Estate Planning
Techniques To Consider

Introduction

The gift tax lifetime exclusion amount (which is linked to the estate tax exclusion amount) locked is $5,450,000 as of January 1, 2016, and is indexed to inflation. The landscape for estate planning has changed over the past several years, and we suggest the following ideas. These techniques are best suited for those of our clients who have substantial estates and desire to reduce the tax burden in passing wealth from generation to generation.

1. *Annual Gift Program*. Gifting the full annual exclusion amount ($14,000 per recipient per year) will significantly reduce the size of a taxable estate. Annual exclusion gifts to section 529 educational accounts or Education IRAs for children and grandchildren can be particularly effective ways to use the annual exclusion amount. Trusts for minors can be set up for children or grandchildren, where trustees can use both spouses' annual exclusion amounts for the benefit of each trust beneficiary. It is also possible to pay a person's educational or medical expenses directly to an educational institution or medical provider in amounts above the annual exclusion amount.

2. *Generation-Skipping Transfer (GST) Planning*. Using the full GST exemption amount can save estate tax by ensuring that certain assets pass estate tax free at your children's death. A GST Trust can benefit children for life (and allow children to be trustee) while ensuring the ultimate disposition of assets for grandchildren. The trust may continue for the maximum period permitted under state law. The trust may also be funded with life insurance or discounted LLC interests. However, GST planning is complicated for the year 2010 as the estate tax "repeal" also took away the ability to allocate GST exemptions to gifts in trust.

3. *Life Insurance Trust*. One way to reduce estate taxes is to transfer ownership of a life insurance policy on your life so that the proceeds of the policy will not be included in your estate at death for estate tax purposes. You may transfer your life insurance policies either directly to individuals or to an irrevocable life insurance trust.

4. *Private Foundations or Donor Advised Funds*. Many families choose to establish a private foundation as a vehicle to coordinate charitable giving and permit the family to continue as stewards over family wealth held for the benefit of charity. Donor-advised funds offer some of the flexibility of a private foundation and may be suitable for clients who wish to avoid establishing a separate entity for charitable giving.

5. *Family Limited Liability Companies (LLCs) or Family Limited Partnerships (FLPs)*. LLC or FLP interests provide the opportunity to leverage the value of gifts through valuation discounts. In addition, an LLC offers a vehicle to manage assets over an extended period of time and may protect the assets from the claims of creditors and interference by nonowner family members.

6. *Grantor Retained Annuity Trusts (GRATs)*. A person may transfer assets to a trust and retain the right to receive an annuity for a fixed term. This acts as a discount in valuing the gift of the

remaining interest in the trust. GRATs, particularly short-term ones with high payout rates, afford great gift tax leverage and flexibility and offer an alternative to charitable lead trusts for those who have little or no charitable motivations. GRATs are particularly attractive in a period of low interest rates. The assets given to a GRAT need only outperform the federal interest rate to make the gift worthwhile.

7. *Qualified Personal Residence Trusts (QPRTs)*. This is a way to give away a primary residence or vacation property, and retain the right to occupy the property for a fixed period. After the fixed period expires, the house is transferred to children. Thereafter, the house can be rented from children or other beneficiaries. Like a GRAT or charitable lead trust, this type of trust also provides the opportunity for significant gift tax leverage.

8. *Leveraged Gifts*. In some circumstances, stock options may be given to family members or trusts for family members. Transferable options may be an opportunity for a leveraged gift. Clients may also be able to transfer closely held stock or other interests in a family business to the next generation at a discount.

9. *Charitable Lead Trusts*. A charitable lead trust makes payments to charity as long as a person lives or for a number of years. At the end of that period, the property passes to children, grandchildren or other family members or trusts for their benefit. A charitable lead trust has an advantage over an outright charitable gift or a charitable remainder trust because the lead trust allows capital to be kept in the family. A family foundation may be the charitable recipient. Charitable lead trusts are a particularly effective type of gift when interest rates are low.

10. *Intrafamily Sales*. Selling an appreciating asset or a remainder interest in such an asset to a family member or to a "grantor" trust for an installment note is a way to "freeze" an estate because the note will not grow in value beyond the interest that is accrued and compounded. Triggering a future capital gain or other income tax cost may be less costly than an estate tax assessed against an appreciating asset.

11. *Applicable Federal Rate (AFR) Loans*. By making intrafamily loans at the lowest interest rate required by the IRS, one can “freeze" the value of an estate while allowing family members to enjoy the economic benefits of wealth without the payment of gift taxes.

12. *Business Opportunities*. One of the best ways to pass wealth to children is to make sure that the children make successful investments in the first place. If you become aware of a great investment opportunity, consider giving or loaning money to your children and have them make the investment.

13. *Conservation Easements*. Often a family owning forest or farm property will want to maintain that property for the enjoyment of future generations. The need to pay estate tax on the property may make that difficult. A conservation easement can alleviate this problem by restricting development and ensuring the property will be valued for estate tax purposes as underdeveloped property. In addition, the easement may result in a significant income or estate tax deduction.

We look forward to helping you decide which of these, or perhaps other, techniques may suit your situation and help accomplish your overall objectives. We will be glad to provide additional information and examples concerning any of these techniques. These items may be separate from any income tax or financial planning that your accountants and financial advisors may recommend. All such planning should be coordinated among your advisors.

This material is intended for general informational purposes only and should not be construed as legal advice or a legal opinion on specific facts or circumstances. You are urged to consult an experienced lawyer concerning your particular factual situation and any specific legal questions you may have.