

The Estate Planning Advisor

Estate Planning in a Troubled Economy

By Richard J. Shapiro, J.D.

There is no question that we are living in difficult economic times. Even when the economy is strong, people tend to procrastinate in preparing an estate plan. During this period of economic uncertainty, more people are likely to avoid estate planning because they think that they do not need it or that it will not benefit them. What most people do not realize is that the depressed economy has created what might be the best environment in recent memory to address their estate planning needs.

Estate tax issues always deserve scrutiny. Given the financial crisis, there is virtually no chance that the federal estate tax “repeal” slated for 2010 will go into effect. Furthermore, the New York estate tax, which applies to all New York estates in excess of \$1,000,000, will remain in place for the foreseeable future. Only a well designed estate plan will help avoid or reduce the impact of estate taxes. For example, in 2005 I was unable to convince a client who had an estate in excess of \$5 million to engage our firm to assist her with estate tax reduction strategies. After she died in 2007, her estate owed the federal government **\$1,288,000** in federal estate taxes, and New York State was paid **\$425,000** for the state estate tax. For a fraction of those amounts, the client could have implemented one or more estate planning techniques to legally reduce the amount of her heirs paid in estate taxes.

The reduced value of many formerly appreciated assets provides a rare opportunity for estate tax planning by allowing for the “discounted” transfer of wealth to children or other loved ones. For example, assume that a stock formerly worth \$100 per share is now worth \$80 per share. This reduced value would permit the transfer of 25% more stock to a child using the individual’s \$13,000 annual gift tax exclusion. Thus, the parent could transfer 162.5 shares of stock rather than 130 shares, while a married couple could “double” that gift, all without utilizing any portion of their respective \$1 million lifetime gift tax exemptions. Of course, such lifetime transfers of appreciated assets may have capital gains tax implications, so such transfers should not be made without professional advice.

With our historically low interest rates – the current mid-term “applicable federal rate” is at 2.05% -- we have a golden opportunity to engage in wealth transfer strategies such as Charitable Lead Annuity Trusts, Grantor Retained Annuity Trusts, and sales to Grantor Deemed Owner Trusts. Using any of these planning tools in a low interest rate environment facilitates a highly efficient transfer of assets from the parents to children or other family members at the lowest possible gift and estate tax cost.

Finally, the recent federal tax court cases of *Estate of Mirowski* and *T.H. Homan* confirm our belief that properly structured and maintained “family” limited partnerships or limited liability companies can be used as part of a successful wealth transfer plan. While the “valuation discounts” often provided through these structures will likely remain under attack by the IRS, these recent decisions provide some comfort that the courts will continue to respect such entities if the appropriate formalities are followed.

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