tax if the spouse dies this year
  - Such property may be placed in the trust for the surviving spouse and may pass free of estate tax when surviving spouse dies

WEALTH TRANSFER OPPORTUNITIES DUE TO ESTATE TAX REPEAL

WEALTH TRANSFER TECHNIQUES

Technique	**Relative Ease of Implementation**	**Good for Low Interest Rate Environment?**	**Good for Reduced Value Assets?**
Gifts	Easy	No impact	Yes
Loans	Easy	Yes	No impact
Sale of Assets	Sometimes simple; sometimes complex	Yes, if purchased with a Note	Yes
Irrevocable Life Insurance Trusts	Not as complex	No impact	No impact
Grantor Retained Annuity trust	More complex	Yes	Yes
Qualified Personal Residence Trust	More complex	No	Yes
Family Limited Partnerships	More complex	No impact	Yes, if making gifts of partnership interest
Charitable Lead Trusts	More complex	Yes	No impact

Wealth Transfer Opportunities Due to Economic Conditions

– **Economic Conditions**

- Low interest rates
- Reduced values

– **Gifts**

- $1 million lifetime gift exemption
- $13,000 per donee annual gift exclusion
- May work especially well if gifting property that has declined in value
- Discounts may be available for certain gifts

Wealth Transfer Opportunities Due to Economic Conditions (cont.)

– **Loans**
  - Minimum interest rates for March
    – Term of <3 years: 0.64%
    – Term of 3 to 9 years: 2.69%
    – Term >9 years: 4.35%

– **Irrevocable Life Insurance Trusts**
  - A form gifting program designed to acquire life insurance
  - Purpose is to keep insurance out of taxable estate
  - Old trusts that don't meet current needs – several ways to "change" these irrevocable trusts, depending on trust terms:
    1. Sale of assets to new trust
    2. Transfer of assets to new trust
    3. Merger of old trust to new trust

Wealth Transfer Opportunities Due to Economic Conditions (cont.)

– **Sale of Assets**
  - Sales price can be paid by a Note
    – *e.g.*, Interest only, 9 year term
  - If sale is made to a certain kind of trust, known as a Grantor Trust, no capital gains tax on sale to the trust
  - May work well with business succession planning

– **Grantor Retained Annuity Trust**
  - Can transfer appreciation in value of assets to beneficiaries for very small gift
  - **Caution:** On President's "wish list" to require a 10 year minimum term; this may limit their usefulness for some people

Wealth Transfer Opportunities Due to Economic Conditions (cont.)

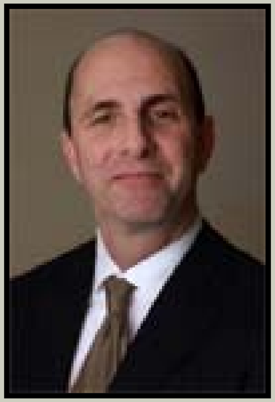
- **Qualified Personal Residence Trust ("QPRT")**
  - Holds interest in a residence for a term; at end of term, residence passes to beneficiaries
  - If successful, can pass title to residence to beneficiaries for less than full value of the property
    - Does not work as well in low interest environments, but may want to consider if value of property has declined

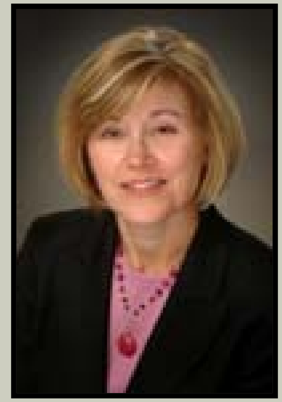
- **Family Limited Partnership or Family Limited Liability Companies**
  - Can provide management for family owned assets
    - Can make gifts of interests for lower value than if the property itself were gifted – *i.e.,* discounts
      - Example: Investment real property
  - Can carry out gifting program without gifting cash
  - **Caution**: On the President's "wish list" to do away with discounts for intr-family transactions

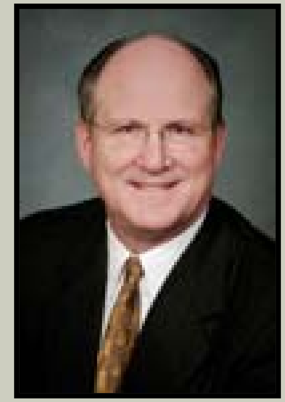
Wealth Transfer Opportunities Due to Economic Conditions (cont.)

- **Charitable Lead Trusts**
  - Charitable lead trusts work especially well when interest rates are low
  - Charity gets income interest for term of trust
  - Non-charitable beneficiaries get the remaining assets at end of the trust term

ASSET PROTECTION







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