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If you have any questions regarding this bulletin, please contact any member of our Tax and Wealth Planning practice group.

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Gifting and other Tax Planning Opportunities in 2010

As we enter the final quarter of 2010, we want to inform you about circumstances which make this a remarkable year for gifts and intra-family sales. For those who have used their $1,000,000.00 lifetime exemptions from Federal gift tax, it may be worthwhile to pay gift tax as Federal gift tax rates are only 35% in calendar year 2010. This rate is much lower than the 45% Federal gift tax rate in place in 2009, and far lower than the 55% Federal gift tax rate presently scheduled to take effect in 2011.

Not only are tax rates favorable for lifetime gifting, but the current economic environment is also extremely favorable for lifetime gifting and intra-family sales due to the convergence of three factors. First, many asset values are unusually low. Second, interest rates are historically low. Third, valuation discounts for minority interests and lack of marketability are currently available, but could be drastically reduced or altogether eliminated in calendar year 2011 by legislation.

By way of example, one possible technique that could utilize all three of the converging factors mentioned above is a loan from you, individually, to a trust for the benefit of your spouse and children. The IRS rate on interest paid annually on a three- to nine-year loan is currently only 1.73%. The trust could then use the loan amount to purchase assets from you (such as interests in limited liability companies that have been structured to enable valuation discounts).

Another IRS-sanctioned estate planning technique very favorably impacted by today's historically low interest rates is the Grantor Retained Annuity Trust ("GRAT"). You establish a trust of which you are sole trustee and fund the trust with assets likely to generate income and appreciate in value. You receive back over the trust term (say, for example, 2 to 5 years) everything you contributed plus 2% per year. All growth (income earned and capital appreciation) over and above that 2% belongs gift tax free to the trust beneficiaries (typically your children). There has never been a better time to establish one or more GRATS!

In addition to the three converging factors of low values, low interest rates and valuation discounts, there is also no Generation-Skipping Transfer ("GST") tax in 2010. Thus, outright gifts to grandchildren (including gifts of limited liability company interests to grandchildren) may be made in calendar year 2010 with significantly less overall transfer tax liability than in calendar year 2009 or in the upcoming calendar year 2011.

If you are interested in discussing these gifting opportunities and other planning, please contact a member of Venable's Tax and Wealth Planning Group.
