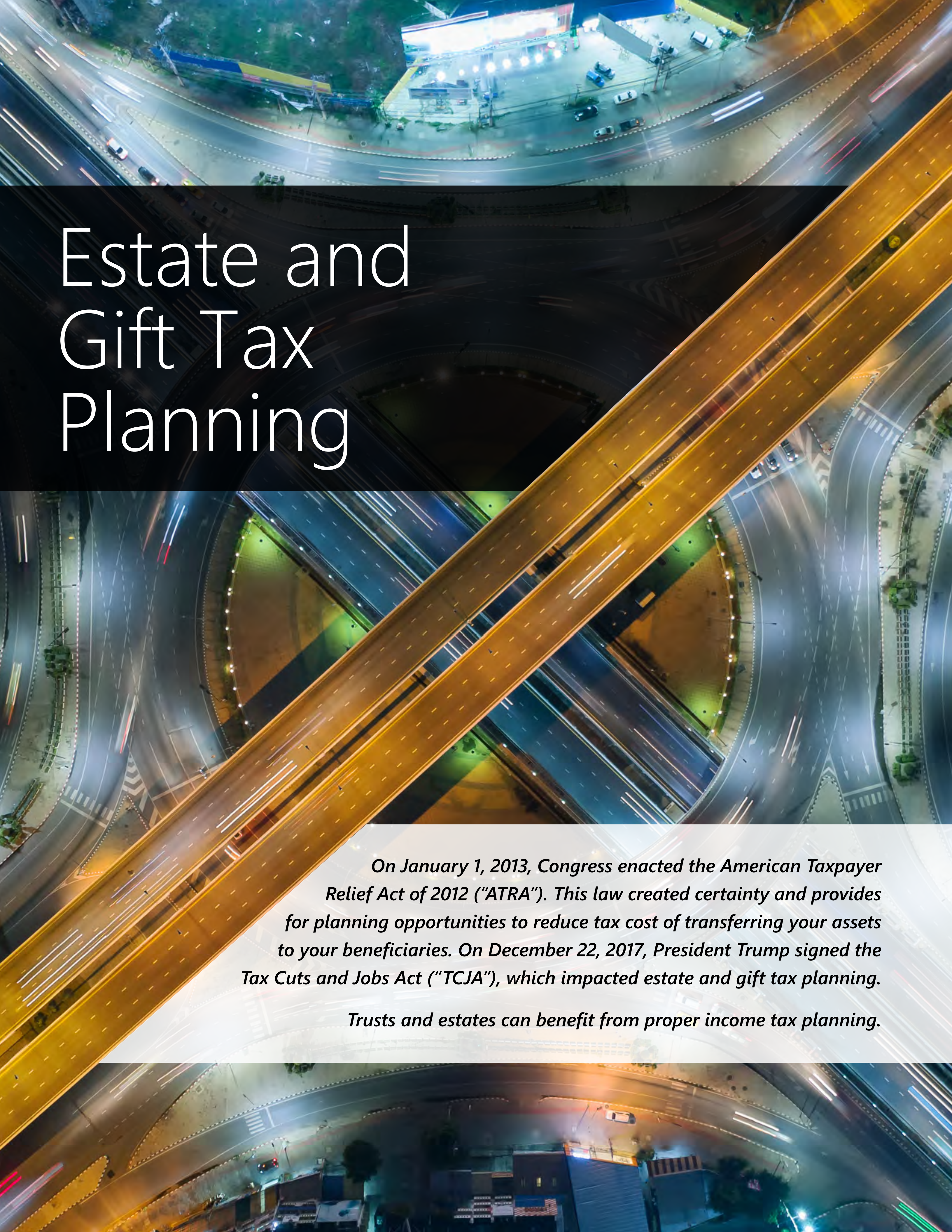

Estate and Gift Tax Planning

On January 1, 2013, Congress enacted the American Taxpayer Relief Act of 2012 ("ATRA"). This law created certainty and provides for planning opportunities to reduce tax cost of transferring your assets to your beneficiaries. On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act ("TCJA"), which impacted estate and gift tax planning.

Trusts and estates can benefit from proper income tax planning.

Estate, Gift, and Generation-Skipping Transfer ("GST") Taxes

Background

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") provided, among other provisions, a phased reduction in the maximum rate of estate and generation-skipping transfer taxes during the years 2002 through 2009, elimination of these taxes for 2010, and a reinstatement of these taxes after 2010 at the tax rates (and with the exclusions) in effect in 2001. Almost everybody believed that Congress would act to either permanently repeal the estate and generation-skipping transfer taxes or, more likely, enact a modified regime for these taxes to begin in 2010 (or earlier).

In December 2010, Congress enacted the 2010 Tax Relief Act— a temporary, two-year reprieve from the sunset provisions of EGTRRA. This Act extended and modified the federal estate, gift, and generation-skipping transfer tax provisions through December 31, 2012. These provisions allowed estates of married couples whose assets were $10 million or less to avoid federal transfer taxes in 2011. For 2012, an inflation adjustment made this $5.12 million per person ($10.24 million for a married couple).

On January 1, 2013, the final compromise was reached and ATRA permanently extended and modified federal estate, gift, and generation-skipping transfer tax provisions. As a result of ATRA, the $5 million exclusion, adjusted for inflation, has been made permanent with a maximum tax rate of 40%. This rate was a compromise between 35% and 55% marginal tax rates of previously enacted estate and gift tax provisions.

Impact of the TCJA

As a result of the TCJA, and effective for tax years beginning in 2018, the estate, generation-skipping transfer, and gift tax exclusion amount is doubled from $5 million to $10 million, indexed for an adjusted inflation amount, using a new "chained" CPI. The 2019 lifetime exclusion was $11.40 million and the 2020 lifetime exclusion is $11.58 million. The increased exclusion sunsets on December 31, 2025, and the maximum estate, generation-skipping transfer, and gift exclusion will revert back to the amount of $5 million and will be adjusted for post-2011 inflation using the new chained CPI.

The TCJA retains the IRC Sec. 1014(a) for a "step-up" in basis for the appreciated assets or a "step-down" in basis for the depreciated assets. The basis of appreciated property acquired from a decedent will be at the fair market value ("FMV") on the date of decedent's death or, if elected, the FMV on an alternative valuation date.

For estates in excess of exclusion amounts, there are still opportunities to decrease tax cost of transferring assets to beneficiaries.

Where do you begin?

Estate planning will help you to maximize the wealth that can be transferred to your beneficiaries. This is especially true in light of the recent changes under the TCJA. The increased estate, generation-skipping transfer, and gift tax exclusions provide an opportunity to transfer significant wealth to family members.

Here are some effective strategies that you should consider to reduce or eliminate the estate tax on your assets:

Make annual gifts

For 2019, the annual gift exclusion allowed you to make tax-free gifts up to $15,000 per individual (or $30,000 as a married couple). The annual gift exclusion remains $15,000 for 2020. By making gifts annually to any number of your relatives or friends, you could end up transferring substantial amounts out of your estate without using any of your lifetime gift tax exclusion.

The federal annual exclusion amount for gifts to a non-citizen spouse has increased from $155,000 in 2019 to $157,000 in 2020.

Use your lifetime exclusion

Also consider utilizing during 2020 all or a portion of your remaining $11.58 million lifetime exclusion. If married, this gives you and your spouse the ability to transfer up to $23.16 million (adjusted annually for inflation, using chained CPI) tax-free during your lifetimes. This is in addition to your annual gift exclusions mentioned previously. See Chart 11 for the rates and exemptions for 2010 through 2020. Also, see Tax Tip 22.

Consider portability of the lifetime exclusion

Prior to the 2010 Tax Relief Act, married couples had to do careful planning and maintain separately owned assets in order to exclude $7 million (each had a $3.5 million estate tax exclusion) of their assets from federal transfer taxes imposed on their estates after both died. Commencing in 2011, married couples could exclude $10 million ($22.80 million for 2019 and $23.16 million for 2020) of their assets from federal transfer taxes without being as concerned about separately titling their assets. This is accomplished by a concept known as "portability."

The executors of estates of first-to-die married decedents dying on or after January 1, 2011 may elect to transfer any unused exclusion to the surviving spouse. The amount received by the surviving spouse is

Chart

11. Maximum Gift, Estate, and GST Tax Rates and Exemptions

The following chart shows the rates and exemptions for the tax years 2010 through 2020 and thereafter:

	Maximum Rates	Exemptions (Cumulative Tax-Free Transfers)			State Tax Credit
Year	Gift, Estate, and GST Tax	Gift	Estate	GST	
2010*	35%	$1,000,000	$5,000,000	$5,000,000	NO
2011	35%	$5,000,000	$5,000,000	$5,000,000	NO
2012	35%	$5,120,000	$5,120,000	$5,120,000	NO
2013	40%	$5,250,000	$5,250,000	$5,250,000	NO
2014	40%	$5,340,000	$5,340,000	$5,340,000	NO
2015	40%	$5,430,000	$5,430,000	$5,430,000	NO
2016	40%	$5,450,000	$5,450,000	$5,450,000	NO
2017	40%	$5,490,000	$5,490,000	$5,490,000	NO
2018	40%	$11,180,000	$11,180,000	$11,180,000	NO
2019	40%	$11,400,000	$11,400,000	$11,400,000	NO
2020 and thereafter**	40%	$11,580,000	$11,580,000	$11,580,000	NO

**Unless carryover basis and no estate tax is chosen.*
***As a result of the TCJA, the exclusions are doubled and will be adjusted for inflation, using a new chained CPI. In 2026, the exclusion will revert back to $5 million plus adjustments for post-2011 inflation, using the new chained CPI.*

called the Deceased Spousal Unused Exclusion ("DSUE") amount. If the executor of the decedent's estate filed a federal estate tax return (form 706) and elects transfer, or portability, of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last-deceased spouse against any taxable transfers arising from subsequent lifetime gifts and transfers at death.

As an example, assume that one spouse dies in calendar year 2020 with a taxable estate of $18 million and leaves it all outright to the surviving spouse (who has $5 million of his or her own assets). No federal estate tax would be due from the estate of the first to die because the surviving spouse receives all of the assets and there is an unlimited marital deduction, and none of the deceased spouse's $11.58 million exclusion would be used. If the deceased spouse's executor elects to transfer the unused $11.58 million exclusion, the surviving spouse will have a combined $23.16 million exclusion (disregarding the inflation indexing) available from future federal transfer taxes. If the surviving spouse has $24 million of assets on his or her death, only $840,000 will be subject to the federal estate tax (assuming the surviving spouse dies prior to January 1, 2026 and no change in the tax legislation occurs prior to that date). As a result of ATRA, portability has been made permanent.

Although portability of the exclusion simplifies estate tax planning for many couples, there are still significant advantages to using the exclusion in the estate of the first spouse to die, which often necessitates the creation of a "bypass trust." These include:

- Removal of future income and appreciation from transfer taxes.
- Protection of the assets from potential creditors.
- Preservation of the assets for the first-to-die spouse's children and grandchildren (e.g., in a situation where the surviving spouse remarries).

Make taxable gifts

Although there is a reluctance to pay gift taxes, for those people who have used up their available exclusion and can afford to transfer additional assets, paying gift taxes will often increase the amount available for your beneficiaries. For example, assume that you have previously used your available exclusion amount and you have another $5 million that you wish to gift. If you have a large estate at the 40% estate tax rate, your beneficiaries will only receive $3,000,000. However, if you make a net gift of $3,571,429, which is the $5 million amount less gift taxes of $1,428,571 ($3,571,429 at the 40% rate) and survive for three years, your beneficiaries will receive an extra $571,429 ($3,571,429 less $3,000,000). (This example ignores the time value of money.) This difference arises because the estate tax is "tax inclusive," which means that the tax is on the amount of total assets and not the amount

Tax Tip

22. Use Your Lifetime Gift Tax Exclusion Now

You should consider using your lifetime gift tax exclusion immediately if you haven't already done so. Otherwise, the transferred assets may remain in your estate with all future income and appreciation thereon subject to estate tax, either at your death, or, if married, typically at your surviving spouse's death. As a result of TCJA, if you and your spouse have not yet used your exclusions, you can make gifts of $22.80 million in 2019 or $23.16 million in 2020 (in addition to the annual exclusion gifts of $15,000 in 2020 to each donee from each of you).

The benefit of utilizing all of your lifetime gift tax exclusion is as follows (assuming a 5% compounded annually after-tax growth rate):

If you transfer $23.16 million in 2020, the $23.16 million will grow to $61,450,375 in 20 years, which will be available to your beneficiaries free of gift and estate taxes. If the appreciated assets remaining in your gross estate pass to your beneficiaries, assuming you and your spouse will have a combined estate in excess of the estate tax exclusion at the time of your surviving spouse's death, the estate tax on the assets that you did not transfer during your lifetime may be as high as $15,316,150 ($61,450,375 less the $23,160,000 at an assumed tax rate of 40%). Your beneficiaries will receive the net balance of $46,134,225, rather than the $61,450,375 had you transferred the assets now.

actually going to the heirs. Furthermore, if the grantor survives three years, the taxes are removed from his or her estate.

Gifts to minors

One of the common methods of making gifts to children and grandchildren under the age of 21 is to arrange for ownership of the assets to be held by an individual as custodian for the minor under a state's Uniform Transfers to Minors Act ("UTMA"). This type of ownership was previously under the Uniform Gifts to Minors Act ("UGMA"). Under the UTMA, the custodian is required to transfer the property to the minor upon the minor attaining age 21, or to the minor's estate upon the minor's death before age 21. However, it is possible for the custodianship to terminate at age 18 if the designation of ownership contains, in substance, the phrase "until age 18."

It is important to make sure that the person who gifts the property does not serve as a custodian under the UTMA for the minor with respect to that property. If the donor is serving as a custodian and dies before the UTMA status terminates (e.g., before the minor reaches the age of 21), the property held under the UTMA will be included in the donor's taxable estate for estate tax purposes. Fortunately, this result can be avoided with proper advance planning. For example, if a spouse transfers his or her property for the benefit of his or her child and his or her spouse serves as custodian under the UTMA, the property would not be included in the deceased spouse's taxable estate should he or she die before the UTMA status terminates.

Other methods for transferring assets to minors (or for their benefit of) include:

- IRC Sec. 529 college savings accounts,
- IRC Sec. 2503(c) trusts for the benefit of persons under 21 years of age,
- Life insurance trusts,
- Discretionary trusts,
- Direct payment of educational and medical expenses to the qualified educational institution or the medical provider, and
- Totten trust (pay-on-death) bank/securities accounts

Pay medical and education costs

You can directly pay unlimited tuition and medical expenses for any person free of gift taxes. This exclusion is in addition to the annual gift exclusion. Payments can include health insurance premiums and tuition for elementary school through graduate school. You must make these payments directly to the qualifying educational organization or medical provider.

Use loans rather than gifts

Lending money to your beneficiaries is a viable option to avoid current gift taxes or the use of your lifetime gift exclusion. You can then use your annual gift tax exclusion to enable your beneficiary to pay the interest due and/or part of the debt principal each year.

For the month of January 2020, the minimum interest rates required by the IRS to be charged on loans with interest to be compounded annually, referred to as applicable federal rates ("AFR"), are:

- 1.60 % if the term of the loan is three years or less (short-term).
- 1.69 % if the term is more than three years and less than nine years (mid-term).
- 2.07 % if the term is nine years or longer (long-term).

These rates are low by historical standards and provide an excellent opportunity to use loans to your beneficiaries as a technique for transferring wealth free of gift and estate taxes. However, you need to make sure that the loan is bona fide (i.e., you intend for it to be repaid) and properly documented.

Note: *Connecticut is the only state which imposes gift tax.*

Use trusts and other family entities

Entities and trusts that should be considered for transferring future appreciation out of your estate at minimal or no gift tax include:

- **Grantor Retained Annuity Trust ("GRAT"):** A GRAT pays you an annuity at a fixed rate in exchange for the assets transferred to the GRAT. If the transferred assets appreciate in excess of the interest rate used by the IRS (2.0 % in January 2020), the excess appreciation will pass tax-free to your beneficiaries. With the IRS rates relatively low, the GRAT is an attractive option (see Tax Tip 23).
- **Family limited partnerships and LLCs:** Family limited partnerships ("FLPs") and family limited liability companies ("FLLCs") can be very effective gift and estate tax planning vehicles (though not without some complications and risks). These entities allow you to transfer assets to your beneficiaries, typically at a discounted value, while you retain control of investment decisions and the timing and amount of distributions to the partners (typically family members) (see Tax Tip 24).
- **Personal residence trust:** This is a form of a GRIT (which is a grantor retained interest trust) that uses your principal residence as the asset contributed to the trust with your right to live in the house for a period of time as the retained interest.
- **Irrevocable life insurance trust ("ILIT"):** An ILIT can remove life insurance proceeds from your estate, thereby transferring substantial wealth to your beneficiaries. However, payment of premiums and gift taxes on the premiums may reduce the tax benefits.
- **Charitable trust:** A charitable trust can help you diversify your portfolio and combine estate planning with your charitable desires. See the chapter on charitable contributions for a more detailed discussion.
- **Bypass trust:** This trust can help you divide your assets properly, so that the future income and appreciation on the assets in the bypass trust escape estate tax when the second spouse dies. However, in states that only allow an exclusion that is less than the

Tax Tip

23. Transfer Appreciation with a GRAT Free of Gift Taxes

You transfer securities in a company that has great potential for future appreciation to a two-year grantor retained annuity trust. The securities are currently valued at $1,000,000 (200,000 shares at $5 per share). As an example, based on a 2.0 % IRC Sec. 7520 rate (for January 2020) you could set the annuity at 51.503914% to effectively zero out the remainder interest and pay no gift tax on the transfer. You would receive an annuity payment of $515,039 per year ($1,000,000 times 51.503914%) totalling payments of $1,030,078. Assume the stock appreciates to $8 per share at the end of the first year and $9 at the end of the second year. Since the GRAT does not hold any liquid assets, you will need to use the stock to pay your annuity, as follows:

Shares transferred to GRAT	**200,000**
Shares used to pay annuities:	
Year 1 ($515,039 divided by $8 per share)	(64,380)
Year 2 ($515,039 divided by $9 per share)	(57,227)
Shares remaining at the end of the GRAT's term	78,393
Value of shares transferred to beneficiaries ($9 per share)	**$ 705,537**

Tax Tip

24. The Advantages of an FLP or FLLC

Let's assume in 2020 you and your spouse have not yet used any of your lifetime gift exclusions of $23.16 million ($11.58 million each). You can transfer assets valued at $33,085,714 to an FLP or FLLC, in addition to your annual exclusion gifts, free of gift taxes (based on the assumption that you can sustain a 30% minority and marketability discount on the value of the limited interests).

How much will your beneficiaries receive? The value of their limited partnership interests could grow, free of gift or estate taxes, to $87,786,249 in 20 years from the initial amount of $33,085,714 using a 5% after-tax growth rate. By comparison, if the assets were left to accumulate in your estate, the estate tax could be as high as $25,850,500 (net of the $23.16 million exclusion assuming a maximum rate of 40%), leaving $61,935,749 to your beneficiaries. Thus, there is a potential savings of $25,850,500.

federal exclusion, it may be appropriate to limit the amount going into a bypass trust.

Utilize Your GST Exclusion

If you transfer assets directly to your children and they eventually pass the assets down to their children, two levels of estate tax will be paid (assuming both estates are in excess of the exclusion amounts). If you make transfers directly to your grandchildren, or for their eventual benefit, through a trust or other entity, or to other "skip persons" (individuals two or more generations younger than you), you will be subject to the GST tax (at a 40% estate tax rate under current law) in addition to gift or estate taxes.

The GST exclusion allows you to transfer up to $11.40 million free of the GST tax in 2019 (increased to $11.58 million in 2020). If you have not yet used the full amount of your gift tax exemption, consider making gifts to your grandchildren (or to a trust for their benefit) up to the amount of your remaining GST tax exclusion, if you can afford to do so. There is no portability between spouses for the GST exclusion.

Grantor Retained Annuity Trust

When you create a GRAT, you (as a grantor) have made a gift equal to the fair market value of the assets transferred to the trust less the present value of the annuity payments you will receive from the trust during the GRAT's term. The annuity payments are calculated at the IRC Sec. 7520 rate so there is no gift tax on transfer to the GRAT ("zero-out" GRAT) and theoretically no assets should be left at the end of the GRAT term.

The success of the GRAT depends on the amount of income earned and appreciation on the assets during the GRAT term. Income and asset appreciation in excess of the IRC Sec. 7520 rate (for example 2.0 % used for January 2020 transfers) will cover annuity payments during the term of the GRAT and remaining assets will pass to your beneficiaries gift tax-free (see Tax Tip 23).

All income earned by the GRAT is taxable to you, so the trust's assets are not depleted by income taxes.

Note: *If you should die before the expiration of the GRAT's term, the assets would be includible in your gross estate, subject to certain limitations.*

Family Limited Partnerships and Family Limited Liability Companies

As Tax Tip 24 illustrates, FLPs or FLLCs can be very beneficial estate planning tools. You can contribute assets to such an entity in exchange for general partnership and limited partnership interests (or

RETURN TO TOC

member interest if a FLLC). You and/or your spouse typically keep the general partner interest (or remain the managing member of a limited liability company). This interest allows you to retain management control of the investment and distribution decisions (though this control must be set up carefully). You would typically gift only the limited partnership interests, but not in excess of your available annual and lifetime exclusions, thereby avoiding gift tax. Because the limited interests are minority interests subject to lack of marketability and lack of control, the value of the gift can be discounted and the corresponding tax-free amount of the gift can be increased. You should obtain an appraisal to substantiate the discounted value. Care must be exercised to be sure that the control does not result in the FLP's entire assets being included in the donor's estate.

An even more effective way to use an FLP or FLLC is to create trusts to hold the limited partnership interests for your beneficiaries. These trusts can be grantor trusts for tax purposes, requiring you, as grantor, to include all of the income of the trust on your tax return. You pay all the taxes on the income earned by the FLP or FLLC, allowing the trust to grow tax-free. In effect, you are making an additional tax-free gift. Before doing this, you should make sure your financial position will allow you to continue paying all the income taxes even though you may not be able to receive any cash distributions from the trust.

Rather than gifting the limited partnership interests, another way to transfer the interests to your beneficiaries is to sell the interests to a grantor trust for their benefit. Since such a trust usually has limited funds to purchase the interests, the sale would be done on an installment basis (subject to a rule requiring the trust to be adequately capitalized). The installment payments that you are required to receive would come from distributions to the trust from the partnership, typically from the annual income. By using this grantor trust method, the trust can receive the income free of taxes,

Chart

12. State Estate Tax Rates and Exemptions

State	Maximum Estate Tax Rate	Maximum Gift Tax Rate	Exemption
New York	16%	None	$5,850,000*
New Jersey	(a)	None	None**
Connecticut	12%	12%	$3,600,000/$5,100,000***
Pennsylvania	(b)	None	None

(a) An inheritance tax will be entirely exempt on transfers to direct descendants and lineal heirs, and a maximum inheritance tax rate of 16% on transfers to siblings and other beneficiaries. The tax will be assessed to the beneficiaries or transferees.

(b) An inheritance tax of 4.5% is imposed on transfers to direct descendants and lineal heirs, 12% on transfers to siblings and 15% on other taxable transfers.

*The exemption amount from January 1, 2020 through December 31, 2020 will be $5,850,000. If the NY taxable estate is 105% more than the exemption amount, the entire estate is subject to estate tax, not just the amount in excess of the exemption amount.

** Effective January 1, 2018, the New Jersey Estate Tax was repealed. However, the New Jersey Inheritance tax was not repealed.

***Beginning 2019, the CT estate and gift tax exemption increased from $3.6 million to $9.1 million in 2022. In 2023 and beyond, the Connecticut exemption will match the federal estate and gift tax exemption. CT doesn't have the portability option. The taxable estate exceeds the exemption amount will be taxed at a margin rates between 7.8% and 12%.

Note: *California and Florida have no estate tax. In Florida, there may be a need to file other forms to remove the automatic Florida estate tax lien.*

thereby increasing the annual cash to fund repayment of the principal and interest on the installment note.

While FLPs and FLLCs can be effective estate planning vehicles, they must be carefully structured, fully implemented substantially before death occurs, and have a bona fide, nontax purpose. In addition, the proper tax and accounting records should be maintained, income and gift tax returns should be carefully prepared and all transactions should conform to the legal documents. Unless these precautions are taken, the arrangement may not be upheld in the event of a challenge by the IRS.

In August 2016, the IRS issued proposed regulations under IRC Sec. 2704 that imposed limitations on valuation discounts for transfers of interests in family-controlled entities. These regulations would have limited or eliminated lack of control discounts and would have had an impact on marketability discounts. On October 4, 2017, the U.S. Treasury Department released a final report stating that the proposed regulations under IRC Sec. 2704 would be withdrawn as they would hurt family-owned businesses by limiting valuation discounts and made it difficult and costly for families to transfer their businesses to the next generation.

Qualified Personal Residence Trust

A qualified personal residence trust ("QPRT") is a form of a GRIT that allows you to transfer your personal residence to a trust (typically for your children's benefit) even though you continue to live in the home during the QPRT's term (e.g., ten years). You hold an income interest in the home based on the present value of your right to live there during the term of the QPRT. Gift tax applies to the fair market value of the house reduced by the retained income interest (as actuarially computed using IRS interest rates).

The value of the house at the end of the QPRT's term will go to your beneficiaries free of additional gift or estate taxes. When the QPRT term expires, your children (or a trust for their benefit) will own the residence. They must charge you a fair market value rent to allow you to continue using the residence, and the rent you pay will further decrease your taxable estate. If you do not intend to live in the home and your beneficiaries do not want to live there, the trust can sell the house and reinvest the funds in other investments. In either case, there is no additional gift tax when the QPRT terminates. However, the benefits are lost if you die before the QPRT term ends because the full value of the residence will be includible in your gross estate.

Life Insurance

Life insurance can serve an important function in your estate plan because it can provide your beneficiaries liquidity to pay estate taxes, especially if the value of your business (or other non-liquid assets) represents a significant portion of your estate. Life insurance can also provide immediate funds to help your family maintain their standard of living and for other purposes. But if the proceeds are left in your taxable estate, the federal estate tax could reduce the proceeds by as much as 40% for 2019 and beyond. To avoid this tax, you must ensure that the proceeds of your life insurance policies are not payable to either you or your spouse's estate, and that neither of you possess any incidence of ownership in the policy at death.

A properly structured ILIT can remove life insurance proceeds from your estate, if the trust is both the policy's owner and beneficiary. The trust can also provide income to your surviving spouse and principal to your children (or other beneficiaries) upon your spouse's death. In addition, the trustee can properly manage and invest the insurance proceeds for future growth.

If you use any of the following funding methods, you can make the trust the owner of the insurance policy without being deemed to have any incidence of ownership:

- Gift sufficient funds to a grantor-type trust so it can

RETURN TO TOC

buy the insurance policy and pay all current and future premiums.

- Assign a current policy to the trust and gift future premiums. However, the transfer must be completed at least three years before your death to avoid inclusion in your taxable estate.
- Gift to the trust the annual premiums on a policy owned by the trust either by paying them directly or first depositing them in a trust account.

Be careful of gift tax issues to the extent you gift funds to purchase the policy, pay premiums or transfer an existing policy that has value. You will only incur a gift tax if the amount exceeds the available annual exclusion and any remaining lifetime gift tax exclusion. The government's position is that the annual exclusion is only available if the trust document includes a withdrawal (Crummey) power and the beneficiaries are notified in writing of their right of withdrawal. It is important to properly comply with this administrative requirement.

There are some disadvantages to life insurance trusts, but they can be minimized with proper planning. There will be some additional costs: You will incur legal fees since a carefully drafted trust instrument is needed to satisfy specific rules, and there may be trustee commissions. Also, income tax returns may be required if the trust has assets generating taxable income. Life insurance trusts are almost always grantor-type trusts. However, if the trust only holds the life insurance policy and you pay the annual premiums through gifts, income tax returns will generally not be required.

If you have a life insurance policy that has been in force for at least three years, it may prove beneficial to review the policy to see if premiums can be lowered and/or the death benefit can be increased. It is sometimes possible to find a more favorable policy and obtain it in exchange for your old policy on a tax-free basis.

State Estate Tax Considerations

You should keep in mind that many states also impose an estate or inheritance tax on persons who are domiciled in the state or have property located in the state. Some of these states continue to impose their estate or inheritance tax even if there is no federal estate tax. Others (e.g., Florida) impose no such tax when there is no federal estate tax credit for taxes paid to a state.

Changes to estate taxes in New York

On April 1, 2014, New York State passed legislation known as the Budget Legislation with the new estate tax rates and estate exclusion amounts. The new estate tax provisions are in effect for decedents dying on or after April 1, 2014.

Prior to this legislation, New York estates above $1 million in assets were subject to New York estate taxes. Under the Budget Legislation, the estate exclusion amount gradually increased and by April 1, 2017, reached the 2013 federal estate tax exclusion of $5.25 million. After January 1, 2020 and before January 1, 2021 the basic exclusion amount is $5,850,000. Below are the basic exclusion amounts ("BEAs") for decedents dying on or after the following dates:

- April 1, 2014 and before April 1, 2015: $2,062,500
- April 1, 2015 and before April 1, 2016: $3,125,000
- April 1, 2016 and before April 1, 2017: $4,187,500
- April 1, 2017 and before Jan. 1, 2019: $5,250,000
- January 1, 2019 and before Jan.1 2020: $5,740,000
- January 1, 2020 and before Jan.1 2021: $5,850,000

Unfortunately, the above basic exclusion amounts start to phase out once the estate's taxable value exceeds the BEA in effect at that time. Furthermore, the estate's exclusion amount is fully phased out once the estate's taxable amount is over 105% of the current BEA.

On January 15, 2019, The New York Governor's Fiscal Year 2020 Executive Budget was released and would have retroactively extended the "clawback" provisions for certain taxable gifts made by New York residents within three years of death for estates of decedents on or after January 16, 2019, and before January 1, 2026. For estates of decedents dying on or after January 1, 2019, and before January 16, 2019, there is no addback of taxable gifts.

Another new change in the New York estate tax is that the tax law requires a New York qualified terminable interest property (QTIP) election be made on a New York estate return directly for decedents dying on or after April 1, 2019. The surviving spouse's New York gross estate must include any QTIP allowed from a previously allowed New York marital deduction whether the QTIP election was made on the transferring spouse's New York estate tax return or on a federal pro forma return if no federal return was required.

Impact on Certain Exempt Organizations

As a result of PATH, the gift tax will not apply to the transfer of money or other property to a tax-exempt organization described in IRC Sec. 501(c)(4) (generally, social welfare organizations), IRC Sec. 501(c)(5) (generally, labor and agricultural organizations) or IRC Sec. 501(c)(6) (generally, trade associations and business leagues).

Consistent Basis Reporting for Estates

Under the Surface Transportation and Veterans Health Care Choice Act of 2015, IRC Sec. 6035 introduced reporting requirements to assure that a beneficiary's basis in certain property acquired from a decedent be consistent with the value of the property for estate tax purposes. Because many executors were not prepared to comply with the new reporting requirements, the IRS extended the due date for filing Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent and distributing Schedules A to beneficiaries. Final regulations issued in December 2016 confirmed that no further extensions beyond June 30, 2016 would apply to initial reporting and that the rule going forward is to file the form within 30 days of filing Form 706.

Non-Tax Considerations

There are many non-tax reasons to review your estate plan and the related documents.

It is advisable to periodically review your estate plan to make sure it is in conformity with your current wishes and current law. This review should include nontax considerations, such as:

- Who are your executors and trustees?
- Do you have a power-of-attorney and is it current?
- Is your health care proxy and/or living will current?
- Have you provided for long-term care for your spouse and yourself?
- Are the designated beneficiaries of your qualified retirement plans and life insurance policies in accordance with your present desires?
- Does your estate plan include new children, grandchildren, etc.?
- Have you named appropriate guardians for your minor children should both parents be deceased while the children remain minors?
- Has anyone mentioned in your will died?
- Will your assets be preserved for your family in the case of a divorce?
- Do you have adequate creditor protections included in your planning?
- At what age do you want your children, grandchildren or other beneficiaries to have full access to inherited assets?

RETURN TO TOC

- Do you have a beneficiary with special needs that you want to provide for?
- Do you wish to leave a legacy to a charitable or educational organization?
- If there is a family business, are you satisfied with the beneficiaries who will receive that interest? Has a succession plan for the business been put into place? Do you need to equalize amongst your children where only children working in the business are receiving interests in the business?

Income Tax Planning for Trusts and Estates

As a result of the TCJA, the income tax rates for trusts and estates have changed to the following:

Taxable income over	2019 But not over	Rate	Taxable income over	2020 But not over	Rate
$0	$2,600	10%	$0	$2,600	10%
$2,600	$9,300	24%	$2,600	$9,450	24%
$9,300	$12,750	35%	$9,450	$12,950	35%
$12,750		37%	$12,950		37%

Planning surrounding income taxation of estates and trusts should consider the respective tax brackets and determination of the ability to potentially reduce income tax liabilities through the means of beneficiary distributions. As the trust is subject to the top ordinary income tax rate once taxable income reaches $12,950 for 2020 (a much lower threshold than individuals), making distributions to current income beneficiaries and receiving a taxable deduction at the trust level may provide an overall tax savings.

Choosing the fiscal year-end of an estate involves more planning. The timing of income and deductions can reap tax savings, if planned for properly.