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Now Is an Opportune Time for an Estate Planning Review

Due to the current state of the economy, many wealthy individuals have put off making important decisions about their estate plans until more prosperous times. However, in light of currently depressed asset values and low interest rates, these individuals are missing a unique opportunity to maximize estate tax savings and potentially minimize their exposure to creditors.

Moreover, with constant tax law changes, many individuals with older estate plans may find that their existing plan does not meet their current financial and estate planning goals. Set forth below are examples of some planning techniques and suggestions that can help put you and your family "ahead of the game."

Turning Turmoil into Gold

The current economic downturn, while having many negative aspects, actually provides an excellent opportunity to pass wealth to your heirs at existing *depressed* values. There are several strategies that should be considered in light of currently depressed asset values and historically low Federal interest rates (i.e., the IRS Section 7520 rate for January 2010 is 3.0 percent). If you would like to take advantage of the current economic situation, there are several planning options that you may want to consider.

- **Grantor Retained Annuity Trusts (GRATs)** are irrevocable trusts where the grantor receives an annuity from the trust for a fixed period of years, and any property remaining at the end of the trust term passes to the beneficiaries, typically children, often at significant gift and estate tax savings.
- **Charitable Lead Annuity Trusts (CLATs)** are similar to GRATs except the annuity is paid to a charity rather than the grantor.
- **Family Loans** are currently an ideal planning technique due to the low interest rates the IRS requires the borrower to pay (i.e., the short-term applicable Federal rate for January 2010 is only 0.57 percent).
- **Intentionally Defective Grantor Trusts** are trusts that allow grantors to take advantage of low interest rates to achieve estate tax savings by allowing assets transferred to the trust to appreciate outside of their estate while also reducing their taxable estate through payment of income taxes on the associated income and gains. This type of "freeze transaction" allows future growth in investments to be channeled to a trust that benefits a spouse and/or descendants.

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Review Estate Planning Documents

Due to Congress' failure to enact legislation in 2009, on January 1, 2010 the Federal estate and generation-skipping taxes are repealed for one year or until earlier Congressional action is taken. Congress is likely to reinstate both taxes at some point during 2010, and the reinstatement may be retroactive to January 1, 2010, despite potential court challenges that retroactivity is unconstitutional. While there can be no assurance as to the estate and generation-skipping tax exemption amounts and rates that would accompany such reinstatement, conventional wisdom suggests that we may return to the rates and exemption levels in effect in 2009—namely, an exemption of $3.5 million for each and a tax rate of 45 percent. If Congress again fails to act in 2010, the estate and generation-skipping taxes will nonetheless return on January 1, 2011, with a $1 million exemption amount for each and a maximum rate of 55 percent. Further, the gift tax is not repealed and remains in effect during 2010 at the rate of 35 percent on taxable gifts in excess of the $1 million exemption; the 2009 rate for gifts in excess of the exemption is 45 percent.

With the stock market as well as real estate and other investment values in a general decline, many persons may find their estate plans provide their spouse with less support than they intended. For example, certain estate plans may provide that the Federal exemption amount passes to the children and/or grandchildren with the remaining assets passing to the surviving spouse. However, with an increased exemption amount, coupled with the recent downturn in the financial markets, this plan may leave a surviving spouse with insufficient funds to maintain his or her lifestyle. Moreover, due to the *temporary* repeal of the estate and generation-skipping taxes, many estate planning documents may not work as intended—failing to minimize estate taxes and, worse yet, not passing estate assets in the desired manner. This is particularly true for married persons whose documents incorporate formula provisions based on prior law concepts such as the Federal estate tax or generation-skipping tax exemptions.

A careful review of one's documents will help to ensure that financial and estate planning goals are met. Once reviewed, troublesome issues can often be resolved quickly and efficiently by simply amending the current documents.

Integrating Asset Protection into Your Estate Plan

Now is also a good time to integrate asset protection into an estate plan. Family limited partnerships, limited liability companies, and irrevocable trusts, both foreign and domestic, continue to provide significant tax and asset protection benefits. Estate planning documents should also be reviewed to ensure that assets passing to children and other beneficiaries are protected from potential claims of creditors. If you are a guarantor of real estate or other loans and are concerned that the investments may have significantly depreciated in value, now is the time to review your existing plan to determine if any restructuring can be initiated to legally protect some of your assets from a potential future claim.

We have mentioned just some of the strategies that may be used at this time to take advantage of current financial conditions and low interest rates. As financial markets appear to be poised for a rebound, there is no guarantee that these opportunities will be available in the future. Therefore, now is an opportune time for an estate planning check-up.

Determining which estate planning techniques are best suited for you and your family is specific to your goals and financial situation. J.H. Cohn's team of estate planning professionals is available to discuss any questions that you may have on the issues discussed in this article. ■

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