



## A Silver Lining: Now Might Be An Ideal Time For Estate Planning

By Kim Kamin, Chief Wealth Strategist, Gresham Partners LLC

In these uncertain times, understandably many of us have some anxiety about our health and that of our loved ones, concerns about the economy, and unease about personal balance sheet declines. In the spirit of optimism and positivity, however, now might be an ideal time to focus on estate planning.

### Advanced Wealth Transfer Planning

Depressed asset values and low interest rates provide a unique opportunity to leverage certain advanced wealth transfer planning techniques. Here are four we find particularly compelling in the current environment:

**Gifts to Grantor Trusts** — The exemption amounts you can gift transfer tax-free to an irrevocable grantor trust are higher now than ever – \$11,580,000 per person or \$23,160,000 using gift-splitting with a spouse. Usually the goal is to gift cash or high-basis assets to these trusts. But even lower-basis assets with sufficiently depressed values can be good to gift, recognizing that when values of the gifted assets go back up, you should consider swapping cash or higher-basis assets for those original assets. To maximize the benefits, the trust should be structured as a Dynasty Trust to eventually benefit grandchildren and more remote descendants for as long as state law permits.

**Installment Sales to Dynasty Trusts** — If you have already fully utilized your available exemptions, the current low-rate environment is ideal for selling assets to a new or existing Dynasty Trust in order to freeze the depressed value of certain assets in your taxable estate. Attractive assets to sell include interests in an operating business or investment entity, or derivative contracts that track the value of other interests. The trust should be funded with at least 10% of the value of the sale before the transaction and any promissory note used for the funding should be secured and must use the applicable federal rate (AFR) as its interest rate.

Current AFRs are extremely low and therefore advantageous. For April, the rates will be 0.91% for loans three years or shorter, 0.99% for loans between three and nine years, and 1.44% for loans over nine years. For example, if you were to sell a \$9 million asset to a Dynasty Trust in exchange for a nine-year note with a balloon payment at the end of the term, and the asset grows at an annualized rate of even 5%, almost \$4 million could be transferred to the trust at no transfer tax cost. Higher growth rates would make the strategy even more effective.

**Grantor Retained Annuity Trusts (GRATs)** — Another option for transferring assets in this low interest rate environment that wouldn't require utilizing any transfer tax exemption is a GRAT. With a GRAT, you retain the right to receive an annual annuity for a period of time (typically two years). The total annuity payments are structured to equal the current value of the asset transferred to the trust, plus required interest, so the amount calculated to remain at the end of the annuity term is nominal. Any increase in the value of the gifted asset during the term remains in the trust to benefit a spouse or children. The trust cannot be used to make tax-free transfers that benefit grandchildren or more remote descendants.

This strategy works especially well when the gifted asset has significant growth potential, like a specific security or interest in a partnership with a depressed value. In April, the required interest rate for this type of transaction (the Section 7520 Rate) is going down to 1.2%, the lowest it's been since 2013. For example, if you funded a GRAT with a \$5 million security or partnership interest that grows at an annualized rate of 10% for two years, over \$700,000 would be transferred to children with no transfer tax due.

***Charitable Lead Trusts (CLTs)*** — If you are philanthropically inclined, a CLT may be another attractive strategy with advantages in this low interest rate environment. The CLT would provide for annual distributions to charity for a set term, such as your lifetime or a term of years. The growth remaining at the end of the term can then benefit others, such as your spouse or children (but not grandchildren or more remote descendants). Only the current estimated value of the remainder interest, if any, is treated as a gift when the CLT is funded which can be sheltered with any remaining exemption. The initial transfer to the trust isn't eligible for an income tax deduction, but each payment from the trust to the charity is eligible. A Private Foundation or a Donor Advised Fund may be the charitable recipient, which makes the CLT particularly flexible.

Note that for any of the above strategies, you may be able to transfer an asset at less than its current book value if a qualified appraisal establishes that the asset is properly subject to a discount for lack of control or lack of marketability. Applying appropriate valuation discounts to such assets can materially enhance the benefits produced by these strategies.

## **Basic Estate Planning**

It is always important to have a basic estate plan in place, and now may be an opportune time to review yours to confirm that it is up to date. Here are some questions to consider for your four essential estate planning instruments:

***Power of Attorney for Health Care and Advance Health Care Directive*** — If you are unable to communicate on your own behalf, have you appropriately designated who can speak for you to healthcare providers? Have you sufficiently informed the named individuals regarding your wishes?

***Power of Attorney for Property*** — If you are hospitalized or otherwise incapacitated, this document appoints successors to step into your shoes to pay bills, access smaller bank accounts and engage in other financial activities on your behalf. Have you made sure these individuals have adequate access to information they will need to serve in this capacity?

***Revocable Living Trust*** — Are you comfortable with whomever you have appointed to step into your shoes as successor trustee if you aren't able to continue serving as trustee? Do the provisions for distributing assets following your death reflect your current wishes?

***Will*** — Have you named an appropriate executor of your estate and guardian(s) for any minor children? Have you discussed if they are comfortable serving in these roles?

## **Implementation**

We have checked with many of the law firms our clients use to confirm they can assist with these types of estate planning projects in today's environment. Even in states that do not yet permit remote witnesses or notarization, we can work with you and your counsel to figure out how to execute any new documents during this time.

Please contact us if you want to discuss your current estate plan, explore any of these advanced planning techniques, or consider other wealth transfer planning strategies.