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How GRATs Work

The tax code imposes limits on how much you can give each year without having to report the gift, and how much you can give away during life without having to pay gift tax. You can give $14,000 per year per person without having to report the gift. Over and above this "annual exclusion amount" you can give a total of $5,450,000 (as of 2016) during life without having to pay a gift tax. The tax code also authorizes many ways to give more than this amount without having to pay gift tax. A grantor retained annuity trust (GRAT) is one of the most attractive options today to do so.

If you want to transfer wealth out of your estate to reduce estate taxes and benefit your loved ones you should consider a GRAT. A GRAT is a trust to which you transfer assets and receive back an annuity for a set term of years. As long as you receive back over the term of the GRAT via the annuity payments assets equal in value to what was transferred into it plus the rate of return prescribed by the IRS, what remains in the GRAT at the end of the term will pass to the beneficiaries free of gift and estate tax.

What makes GRATs particularly attractive now is the low rate of return the IRS requires you to receive back. The current IRS rate of return is 1.8%. So for example, if you transferred $2,000,000 into a GRAT with a 4 year term and a graduated payment schedule, and the transferred assets appreciate on average 8% a year, almost $400,000 would pass as a tax free transfer to the beneficiaries at the end of the term.

GRATs can be used to transfer a variety of assets from publicly held securities, to rental real estate (where the rental income provides the funds for the annuity payments) to start up entities with the potential for significant value appreciation. At some point interest rates will rise, diluting the benefits of this strategy. Moreover, there has been ongoing talk in Congress about modifying the rules applicable to GRATs to make them less effective. Therefore, if this strategy is of interest to you, we recommend that you discuss it with your advisors sooner rather than later.

New Additions

We are pleased to announce that as of January, Robert M. Allen and Rhonda G. Hollander have joined the Firm as partners. Robert and Rhonda came to us from Allen & Hollander LLP, a trusts and estates law firm established by them in 2003. The Firm is thrilled to add both of them and their combined sixty (plus) years of experience as trusts and estates practitioners to our growing, and multigenerational, team of counsellors.

IRA Charitable Rollover

On December 18, 2015, President Obama signed the Protecting Americans from Tax Hikes Act of 2015, legislation that makes the IRA charitable rollover permanent. The IRA charitable rollover allows individuals age 70½ and older to donate up to $100,000 (annually) from their IRAs to eligible charities without having to include the distributions as taxable income. The gift must be made by December 31st of each year. Since there is no "double dipping" allowed by the IRS, you cannot also claim an itemized charitable deduction for these donations.

A donor's total IRA charitable rollover contribution cannot exceed $100,000 per year and must be made *directly* to an eligible charity. An eligible charity includes most public charities other than supporting organizations; however, distributions to donor advised funds held by public charities and private foundations, except in narrow circumstances, do not qualify for tax-free treatment. Distributions can only be made from traditional IRAs or Roth IRAs; charitable donations from 403(b) plans, 401(k) plans, pension plans, and other retirement plans are ineligible for this tax-free treatment. Donors should be wary of receiving goods or services in return for charitable IRA rollover contributions, as this may disqualify them from the tax-free treatment.

We strongly encourage you to speak with your accountant to determine whether it would be advisable for you to take advantage of the IRA charitable rollover. This is an easy and tax-efficient way to make contributions to your favorite nonprofit organization.

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One of the largest estate planning firms in New England, our attorneys have been recognized for their exceptional experience in the field. The firm carries the highest professional rating in the national Martindale-Hubbell Law Directory and is listed in the Bar Register of Preeminent Lawyers. Many individual attorneys are listed in the Best Lawyers in America and New England, Massachusetts and Rhode Island Super Lawyer lists.

Please feel free to contact the firm if you would like to discuss the matters highlighted in this newsletter, or any other legal matters.

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