

# OPPORTUNITIES FOR ESTATE AND GIFT TAX SAVINGS

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This fall is an excellent time to review your opportunities for estate and gift tax savings:

- As federal law stands now, the estate tax will expire at the end of 2009 and there will be no tax in 2010, but the tax will return in 2011. Congress is expected to take action so that an estate tax will continue without interruption in 2010, but there may be changes to the estate tax rules. In changing or extending the estate tax, Congress may curtail or disallow certain tax-saving techniques.
- In addition, the current economic environment provides opportunities for significant estate and gift tax savings.



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**Before the economy recovers and before Congress decides on estate tax changes, you may want to take advantage of these opportunities:**

## *Gift of Your Residence*

A gift to your children of your vacation or primary residence now, while real estate values are down, may result in a lower gift tax because the gift tax is based on the current value of the gift. You can defer and further leverage a gift of your home or vacation home by using an IRS-approved technique called a Qualified Personal Residence Trust (“QPRT”). The home is not transferred to your children immediately but is held in trust for your use for a period of years, and when the period ends the home is transferred to your children or into a trust for their benefit. Your ownership of the home for that period reduces the value of the gift.

Here is an example of how you can reduce gift tax through a QPRT. Assume that your vacation home was worth \$1.5 million in 2006 but now an appraiser values your home at \$1.1 million. An outright gift of your home now to your children could result in a gift tax because the lifetime exemption for the federal gift tax is \$1 million. However, by transfer to a QPRT for ten years, your gift will be calculated as follows, depending on your age:

YOUR AGE WHEN YOU MAKE GIFT TO QPRT...	IF YOUR HOME IS VALUED IN SEPTEMBER 2009 AT \$1.1 MILLION, GIFT IS...	BUT IN SEPTEMBER 2006, WHEN YOUR HOME WAS WORTH \$1.5 MILLION, GIFT WOULD HAVE BEEN...
50 YEARS OLD	\$729,135	\$775,635
60 YEARS OLD	\$656,854	\$698,745
70 YEARS OLD	\$519,541	\$552,675

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After the transfer to the QPRT, all you (as the grantor) have to do to is stay alive for the term you choose – so if you are healthy and feeling great, you may want to choose a longer term and reduce the gift. If you die before the term, the property is back in your estate but your estate is no worse off than if you had not created the QPRT. A gift to a QPRT can be made by a parent of any age and we will be happy to discuss different scenarios with you.

### *Gifts of Interests in Closely-Held Businesses*

You may want to consider outright gifts, or gifts in trust, of percentages of your closely-held business, especially if it is your intent to eventually have the business pass to the next generation. If you think your closely-held business is worth less now than a few years ago but expect the value to grow over time, now may be the right moment to make fractional gifts of your business to your children, thus removing that asset or fraction of it from your estate and transferring any future appreciation into their hands.

Gifts to Grantor Retained Annuity Trust (“GRAT”) A GRAT is an irrevocable trust technique that allows you (as the grantor) to transfer future appreciation of a particular asset (such as stock) to family members with minimal or no gift tax. Under a GRAT, your asset is transferred to an irrevocable trust, the terms of which provide that a stated percentage of the assets of the trust on the date of contribution must be returned to you each year.

If the assets of the GRAT grow fast enough, there may be property remaining in the trust after all the required payments have been made. Any assets remaining in the trust after the last payment to you will pass to your family members (called “remainder beneficiaries”) free of gift tax.

If the assets transferred to the GRAT do not appreciate enough to satisfy the payments to you, the trust will simply run out of assets with no tax or other consequences. And if you die during the term of the GRAT, no tax benefits will be realized. In each case, however, you will be no worse

off than you would have been without the GRAT, with the exception of the costs of setting up the GRAT.

In the past, short-term GRATs have been particularly beneficial in situations where the grantor has anticipated substantial appreciation in the value of the assets contributed to the GRAT. However, among the recent proposed changes in the estate and gift tax area is a proposal to require an annuity term for GRATs of at least 10 years, which would eliminate the benefits of short-term GRATs. But if such a change were adopted, it would only impact GRATs created after the date of enactment. Therefore, you may want to consider acting quickly to lock in the benefits of a short-term GRAT.

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