

# Commentator

Vol. 33, Issue 1



In this newsletter, we often talk about the value of planning ahead, but with the unpredictable year we've just experienced, making plans can feel discouraging. Life looks a lot different than we expected it to look at this time last year. However, there are some upcoming changes that we *can* anticipate and those involve President Biden and his administration. Brian Jenney outlines several tax strategies that can help you get ahead of new legislation and Will Sanford shares an example of optimizing your estate plan to take advantage of today's market and climate.

I think of my grandkids and like many of you, I am increasingly grateful for my family with each day the pandemic continues to affect our lives. Implementing or reevaluating an estate plan is one small way to assert some control during this crazy time and make an impact on the future of our loved ones.

Best Wishes,

A handwritten signature in black ink that reads "Robert A. Condit, Esq.".

## Tax Planning for 2021

BRIAN R. JENNEY



Potential significant changes to tax laws require advisors and clients to act *now*. The House, Senate and the Presidency are held by

Democrats, giving President Biden the potential opportunity to implement some significant proposed tax changes.

President Biden has proposed eliminating the stepped-up basis rule. The stepped-up basis rule is an adjustment to the cost basis of an appreciated asset to its fair market value at the time of the owner's death which allows a deceased individual to pass

an asset onto his or her children at the date of death FMV. The current 2021 estate and gift tax exclusion amount is \$11.7 million. President Biden's proposal is to lower the exclusion amount to \$3.5 million. The current top federal tax rate for the estate and gift tax is 40%. President Biden would like to increase the top federal estate tax rate to 45%.

Depreciated asset values caused by the COVID-19 pandemic's effect on the economy, low interest rates and the high estate and gift exemption amount have created a significant opportunity to implement gifting strategies to reduce the tax exposure on your estate.

Furthermore, taxes may need to be increased to raise revenue for the massive federal stimulus spending enacted in response to the COVID-19 crisis.

Joe Biden and congress could pass tax reform legislation in 2021 and it is possible the changes will be retroactive to January 1, 2021.

Clients should consider the following tax strategies:

### **1. Roth IRA Conversion**

Taxpayers should consider converting a traditional IRA into a Roth IRA.

Roth IRAs are funded with after-tax money and the assets grow tax free and generally are not taxed when

distributed, potentially resulting in lower taxes paid.

Roth IRAs allow the taxpayer to contribute to the Roth IRA for the rest of his or her life. RMDs are not required during the lifetime of the original owner of a Roth IRA.

Individuals contributing to Roth IRAs can choose to not receive distributions as long as he or she is alive.

A qualified distribution from a designated Roth Account is excludable from gross income. A qualified distribution is one that occurs at least five years after the conversion and is made:

On or after attainment of age 59½,

On account of the individual's disability, or

On or after the individual's death.

## **2. Family Limited Partnerships or Family Limited Liability Corporation**

Clients should consider creating a FLP or FLLC and making significant gifts of partnership interests or membership interests to their children or grandchildren. The value of the interest transferred qualifies for reduced valuation, plus it allows for a gradual transfer of assets to the next generation.

## **3. Spousal Lifetime Access Trust (SLAT)**

A SLAT is a gift from one spouse (the donor spouse) to an irrevocable trust for the benefit of the other spouse (the beneficiary spouse). A SLAT allows the donor spouse to transfer and use the donor spouse's available estate and gift tax exclusion amount. When the donor spouse dies, the value of the assets in the SLAT is excluded

from the donor spouse's gross estate and are not subjected to the federal estate tax. See article on page three for more on SLATs.

## **4. Grantor Retained Annuity Trust (GRAT)**

A GRAT is an irrevocable trust used to make future gifts of appreciating property to children and grandchildren at minimal or no gift tax cost. A GRAT makes sense only if the property appreciates at a rate faster than the Applicable Federal Rate (AFR). The grantor transfers assets into a trust for a term of years and during the term of the trust, the grantor receives an annuity payment, at least annually, of either a fixed dollar amount or a fixed percentage of the fair market value of the property placed into the trust. At the end of the trust term, any remaining principal will be distributed to the trust beneficiaries.

## **5. Charitable Lead Trusts (CLT)**

A CLT pays an annuity to charities that you choose and then, after a period of years, the principal is paid out to your children or grandchildren. The trust may be established for a term of up to 20 years or can be based on the life or lives of individuals living at the time of the creation of the trust. The amount of the charitable contribution deduction at the creation of the CLT will be the present value of the annuity using the Section 7520 Rate. A CLT will result in a taxable gift upon creation equal to the fair market value of the assets gifted to the trust reduced by the present value of the annuity.

## **6. Family Loans**

Family loans are very simple and

provide a significant opportunity for clients. The transferor loans (parent) funds to the transferee (children) and is documented by a formal promissory note. As long as the loan bears interest no lower than the AFR, the transaction will not be considered a gift. These intra-family loans work best in low-interest-rate environments which we have now because the wealthier senior generation of a family can loan cash to the younger generation at attractive interest rates.

## **7. Qualified Personal Residence Trust (QPRT)**

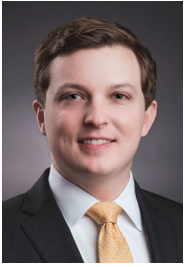
A QPRT is an irrevocable trust to which the client transfers his or her primary residence or vacation home for a set term that is less than his or her life expectancy. During the term of the trust, he or she continues to live in the residence. When the specific term of years ends, the trust continues for the benefit of the client's children and the client must pay rent to the trust. The tax advantage of a QPRT is that there is a gift of only a fraction of the value of the primary residence or vacation home when the client establishes the trust.

We realize that many of our clients are reluctant to incur the expenses of advanced estate planning during these uncertain times. However, the current tax laws, circumstances and facts contain substantial opportunities for estate and gift tax planning and we welcome the occasion to discuss how you can take advantage of them. Please contact Brian R. Jenney, Cynthia L. Umphrey or Kate L. Ringler.

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# Resolve to Create a SLAT in 2021

WILL C. SANFORD



For all of us, 2020 was a startling reminder of life's unpredictability and the importance of being prepared in uncertain times. If you

find yourself, now, one month into your 2021 resolutions and are second guessing your new gym membership or diet, you are in luck. There is no time like the present to resolve to plan ahead and utilize the current tax legislation to you and your loved one's advantage, before it may be too late.

The 2017 Tax Cuts and Jobs Act temporarily increased the federal estate and gift tax exemption, which gives individuals the opportunity to pass a certain amount of assets tax-free. The current estate and gift tax exemption is \$11.7 million per individual (or \$23.4 million for a married couple). The exemptions will continue to increase with inflation through the end of 2025 but will then be cut approximately in half beginning in 2026.

With the Democrats gaining control of the Senate in the Georgia run-off elections, President Biden's path towards

reducing these exemptions before 2026 became much less restricted. What does this mean? Well, it is impossible to predict whether changes will be implemented, but President Biden has suggested lowering the estate tax exemption to \$3.5 million per individual and raising the top tax rate to 45%. Ultimately, a proposed change like this represents a multimillion-dollar reduction in the amount of wealth that can be transferred upon death, or given away during life, free of estate and gift tax.

There are numerous ways to optimize your estate plan while making full use of today's high exemptions. One such opportunity is a uniquely drafted trust called a spousal lifetime access trust (SLAT). A SLAT is an irrevocable trust that one spouse (the grantor spouse) creates for the benefit of the other spouse (the beneficiary spouse). The grantor spouse will typically fund the SLAT with separate property, thus, using the high exemption amount and protecting the transfer from tax. In other words, the grantor spouse gifts assets to the SLAT tax free, from which the beneficiary spouse may receive distributions of income and principal.

While the beneficiary spouse is

alive, they have the additional ability to access the trust for things like health, education, and general living expenses, if necessary. While access to SLAT assets is not unlimited for the beneficiary spouse, the grantor spouse retains ancillary access to the trust property since they are married to the beneficiary of the trust. From this perspective, a SLAT is a special tool because couples have a safeguard: one spouse has access to SLAT assets, while the other spouse can take advantage of the high estate and gift tax exemption. It is not uncommon, in fact, for both spouses to create a SLAT for the benefit of each other, although this increases the risk of IRS disapproval significantly.

Estate plans are never one-size-fits all, but the current low interest rates and market environment create many good estate planning opportunities. Making estate planning a priority for you and your family in 2021, or reviewing a plan already in place, will prove to be advantageous. Please contact your Kemp Klein estate planning attorney to discuss SLAT's and other gifting techniques in today's environment.

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## Firm News

### Attorney Will Sanford Joins Kemp Klein

We are pleased to welcome Will Sanford as an associate attorney. Will worked with us as a summer associate in 2019 and 2018 while completing his law degree at Wayne State University. He joins our firm now to practice in the areas of estate planning and business and corporate planning. Will assists individuals and families in understanding the opportunities available for wealth preservation and transfer.

### Morgan D. Schut is Recipient of 2021 Golden Gavel Award

The Golden Gavel Award is one of five Legal Excellence Awards presented by the Michigan Defense Trial Counsel. The Golden Gavel Award is given to a young lawyer who is recognized for their significant achievement within their practice area, service to the community, and who promotes the image and honorable reputation of the profession. The Legal Excellence Awards will be celebrated in a virtual ceremony on March 18<sup>th</sup>.

## Publication

### Zawideh Authors Article for Michigan Probate & Estate Planning Journal

Robert S. Zawideh authored an article, "Undue Influence: What Rules Apply to This Species of Fraud?" for the Winter 2021 edition of the *Michigan Probate & Estate Planning Journal*, Volume 40, No. 1. The article articulates a call to action, asking Michigan Legislature to enact new statutes ensuring that undue influence will be treated as fraud, requiring clear and convincing evidence to reverse a testator's written directive. Find a link to the full article at [kkue.com](http://kkue.com).