

GOLDEN opportunities

We live in extraordinary times. As our country ushers in a new Presidential administration, we face an uncertain economic future. Property values are depressed and interest rates are at historic lows. While many have predicted the repeal of the Federal estate tax in recent years, today, in light of the current economic crisis and the growing Federal budget deficit, repeal of the Federal estate tax is unlikely.

Do current low interest rates present special estate planning opportunities?

There are several vehicles which are particularly useful in the current low interest rate environment. One is known as a "grantor retained annuity trust" (a "GRAT"),

the use of which is specifically authorized under the Internal Revenue Code.

What is a GRAT?

A GRAT is a trust to which a Taxpayer irrevocably transfers assets in exchange for a fixed annuity payment (expressed either as a dollar amount or as a percentage of the initial fair market value of the trust) which is payable to the Taxpayer at least annually for a number of years selected by the Taxpayer.

The transfer to the property to a GRAT is a taxable transfer for gift tax purposes. The value of the gift is equal to the fair market value of the property transferred to the GRAT, less the value of the annuity retained by the Taxpayer. To value the annuity interest,

the IRS uses the interest rate determined under §7520 of the Internal Revenue Code in effect for the month of the transfer of the property to the GRAT.

A GRAT may even be structured so that the value of the annuity interest equals the original contribution thereby resulting in the value of the gift to be minimal (if not zero) and no gift tax due on the transfer to the GRAT (a "zeroed-out GRAT").

At the expiration of the selected term, if the Taxpayer is living, any property remaining in the GRAT passes to the Taxpayer's heirs outright or in further trust. In addition, by utilizing a GRAT, the Taxpayer also receives back the property he or she



GOLDEN OPPORTUNITIES

is published periodically by the Trusts & Estates Law Practice at:

**MEYER, SUOZZI,
ENGLISH & KLEIN,
P.C.**

990 Stewart Avenue
Suite 300
P.O. Box 9194
Garden City, NY 11530-9194
516-741-6565

Patricia Galteri
Practice Chair

Nathaniel Corwin
Member

Carmela Montesano
Of Counsel

Jayson, J.R. Choi
Associate

For more information about these attorneys visit us online at:
www.msek.com



initially transferred to the GRAT and thus retains control of the asset.

Objectives

The primary objective of a GRAT is to transfer to the Taxpayer's heirs any appreciation in the property over the applicable §7520 interest rate, with minimal or no gift tax cost. In a near zero GRAT, if the property grows faster than the applicable §7520 interest rate (3.4% in December 2008), any appreciation in the GRAT assets over the applicable §7520 interest rate passes to the Taxpayer's heirs gift tax free, provided the Taxpayer survives the selected term of the GRAT. With applicable interest rates at historic lows, the chances of a successful GRAT in this economic environment are substantially increased.

Tax Consequences

If the Taxpayer dies during the selected term, the property transferred to the GRAT is includible in the Taxpayer's gross estate. A GRAT thus achieves an estate tax freeze with minimal or no gift tax cost. There is virtually no downside estate planning risk as the property would have otherwise been includible in the Taxpayer's gross estate.

Income Tax Consequences

A GRAT is a grantor trust for income tax purposes, meaning that the Taxpayer is responsible for the payment of income taxes

due by the GRAT. While this may not initially appear to be an advantage, it means that the GRAT assets grow income tax-free. Payment of the income taxes by the Taxpayer is, in essence, an additional tax-free gift to the heirs. Since the income and capital-gains tax rates are lower than the gift and estate tax rates, the Taxpayer passes more wealth on to his or her heirs.

Planning Considerations

A GRAT should be considered by any Taxpayer who:

- ◆ Has appreciating assets with significant estate tax exposure
- ◆ Is motivated to make lifetime transfers
- ◆ Has assets which are expected to outperform the applicable §7520 interest rate during the selected term
- ◆ Is expected to survive the selected term

The performance of a GRAT is substantially enhanced where:

- ◆ There is significant appreciation in the Trust property during the selected term, especially if the property is temporarily depressed prior to funding
- ◆ The Trust property generates cash
- ◆ Gift tax valuation discounts are obtainable
- ◆ Use of sequential GRATs and sector specific GRATs are possible

If you wish to learn more about the appeal of this estate planning vehicle, please call our office at **516-741-6565** to schedule an appointment.



(The attorneys of the Trusts & Estates Law Practice at Meyer, Suozzi, English & Klein from left to right: Patricia Galteri, Nathaniel L. Corwin, Carmela T. Montesano and Jayson, J.R. Choi)

IRS Circular 230 Disclosure: Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)

