Personal Planning Practice Group
February 2009

Estate Planning Update

Alert

The current tax and economic climates have created a unique environment for estate planning. Numerous opportunities are now available to transfer wealth with little or no gift or estate tax consequences, but some of these opportunities may be short lived. Understanding how to leverage estate planning tools during this exceptional time is critical to any wealth management strategy. The following update identifies recent changes to the tax law and describes strategies to best achieve your estate planning objectives in the current marketplace.

Estate And Gift Tax Exclusion Amounts

As of January 1, 2009, there are three important changes to the estate, gift and generation skipping transfer tax systems.

Estate Tax Exclusion Amount/Generation Skipping Transfer Tax Exemption

The federal estate tax exclusion amount increased from $2 million to $3.5 million for individuals dying on or after January 1, 2009. The exemption amount for generation skipping transfer ("GST") taxes increased by the same amount. This has several effects on existing estate plans. First, the gap between the amount of assets "sheltered" for federal estate tax purposes and the amount sheltered for state estate tax purposes has grown wider in many states. In New York, for example, the state tax law allows each individual to shelter only $1 million of assets from state estate taxes. Consequently, a New York resident with $3.5 million in assets will not be subject to federal estate taxes but will be subject to $229,200 in New York estate taxes, without additional estate planning. Second, formula bequests in a will which rely on the federal exclusion amount or the GST exemption amount to determine the funding of trusts will now result in those trusts being funded with significantly larger amounts. It is important to review your estate plan in light of these changes.

Annual Exclusion Gifts

In 2009, the annual gift tax exclusion amount was increased from $12,000 to $13,000. This means that an individual may now give up to $13,000 (and a married couple may give up to $26,000) each year to an unlimited number of people without either incurring gift tax or "using up" a portion of his or her $1 million aggregate lifetime gift tax exclusion amount.

Low Interest Rates

Many estate planning techniques make use of federally determined interest rates which are published monthly by the IRS. These interest rates are at historic lows, making planning tools such as Grantor Retained Annuity Trusts (GRATs), sales to Grantor Trusts, and Charitable Lead Trusts (CLTs), especially effective. In addition, the interest rates that must be charged in intra-family loans (loans to family members at interest rates that are significantly lower than those of commercial loans) are also at historic lows – as low as 0.60% for loans less than 3 years in duration.

Depressed Asset Values

Today's economic environment is certainly unsettling. However, it also presents an estate planning opportunity – it is an ideal time to reduce your taxable estate by taking advantage of depressed asset values. Low asset values provide an opportunity to transfer more property without incurring gift tax. In addition, low asset values allow the transfer of appreciation on assets that are expected to rebound, with little or no transfer tax consequences.

Potential for Reform

Congress is currently considering estate planning reform measures which would retain the federal estate tax, most likely with the current exclusion amount of $3.5 million, while restricting or eliminating certain commonly used estate planning strategies. Among other measures, Congress may consider legislation that would impact the use of GRATs, and the availability of valuation discounts for family LLCs and family limited partnerships (FLPs). These important techniques may not be available, or may become less attractive, in the near future.

Next Steps

- Review your estate plan in light of the recent increases to the annual exclusion, estate tax exclusion and GST exemption amounts.
- Consider estate planning techniques that are particularly effective in a low interest rate environment, such as GRATs, sales to Grantor Trusts and CLATs.
- Review any existing estate planning techniques you are utilizing which are no longer advantageous – for example, GRATS with assets which have declined in value, or outstanding notes for intra-family loans which bear a high interest rate - to determine whether changes may be made.
- Determine whether you would like to make new intra-family loans or modify existing loans.
- Estimate the value of your real property in light of depressed market conditions, and consider whether you would like to make any real property transfers.
- Consider whether a family LLC or FLP would be an appropriate estate planning vehicle for your family.

If you have any questions or would like more information about the foregoing opportunities, please do not hesitate to contact one of the following attorneys:

Christopher C. Angell	**212.336.2770**	**ccangell@pbwt.com**
Michael S. Arlein	**212.336.2588**	**msarlein@pbwt.com**
Susan F. Bloom	**212.336.2976**	**sfbloom@pbwt.com**
Hugh J. Freund	**212.336.2370**	**hjfreund@pbwt.com**
Dana W. Hiscock	**212.336.2290**	**dwhiscock@pbwt.com**
John Sare	**212.336.2760**	**jsare@pbwt.com**
Catherine G. Schmidt	**212.336.2110**	**cgschmidt@pbwt.com**