

Presenting a live 90-minute webinar with interactive Q&A

Estate Planning During COVID-19: CARES Act Relief, Key Issues and Planning Opportunities for Trusts and Estates

Alternate Valuation for Estate Assets, Lifetime Gifts, Reducing Tax Liability, Trust Modifications, Promissory Notes

TUESDAY, JUNE 9, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Program Overview

- Pandemic Planning: Before, During, After
- Review of relevant CARES Act provisions
- Planning Opportunities and Techniques
- Buyer's Remorse

Pre-Pandemic: Examining the Estate Plan

- Review existing documents
 - Dispositive provisions of estate plan
 - Fiduciary succession (including guardians for minor children)
 - Changes to applicable state statutes, including RUFADAA
 - State estate tax considerations (or not)
 - Federal income, estate, and generation-skipping transfer tax considerations and potential tax reform

Pandemic Planning

Wills and Will Substitutes

- Standalone Will v. “Pour Over” Will coupled with Revocable Trust
 - Consider whether changes can be accomplished with stop-gap documents, codicils, or amendments
 - Review applicable state execution formalities in light of anticipated difficulties
 - Needs v. Wants for proper execution
 - Remote execution
- Review and update beneficiary designations
 - Retirement accounts
 - SECURE Act changes
 - Insurance
 - Request and review illustrations to verify coverage

Pandemic Planning Powers of Attorney

- When does the authority become effective?
 - Springing powers
 - Durable powers
- Consider powers to facilitate activity by attorney-in-fact
 - Gifting
 - Estate planning (including changing beneficiary designations)
 - Digital assets
 - Electronic communications

Pandemic Planning Health Care Decisions

- Health Care Proxy
- HIPAA release
- Declaration of pre-need guardian
- Living Will/DNR
- Considerations
 - Review of agents and successor agents and confirm contact details
 - Consider use of rider to address COVID-specific issues, including potentially life-saving measures such as intubation and experimental treatments/trials
 - Expressly authorize agent to communicate with medical providers electronically

Pandemic Planning Client Toolbox

- Client folder or “emergency envelope” for immediate client use
 - Identify “VIPs”
 - Attorney-in-fact
 - Health care agent
 - Guardians
 - Attorney
 - Copies of certain documents relevant to medical care
 - Health Care Proxy
 - Living Will
 - HIPAA Release
 - Prepaid funeral arrangements/instructions
- Office/vault files
- “The Cloud”

Planning Opportunities

Domicile Planning

- State income tax generally imposed on a:
 - Domiciliary or
 - Statutory resident
- Higher income tax jurisdictions such as California, New Jersey, and New York have been hit particularly hard by COVID
 - The Clash: should I stay or should I go?
- What about people who temporarily relocate due to the pandemic?
 - Residency v. domicile

Planning Opportunities

Domicile Planning (ctd.)

- Successfully effectuating a change in domicile is a 2 part approach
 - Key:
 - Abandon old domicile AND
 - Establish new domicile
- No exhaustive list, but look to state-specific resources such as the Massachusetts audit checklist, NY nonresident audit guidelines, California “Bragg” factors and other guidance
- Factors could include: home, active business involvement, time (day-counting), items “near and dear,” location of partner and children, and closest connections

Planning Opportunities

Recap of Current Estate Tax Exemptions

- The Tax Cuts and Jobs Act nearly doubled the gift, estate, and generation-skipping exemptions to \$10 million, indexed for inflation
- In 2020, the federal exemption is \$11,580,000 per person in 2020 (\$23,160,000 per couple)
 - Expanded federal exemptions set to “sunset” on January 1, 2026 to pre-2017 levels
- Some states still impose state-level estate tax
- Unique opportunities available to take advantage of high exemptions, coupled with low values and interest rates

Gift and Estate Tax Exemption Here Today and Possibly Gone Tomorrow

- Current Exemption Amount is Set to Expire December 31, 2025
- But it could expire sooner...
 - The Democrats appear united in their stance on raising taxes, including lowering the exemption amount
- What would it take? Not much...
 - 3 Democratic Senators and 1 democratic president
 - Budget Reconciliation
 - Retroactive legislation, which, by the way, has been done many times and SCOTUS has ruled constitutional

Gift and Estate Tax Exemption Here Today and Possibly Gone Tomorrow

- What does this all mean?
 - Use the temporarily inflated exemption amount in 2020 or it very well could disappear forever
- What about the wait-and-see approach?
 - Does anybody remember 2012?
 - Valuations may take longer than the 7 weeks after the election and before the end of the year
 - Enter *Wandry* clauses
- Urge your clients to take advantage of the exemption while it lasts!

Planning Opportunities

Low Interest Rates

Month/Year	7520 Rate	Mid-Term AFR
January 2020	2%	1.69%
February 2020	2.2%	1.75%
March 2020	1.8%	1.53%
April 2020	1.2%	0.99%
May 2020	0.8%	0.58%
June 2020	0.6%	0.43%

Planning Opportunities: Low Interest Rates (ctd.)

Techniques that can help lock in low value, lock out appreciation

- Gifts
- Intra-family loans (and/or refinance existing promissory notes)
 - Special interest rates apply (mid-term AFR of 0.43% in June 2020)
 - Attractive option in connection with grantor trusts
 - Can be used to get cash to family members while preserving grantor's gift tax exemption
- GRATs
 - Hurdle rate for June 2020 is 0.6%
 - Preserve grantor's gift tax exemption with a "zeroed out" GRAT
 - Ideal strategy to transfer undervalued securities or private investments
 - Existing GRAT can be repurposed if assets have declined in value (fund a new GRAT with those assets)
- Sales to grantor trusts such as SLATs or dynasty trusts in exchange for promissory note
 - Utilize expanded exemptions
 - Note imposes interest at AFR and property sold to the trust generates income to pay down the note
 - If property sold to the trust earns a higher rate of return, excess is a tax-free transfer
 - Valuations/appraisals important to set value with IRS
 - Triple crown: may take advantage of low asset values, entity-level discounts, and additional COVID discounts

Planning Techniques: Intra-family Loans

- New loan
 - Excess appreciation remains with borrower without any transfer tax
- Existing loan
 - Between family members or trusts (or combination)
 - Refinance
 - Consideration/pay down principal?
 - Include prepayment penalty?
 - Keep same termination date?
 - Review history of payments/refinancings

Planning Techniques: Sale to Grantor Trust (IDGT)

- Income/estate tax treatment
 - Income tax—ignored; estate tax—respected as separate
- Benefits
 - No capital gains on sale of assets to grantor trust
 - No gift tax when grantor pays income taxes on behalf of trust
 - Can allocate GST exemption
 - Hurdle rate is lower than GRATs
- Challenges
 - May need to seed trust (use exemption) and/or make guaranty arrangements

Planning Techniques: GRATs

- Works well in low interest rate and depressed asset value environment
- Does not use any meaningful portion of exemption
 - Good for clients who have used up lifetime exemption
 - Can help avoid “buyer’s remorse”
- Challenges
 - Cannot allocate GST
 - Slightly higher hurdle rate
 - Require significant manual oversight, especially if trying to swap out assets and “lock in” gains/losses

Planning Techniques: CLATs

- Similar to GRAT
 - Charity (not grantor) receives annuity
- Charitable deduction may be available at funding
 - AGI limitations
 - Cash: 30%
 - Long-term gain assets: 20%
 - 2020: qualified contribution of cash to public charity: 100% (CARES Act)

Planning Techniques: SLATs

- Removes assets from estate while maintaining accessibility to assets through spouse
- Caution: reciprocal trust doctrine
- Other risks
 - Divorce
 - Untimely death of beneficiary spouse

Planning for Potential Buyer's Remorse by Giving the Grantor Access

- Spousal Lifetime Access Trusts (SLATs)
 - Each spouse creates a trust for the other spouse
 - Avoid the reciprocal trust doctrine by making the two trusts sufficiently different:
 - Different governing law; different trustees; timing; one trust may provide a power of appointment while the other does not; different distribution standards or timing or distributions; give one spouse a noncumulative 5/5 power; vary beneficiaries, etc.
 - SLATs are grantor trusts, so consider including a discretionary income tax reimbursement clause to reimburse grantor for taxes paid on trust income
 - SLATs can own vacation homes that grantor may use as part of the beneficiary spouse's family
 - Consider allowing the trustee to confer a GPOA on beneficiary spouse
 - Be sure to define spouse carefully
 - Consider life insurance

Planning for Potential Buyer's Remorse by Giving the Grantor Access

- Domestic Asset Protection Trusts (DAPTs)
 - Good option if you're in one of 19 states that permit their use
 - Many states have statutorily ruled that self-settled trusts are against public policy
 - NY EPTL 7.3.1: "A disposition in trust for the use of the creator is void as against the existing or subsequent creditors of the creator."
 - Section 548(e) of US Bankruptcy Code states that if any self-settled trust is used to hinder, delay, or defraud a creditor and bankruptcy is commenced within 10 years then the trust is pulled into the bankruptcy estate
 - Therefore clients should sign a solvency affidavit
 - Prohibit distributions for 10 years and one day to avoid
 - Can clients in non-DAPT states create DAPTs in states that allow them?

Planning for Potential Buyer's Remorse by Giving the Grantor Access

- More sophisticated/riskier techniques
 - Hybrid DAPT – allowing a nonfiduciary to add the grantor as beneficiary
 - Special Power of Appointment Trusts (SPATS) – avoiding DAPT rules altogether where *trustee* makes distribution back to grantor; instead, prohibit trustee from making distributions to grantor but give a non-beneficiary a lifetime power of appointment that can be exercised in favor of class that includes the grantor
 - Split Interest Purchase Trust – avoiding QPRT downsides by having grantor purchase life estate in residence and GST-exempt trust purchase remainder

Convincing the Client to Plan Now

- Best ways to convince clients to part with significant wealth now:
 - Use-it-or-lose-it exemption
 - Access – The current economic environment, as well as domestic unrest, may make clients nervous about parting with some of their wealth
 - Asset protection – It's about more than just helping heirs; it's also about protecting the client

Thank You

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