Golden chance

How to take advantage of new estate planning opportunities **Interviewed by Meredyth McKenzie**

Now is a great time to start planning your estate or reviewing the plan you already have in place.

With the depressed value of assets, especially in the real estate and stock markets, and low interest rates, new and different opportunities for estate planning have emerged. Tax law changes, such as an increased applicable exemption amount and an increased exemption for annual gifts, have also made this a great time to start transferring your estate.

"Given the changes in the economy, interest rates and potential legislation, you should review your estate plan and update your asset list," says Jennifer A. Davis, officer in the trust and estates practice group at Greensfelder, Hemker & Gale, P.C. "If you haven't done any estate planning, now is an excellent time to do so to make sure you are not paying any unnecessary taxes."

Smart Business spoke with Davis about the different estate planning opportunities available and why you should review your estate plan today.

Jennifer A. Davis
Officer in the trust and estates practice group
Greensfelder, Hemker & Gale, P.C.

How can you take advantage of today's estate planning opportunities?

The simplest and most attractive opportunity is gifting, which reduces your taxable estate and moves assets from one generation to another. Now, more individuals are taking advantage of this technique because the decreased value of the gifted asset allows you to transfer more to your family. Even families not interested in complex estate planning can take advantage of gifting.

There are some limits to the gifting you can make before you face any tax implications. The first is the annual exclusion amount, which increased to $13,000 per individual in 2009. An individual can gift up to $13,000 to another individual on an annual basis, or a married couple can gift up to $26,000 jointly. We will know in December if the amount will increase in 2010.

There is also a lifetime gift exemption of $1 million per individual or $2 million per married couple if you want to make larger gifts.

How does a lower interest rate affect estate planning?

Interest rates come into play based upon the structure and value of the asset transactions. A lower interest rate would mean a lower amount of interest being paid or accruing. A simple technique that has gained popularity is a loan to a family member.

You cannot give an interest-free loan to your children without tax consequences. To avoid these tax implications, you must charge an interest rate at a specified level. That rate is at an all-time low.

Parents are now expressing more interest in structuring a loan to their children instead of making a gift. This can be done at little cost to their children and allows parents to retain some comfort as they are not giving away assets should they need them in the future.

There are also other, more complex estate planning techniques that are more efficient and attractive because of the low interest rate. One is a grantor-retained annuity trust, in which an individual sets up a trust and transfers assets to it, retaining the right to receive an annuity payment for a certain number of years. Any assets remaining at the end of that term are passed to specified beneficiaries. On this arrangement, you are trying to transfer a depressed asset into the trust in hopes that it appreciates at a rate greater than the annuity rate.

Another similar vehicle is the charitable lead trust, in which a charity receives the payments and the remainder of the amount at the end of the term goes to specified beneficiaries.

What pending laws could affect estate planning?

Congress is looking to pass legislation that revisits prior legislation, which changed the amount an individual can transfer on death before an estate tax is applied, known as the applicable exemption amount. That law also reduced the top estate tax.

This year, the applicable exemption amount increased to $3.5 million per person — the highest it has ever been. Under the current law, the estate tax goes away entirely next year, but comes back in 2011 with an applicable exemption amount of only $1 million per person.

Why is it important to review your estate plan?

You want to make sure it is properly funded. The plan will only be effective if you follow through with funding and transfer assets to the proper estate planning vehicles.

You also want to make sure it works under existing laws. For example, if one spouse has the bulk of the wealth, he or she may transfer a portion to the other spouse to ensure that assets are available to use both spouses' applicable exemption amounts. There may need to be further transfers as the amount changes.

You also need to be aware of upcoming legislation. Most documents are drafted to accommodate changes in law and exemption amounts, but you should understand how those apply to your situation. Remember to review your documents, review how your assets are titled and work with your tax advisers to avoid any unintended results.

What are the benefits of taking advantage of these new opportunities?

You can save money on estate tax. Having a plan in place also ensures that your family or beneficiaries are taken care of in the manner that you want. <<

JENNIFER A. DAVIS is an officer in the trust and estates practice group at Greensfelder, Hemker & Gale P.C. Reach her at (314) 345-4749 or jac@greensfelder.com.