

## **Estate Planning in Economically Turbulent and Politically Uncertain Times**

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### **I. Political Uncertainties.**

- a. **What will Congress do?**
- b. **When will its changes take effect?**
- c. **Possibility of extending 2009 provisions to 2010 and then allowing the estate tax system to revert to pre-2001 law.**
- d. **In any event, the financial circumstances of the federal government will be stressed (less income tax and lower estate tax) and the need for revenue greater than anticipated.**

### **II. Reversion To One Million Dollar Exemptions.**

- a. **Increase in rates to 55% (60%).**
- b. **But re-enactment of section 2011 state death tax credit causes effective rate to drop to 39%.**
- c. **Other changes: A year without estate tax; conservation easements; QFOBI.**

### **III. Ways To Increase Estate Tax Revenues.**

- a. **Require value of remainder of GRAT to be at least 10%.**
- b. **Eliminate the QPRT exception from section 2702.**
- c. **Allow no entity discounts (e.g., family partnership) unless substantial portion of entity's receipts are from the public.**

### **IV. Economic Factors.**

- a. **Forecasts (before economic downturn) of President Elect Obama's estimated tax policy and expenditures: \$3.5 trillion increase in national debt.**
- b. **Economic stagnation could mean third party national debt exceeds GDP.**
- c. **Estate planning axiom: Transfers during life are more efficient than those at death. Best to transfer property when values are low. Many strategies work best with low interest rates. That appears to be the situation now.**
- d. **Not necessarily so with declining values, but in the long run values must increase.**

## V. Specific Steps.

- a. Use the unified credit now.
- b. Consider short-term declining GRATS. Vest remainder absolutely.
- c. Make all transfers to grantor trusts (with ability to toggle off).  
Rev. Rul. 2004-64.
- d. Do extremely long term installment sales to grantor trusts (but within grantor's life expectancy, *see* PLR 9535026).
  - i. Reset AFR as it drops.
  - ii. Prepay when adequate profit develops and resell.
  - iii. Create and transfer discount entities before any law change.
- e. Do QPRTS or Split Purchase Trusts<sup>sm</sup>
- f. Do a reverse freeze with disregarded entities and grantor trust.
- g. CLATS work best in low interest rate environments.
- h. Some comparisons of strategies.

## VI. Overcoming Client Resistance.

- a. *King Lear*.
- b. Current economic concerns: "I'm too poor to plan now."
- c. Use self-settled trusts: *Paolozzi*; *Outwin*; Rev. Rul. 76-103; Rev. Rul. 77-378; Rev. Rul. 2004-64; *Estate of Uhl*; *Estate of German*.
- d. Do it in Alaska or Delaware: PLR 9837007 (completed gift but no ruling on estate tax inclusion).
- e. Structure:
  - i. Grantor is eligible only after a period and at such times, if any, when not married and living with another as husband and wife. *Estate of Tully*; Rev. Rul. 80-255. Otherwise, permit distributions to spouse from time to time.
  - ii. Allow someone permanently to eliminate grantor as a beneficiary: Section 2036 applies only as of death; Section 2035 (transfer-within-three-years-of-death rule) should not apply as the grantor has made no transfer.