



**THOMPSON
HINE**

December 2008

**PERSONAL & SUCCESSION
PLANNING ADVISORY**

Personal and Succession Planning in Unusual Times

We live in extraordinary times. The value of securities, real estate and other assets is depressed or declining, and interest rates are very low. At the same time, the shape and detail of future tax laws are uncertain.

Although these circumstances can foster uncertainty and even fear, for high net worth individuals with vision, confidence and the means, the situation presents an unprecedented opportunity to transfer wealth cost-effectively. We are happy to provide you with this report and encourage you to contact us with any questions you may have regarding your own particular circumstances.

For purposes of this commentary, we assume:

- That depressed asset values and low interest rates will prevail for several months;
- That income tax rates are likely to rise rather than fall for high income taxpayers and for capital gains;
- That gift and estate taxes are likely to continue in effect, with tax exemption amounts perhaps similar to those scheduled for 2009, and perhaps similar tax rates as well; and
- After some period of uncertainty, that values and interest rates may again rise.

In briefest summary, any current transaction that fixes the taxable value of property at current low levels may result in large tax savings if that property appreciates in value. All of the following concepts may present planning opportunities in the right circumstances.

GIVING AWAY DEPRESSED ASSETS UNDER THE ANNUAL EXCLUSION

It is always advisable to give away assets that are likely to appreciate before death. This includes many securities and real estate today, although it is difficult to fragment real estate into portions worth less than the annual gift tax exclusion, which will increase to \$13,000 per donee in 2009.

GIVING AWAY DEPRESSED ASSETS OF GREATER VALUE

Larger gifts of property likely to appreciate can have much larger benefit. Giving a gift of a larger amount allows appreciation to benefit descendants and avoids additional transfer tax on the growth. These larger gifts may be made in trust for multiple generations. It may even be advisable to pay gift tax to achieve these benefits.



GRANTOR RETAINED ANNUITY TRUST (GRAT)

An individual may create an irrevocable trust, reserve from it an annuity payment for a period of several years, and give the remaining trust assets to children or other suitable beneficiaries while paying gift tax only on the initial calculated value of this remainder. In most cases, the value of the gift is nominal, or even zero. The method for valuing the remainder depends on interest rates prevailing at the time the trust is created. When rates are low, as now, the expectation is that higher actual returns will apply in the future. When this happens, the beneficiaries' actual remainder proves to be much larger than its initial gift tax value, and all of this excess growth ultimately passes to the beneficiaries free of gift and estate taxes.

CHARITABLE LEAD ANNUITY TRUST (CLAT)

It is also possible to fund an irrevocable trust that will pay a fixed amount to charity for a period of several years and then distribute the remaining trust assets to children or other suitable beneficiaries. As with the GRAT, the initial value of the gift of the remainder interest may be very low or zero, and large amounts of wealth may ultimately pass to beneficiaries estate and gift tax free if actual investment returns exceed the current low interest rates.

INTRA-FAMILY SALES AND LOANS

Sales to family members are advantageous whenever the current value of the assets sold is less than their likely future value, which is the case assumed to exist now. The purchase price can be supplied by a note at current interest rates with principal amortized over or at the end of a term of years. From the point of view of the seller, assets sold are removed forever from the estate tax base at a low value, and with little or no gift tax. There also may be minimal realization of gain from a sale at current depressed values. Moreover, by electing *not* to report gain on the installment sale basis, the seller may take advantage of the current low capital gains rate, rather than having some higher rate apply in the future.

Because the minimum interest rates specified under the rules to avoid taxable gifts for certain loans is also currently low, intra-family loans may also alleviate credit or liquidity strains and provide opportunities.

NONTAXABLE SALES TO CERTAIN TRUSTS FOR FAMILY MEMBERS

It is possible to create irrevocable trusts for children or other descendants who are not recognized as income taxpayers separate from the grantor. These trusts are said to be "grantor-owned," and their receipts and deductions continue to appear in the income tax returns of the grantor as if the trusts did not exist. Typically, an individual creates such a trust for the benefit of children or grandchildren and funds it with a small seed gift of cash or other productive assets. Later on, the grantor of the trust may sell additional assets to the trust at their current low fair market value, and in return for the sort of low-interest promissory note described above. Sales to these trusts,



however, should have no income tax effect because the trusts are disregarded. For the same reason, any interest paid by the trust to the grantor will not be taxable income to her. On the other hand, the grantor must pay income tax on any income actually received by the trust after the gift and sale, yet any income in excess of the interest due her will remain in the trust for the ultimate benefit of the beneficiaries of the trust, estate and gift tax free.

There are variants and refinements for the ideas described in this bulletin that planners can adapt to the special circumstances of each individual. For example, if you own an interest in a closely held business, special rules or even additional planning opportunities may apply to you. *The important point is that each suggestion is more likely to succeed in present conditions of lower values and interest rates than formerly.*

It is also true that some planning arrangements of this sort implemented during the last few years have been frustrated by the recent market decline. Anyone confronting a situation like this may wish to consider reviewing the arrangements and perhaps trying again at the lower values and interest rates now prevailing.

FOR MORE INFORMATION

Planning can be particularly advantageous during down times like these. The personal and succession planning lawyers in our firm are familiar with the techniques mentioned and are available to counsel and assist anyone who is interested. For more information, contact any member of our **Personal & Succession Planning** group:

Cincinnati

Mark A. Conway	937.443.6840	Mark.Conway@ThompsonHine.com
Crofford J. Macklin, Jr.	513.352.6730	Crofford.Macklin@ThompsonHine.com

Cleveland

Andrew L. Fabens, III	216.566.5736	Andy.Fabens@ThompsonHine.com
Robert B. Ford	216.566.5603	Robert.Ford@ThompsonHine.com
Ginger F. Mlakar	216.566.5544	Ginger.Mlakar@ThompsonHine.com
Patrick J. Saccogna	216.566.5761	Patrick.Saccogna@ThompsonHine.com
Jennifer A. Savage	216.566.5721	Jennifer.Savage@ThompsonHine.com

Columbus

Jim Balthaser	614.469.3226	Jim.Balthaser@ThompsonHine.com
William S. Fein	614.469.3273	Bill.Fein@ThompsonHine.com
Jerry Vande Werken	614.469.3286	Jerry.VandeWerken@ThompsonHine.com
Amie L. Vanover	614.469.3271	Amie.Vanover@ThompsonHine.com



Dayton

Richard F. Carlile	937.443.6520	Rick.Carlile@ThompsonHine.com
Mark A. Conway	937.443.6840	Mark.Conway@ThompsonHine.com
Jamil G. Daoud	937.443.6865	Jamil.Daoud@ThompsonHine.com
Crofford J. Macklin, Jr.	937.443.6730	Crofford.Macklin@ThompsonHine.com

New York

Paul A. Soden	212.908.3902	Paul.Soden@ThompsonHine.com
---------------	--------------	--

Washington

Irving P. Cohen	202.973.2768	Irv.Cohen@ThompsonHine.com
-----------------	--------------	--

For almost a century, we have assisted in the shaping of dreams and the fulfillment of desires in the best and the worst of times. The art in good planning is in the listening, and

We listen.

Circular 230 Disclosure

Nothing contained herein or in any attachment hereto is intended to be used, or can be used (i) to avoid penalties imposed under the Internal Revenue Code, or (ii) for promoting, marketing or recommending to another party any transaction or matter addressed herein.

If you do not wish to receive future communications by email, please reply to this email with “unsubscribe” in the subject line.

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2008 THOMPSON HINE LLP. ALL RIGHTS RESERVED.