Lowenstein Sandler

Trusts & Estates

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Estate, Gift, and Income Tax Planning in the Time of COVID-19

By The Trusts & Estates Group

First, and most important, we are thinking of all of our clients and friends and hoping everyone is safe and healthy at this challenging time.

We have heard the following statement frequently of late: "Never let a crisis go to waste." An estate planner's version of this is: "Never let a reduction in value of assets go to waste."

As we write this alert, the stock market's major indices have lost about a third of their value over the past several weeks. While we don't pretend to be appraisers or valuation experts, it is possible that commercial real estate, closely held businesses, and other assets have declined or may possibly decline in value—temporarily (we hope!).

For those of you who will be subject to federal or state estate tax or state inheritance tax, this is an opportunity to consider transferring these (temporarily) reduced-value assets out of your name in a tax-advantaged fashion. With proper planning, the post-transfer growth in those assets potentially can escape estate, gift, and generation-skipping transfer (GST) taxes. Since assets are worth less at the moment because of the coronavirus situation, post-transfer growth will occur even if asset values simply return to pre-virus levels. Any additional longer-term growth will also avoid transfer taxes.

Each person currently has the ability to transfer $11.58 million of assets (less any taxable gifts previously made) without having to pay any federal gift tax. Now is an excellent time to consider using this gift tax-free ability to transfer assets. There are many ways to transfer assets—outright gifts, gifts to trusts, sales of assets to certain types of trusts, and more. Each of these techniques has significant tax and nontax aspects to consider.

Another economic development also makes transfer tax planning especially beneficial at this time. Interest rates are currently very low, in part a result of the government's efforts to support the economy. There are certain planning techniques—grantor-retained annuity trusts (GRATs), sales to grantor trusts, charitable lead annuity trusts (CLATs), and intra-family loans—which are particularly effective in low-interest-rate environments.

A few other ideas:

1. Loss harvesting—Needless to say, the financial markets have not been pretty over the past several weeks. Here's a potential silver lining: if you have unrealized losses in some of your investments, consider selling those assets and realizing the losses (a process known as "loss harvesting"). Assuming you have unrealized gains on other assets, you can realize those gains before the end of the year and use the harvested losses to offset those taxable gains. You should not pursue loss harvesting without carefully considering the consequences to your investment strategy and all of the tax consequences.
2. Roth IRA conversions—You can convert a traditional IRA into a Roth IRA. The main advantage of a Roth IRA, unlike a traditional IRA, is that you won't have to pay income tax on the money you withdraw in retirement. Generally speaking, your beneficiaries inherit the same tax benefit if you die. When you convert a traditional IRA to a Roth IRA, you have to pay income tax on the value of the converted assets. When, as now, asset values have declined, the tax cost of conversion may be substantially reduced, and so now is a good time to consider a Roth IRA conversion. Again, Roth IRAs aren't for everyone, and you should consult with your professional financial advisors before proceeding.

3. Review your estate plan—Make sure your current estate planning documents (your wills, revocable trusts, powers of attorney and, particularly, your health care documents) are up to date and accurately reflect your wishes.

Attorneys and other professionals in our firm are working remotely, in accordance with current public health guidelines. Nonetheless, we remain available to speak with you at your convenience, via audio or video conference. We encourage you to reach out to us if you'd like to discuss these planning opportunities.

Until we see you next or speak to you, stay safe!

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

WARREN K. RACUSIN
Partner
Chair, Trusts & Estates
T: **646.414.6848 / 973.597.2446**
wracusin@lowenstein.com

JOHN L. BERGER
Partner
T: **973.597.2314**
jberger@lowenstein.com

MICHAEL N. GOOEN
Partner
T: **973.597.2366**
mgooen@lowenstein.com

KENNETH J. SLUTSKY
Partner
T: **973.597.2510**
kslutsky@lowenstein.com

JEFFREY J. WILD
Partner
T: **973.597.2554**
jwild@lowenstein.com

ASHLEY STEINHART
Of Counsel
T: **973.597.2520**
asteinhart@lowenstein.com

ERIC D. WEINSTOCK
Senior Counsel
T: **973.597.6184**
eweinstock@lowenstein.com

ROBERT I. AUFSEESER
Counsel
T: **973.597.2346**
raufseeser@lowenstein.com

BRIDGET HARRIS
Counsel
T: **973.597.2324**
bharris@lowenstein.com

TRACY A. SNOW
Counsel
T: **973.422.6774**
tsnow@lowenstein.com