

10 Estate Planning Ideas to Consider

By: Randall A. Denha, Esq.***

The 2001 Tax Act, which made substantial changes to the federal transfer tax laws, created uncertainties regarding how and when to embark upon or alter tax-focused estate planning. The Act increased the estate tax exclusion amount to \$3,500,000 currently and to 0 for 2010 only to return to a level \$1,000,000 exclusion in 2011. Although the Act purports to abolish the federal estate tax in 2010, true repeal will only happen if Congress acts to override the "sunset" provision that in 2011 automatically reinstates the law as it was before the Act.

The gift tax exemption amount (which is integrated with the estate tax exclusion amount) increased to \$1,000,000 on January 1, 2002 and remains frozen at that level, making careful planning of lifetime transfers very important. Even those who previously used their full pre-2002 gift tax exemption amount (\$675,000) are now able to make additional tax-free gifts in the range of \$250,000 to \$325,000.

Although the 2001 Tax Act changed the landscape of tax-focused estate planning, we continue to suggest the following ten ideas. **These ideas are best suited for those of you who have substantial estates and a desire to reduce the tax burdens in passing their wealth, and control over that wealth, from generation to generation.** Frequently, two or more techniques used together will produce enhanced benefits and better fit with your overall estate plan.

- **Gift Program.** Full utilization of all tax-free gift amounts, including annual exclusion gifts (now \$13,000 per donee per year), can significantly reduce the size of your estate. Making annual exclusion gifts to section 529 educational accounts for children and grandchildren can be particularly attractive. Shifting the growth in the assets from your estate saves transfer taxes on all future appreciation.
- **Generation-Skipping Transfer (GST) Planning.** Making sure you and your spouse each use your full \$3,500,000 GST exemption can save enormous amounts in taxes for your family. Taking advantage of generation-skipping through the use of trusts simply means skipping the payment of taxes, not the skipping of benefits for the next generation. Because the beneficiaries can be their own trustees and be given powers of appointment, they can control the investment and the ultimate disposition of the assets. Enhanced savings are available by having the trust continue indefinitely, or for the maximum period permitted by the rule against perpetuities, by funding the trust with split-dollar insurance or discounted partnership interests, or by having a partially charitable trust.
- **Family Limited Liability Companies (FLLCs).** Especially if environmental or potential liabilities are an issue, giving limited partnership interests instead of outright ownership of particular assets generally results in substantial valuation discounts. Apart from the transfer tax savings, a limited partnership offers a good vehicle to manage assets over an extended period of time and helps protect the assets from the claims of the partners' creditors and from interference by the partners' spouses.
- **Charitable Lead Trusts.** This technique allows you to "discount" the value of the gift by the actuarial value of the charitable annuity or unitrust amount payable for a term of years or for your or another's lifetime. The charitable lead trust has an advantage over an outright charitable gift or a charitable remainder trust, as the lead trust allows the capital to be kept in the family. Your family's private foundation can be the charitable recipient.
- **Private Foundations.** A private foundation creates flexibility in charitable giving and permits the family to continue as stewards over that part of the family wealth transferred to the entity by outright gifts, bequests, or charitable lead or remainder trusts.

- **Grantor Retained Annuity Trusts (GRATs).** Your retained right to receive an annuity for a fixed term acts as a discount in valuing the gift of the remaining interest in the trust. GRATs, particularly short-term ones with high payout rates, afford great gift tax leverage and flexibility and offer an alternative to charitable lead trusts for those who have little or no charitable motivations.
- **Qualified Personal Residence Trusts (QPRTs).** This is a way to give away your principal or secondary residence, or both, subject to your right to occupy the home for a fixed period. Thereafter, you can rent the house from your children or other beneficiaries. Like a GRAT or charitable lead trust, this type of trust also provides the opportunity for gift tax leverage.
- **Split-Dollar Life Insurance.** For closely held business owners, life insurance owned by a GST trust and paid for by the business could be an attractive way to buy substantial amounts of insurance with only a negligible use of GST exemption. Private split-dollar arrangements among family members are also possible. The taxation of split-dollar arrangements is currently addressed by the Internal Revenue Service in the form of proposed regulations. Final regulations, expected late this fall or next year, will determine the attractiveness of some forms of split-dollar insurance going forward.
- **Intrafamily Sales.** Selling an appreciating asset or a remainder interest in such an asset to a family member or to a "grantor" trust for an installment note is a way to "freeze" your estate because the note will not grow in value beyond any interest that is accrued and compounded. Triggering a future capital gain or other income tax cost may be less costly than an estate tax assessed against an appreciating asset. Selling for a private annuity or self-canceling note can produce greater savings.
- **Applicable Federal Rate (AFR) Loans.** By making intrafamily loans accruing at the lowest interest rate required by the IRS, you are likewise "freezing" your estate while allowing your family members to make equity investments in their own names and otherwise to enjoy the economic benefits of your wealth without the payment of gift taxes.

*****RANDALL A. DENHA, J.D., LL.M., attended Wayne State University and graduated with a degree in Corporate Finance. After college, Mr. Denha then went to University of Detroit School of Law where he obtained his law degree. He then attended the University of Miami School of Law and completed a masters in law (LL.M.) in estate planning. The University of Miami is regarded as the premier school in the country for its program in estate planning. Randy is frequently called upon by both local and state publications to render an opinion or provide insight into planning techniques. Randy has hosted a radio program and has authored many articles in the estate planning arena on the importance of planning. Additionally, he is a former adjunct Professor at Oakland University's Personal Financial Planning Program where he taught estate planning for those wishing to obtain a Certified Financial Planning (CFP) degree. Mr. Denha also serves as General Counsel for both local and national organizations. Mr. Denha is also a member of the Bank of Michigan's Board of Directors, a member of the Board of Directors of Invescor, Ltd. (a national life settlement insurance provider) and volunteers his time to several community organizations.**