

Memorandum

Current Lifetime Estate Planning Opportunities in Light of Low Interest Rates and Depressed Market Conditions

April 16, 2020

Using Increased Gift and Generation-Skipping Transfer Tax Exemption Amounts

- If you own assets that have decreased in value due to current economic conditions, this may be an opportune time to consider making lifetime gifts, in trust or outright, which take advantage of the increased gift and generation-skipping transfer tax exemptions, which are scheduled to expire at the end of 2025 (unless Congress acts sooner). An individual can currently transfer \$11.58 million during his or her lifetime, reduced by lifetime gifts already made that did not qualify for the annual exclusion or another exemption from gift tax, which can benefit multiple generations with no additional wealth transfer tax.
- Residents of Connecticut or those with property there should be aware that Connecticut's gift tax exemption for individual residents is currently \$5.1 million per individual. This amount is scheduled to increase over time until it will equal the federal exemption in 2023 and beyond. The gift tax exemption amount applies to real property and tangible personal property located in Connecticut, regardless of the domicile of the donor, and all property gifted by a Connecticut domiciliary (other than real property and tangible personal property located in a different state). Any gifts above this amount will incur Connecticut state gift tax. Connecticut is currently the only state that imposes a state gift tax.

Taking Advantage of Low Interest Rates

- *Creating New Short Term GRATs.* Because interest rates are currently low (and the market is down in general), this is a good time to create and fund a new Grantor Retained Annuity Trust ("GRAT"). The donor of a GRAT gifts assets which he or she feels will appreciate to the trust while retaining the right to receive an annuity payment from the GRAT for a specified period of time. At the conclusion of that period, the remaining assets in the GRAT pass to specified beneficiaries — usually the donor's descendants (outright or in trust) — free of any gift tax. A GRAT is successful when the appreciation of the assets in the trust exceeds the "hurdle rate," which is only 0.8% for GRATs created in May 2020.
- *Reviewing Existing GRATs.* If you created a GRAT recently, you should review whether the assets in the GRAT have significantly changed in value. Depending on the terms of your current GRAT and how the GRAT assets have performed, there may be strategies you can implement to establish new GRATs now with the assets.
- *Sales to Grantor Trusts.* A popular estate planning technique is the sale of assets to an "intentionally defective grantor trust" (a trust that is out of your estate for federal estate tax purposes but taxable to you for income tax purposes). You would sell assets to the grantor trust

(frequently at a discounted value) in exchange for a promissory note. Because of the grantor trust status, no gain is realized on the sale. The IRS minimum rate for three to nine-year loans made in May 2020 is 0.58%. Any appreciation in excess of the debt service will ultimately pass to the specified beneficiaries. This technique would also work for sales between a grantor trust which is not exempt from GST tax and a GST exempt grantor trust (each funded by the same donor), allowing future appreciation in excess of the debt service to potentially benefit the grandchildren or more remote descendants of the donor as beneficiaries of the GST exempt trust, without the imposition of the GST tax.

- *Refinancing Existing Promissory Notes.* It may be possible to refinance existing promissory notes at very low rates in the current environment.
- *Low Interest Intra-Family Loans.* Making loans, outright or in trust, is a simple but effective way to shift appreciation to other family members. The IRS minimum rate varies based on the term of the loan. You can currently make loans at a very low rate, and if the loan is structured with a balloon principal payment at the expiration of the term, all of the principal could remain invested during the term of the loan, maximizing the amount of appreciation that could pass to the family members.

Credit Shelter Trusts

- Many wills and revocable trusts include a provision creating a credit shelter trust that will be funded with the *maximum* amount that can pass free of federal estate tax or GST tax at an individual's death. Given the significantly increased federal estate and GST tax exemption amounts, you should review your estate plan and your finances to determine whether it is appropriate for you and your spouse to fund your respective credit shelter trusts with the full \$11.58 million (or possibly a lesser amount), if the exemptions remain at high levels. Such a determination will require an analysis based upon your specific financial, tax and personal circumstances.
- In addition, consideration should be given to the potential state estate tax consequences if the full federal estate tax exemption is set aside at the first spouse's death. For example, in New York, a credit shelter bequest funded with the maximum federal exemption will result in over \$1.25 million of New York estate tax on the death of the first spouse in 2020. As a result, you may wish to limit your credit shelter disposition in your estate plan to the appropriate state exemption amount. (If you use the higher amount, your estate will owe this tax, but you will have successfully sheltered the full federal exemption amount from federal estate tax on the death of the second of you and your spouse to die.)

Please contact your Schulte Roth & Zabel attorney at your earliest convenience if you wish to discuss these or other estate planning opportunities as they relate to your specific financial and personal situation.

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This is a fast-moving topic and the information contained in this *Memorandum* is current as of the date it was published.

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