

LOW INTEREST RATE GIFT PLANNING

I. Introduction: General Transfer Tax Planning Issues

- A. Large gifts
- B. Stepped-up basis
 - 1. Estate tax rate
 - 2. Capital gain tax rate
- C. Use current law
- D. Outright gifts v. gifts in trust
 - 1. Trust advantages
 - 2. Trust disadvantages
- E. Selecting assets to transfer
 - 1. Discounts
 - 2. Basis
- F. Timing of transactions
- G. Use exemptions early

II. Current Internal Revenue Code Interest Rates

- A. Applicable Federal Rates (“AFRs”)
 - 1. Short-term (< 3 years)
 - 2. Mid-term (3 years - < 10 years)
 - 3. Long-term (10 years or more)
- B. “Section 7520” Rate
- C. Low interest rate opportunities

III. Grantor Retained Annuity Trust (“GRAT”)

- A. Definition [IRC Section 2702(b)(1)]
- B. Value of remainder interest determined using Section 7520 Rate
 - 1. “Zeroed-out” GRAT
 - 2. Example
- C. Maximize benefits
 - 1. Term
 - 2. Funding

IV. Intra-Family Loans

- A. AFRs
- B. Advantages
- C. Income taxation
- D. Refinancing

V. Irrevocable “Defective” Grantor Trust (“IDGT”)

- A. Definition (IRC Sections 671-679)
- B. Donor deemed “owner” of IDGT assets for income tax purposes
 - 1. Donor pays tax on income earned by IDGT for the benefit of beneficiaries
 - 2. Donor-IDGT transactions ignored for income tax purposes
 - a. Loans
 - b. Sales to IDGTs
 - c. Leasebacks
 - d. Woelbing Estates

C. “Defects”

1. Right to re-acquire IDGT assets (“swap” power)
2. Right to add beneficiaries
3. “Toggle” off

D. Disadvantages

1. Future needs
2. Extra income taxes
3. Basis
4. Depreciating property

VI. Charitable Tax Planning

- A. Estate planning: Charitable Lead Annuity Trust (“CLAT”)
- B. Income Tax planning: Remainder interests
- C. Charitable Remainder Trust
 1. Charitable remainder unitrust (“CRUT”)
 2. Charitable remainder annuity trust (“CRAT”)

VII. Future Legislation

- A. IDGTs
- B. GRATs
- C. Exemptions, Rate, and Basis
- D. Discounts
- E. Retirement Plans
- F. Income tax increase

VIII. Future Interest Rates