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The Silver Lining: Low Interest Rates and Low Equity Values Create Estate Planning Opportunities

Faithful readers of our Real Estate Report know that the current stormy economic conditions bring with them a silver lining: low interest rates and low equity values. These factors make for an unprecedented opportunity to consider leveraged estate planning techniques such as an Installment Sale to a Defective Grantor Trust or a Grantor Retained Annuity Trust (GRAT), among others. These techniques are used by grantors to shift assets, incrementally, to members of subsequent generations, who are the beneficiaries of these types of trusts. The value of the property is fixed at the time the transaction is entered into. So, entering the transaction during a time when asset values are at historical lows is helpful. The IRS-mandated interest rate sets the bar for the minimum rate of return the transferred asset must achieve. The lower the rate, the lower the bar, and the greater the gain to the ultimate beneficiaries. The interest rate used for a particular transaction is the rate in effect during the month the transaction is entered into, and depends on the duration of the loan involved.

The following table shows how interest rates set by the IRS which have dropped precipitously since January 2008, are now beginning to rise. If you have not yet explored a leveraged transfer, you should do so soon.

Type of Rate	January 2008	January 2009	February 2009	March 2009
Short Term Loans (Term < 3 years)	3.18%	0.81%	0.60%	0.84%
Mid-Term Loans (Term > 3 yrs < 9 yrs)	3.58%	2.06%	1.65%	2.04%
Long Term Loans (Term > 9 years)	4.46%	3.57%	2.96%	4.58%

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Section 7520 Rate	4.40%	2.40%	2.00%	2.40%

Valuation Discounts—Under Attack?

Low interest rates and low equity values are not the only factors spurring on the rush to transfer property to younger generations. One of the most powerful techniques available today is the use of valuation discounts. Current law allows for both (1) lack of marketability, and (2) minority interest discounting. Given the right factors, a total discount of 25% to 40% is not uncommon. These discounts are used to reduce the value of a transfer of less than 100% of an asset. However, these valuation discounts are on the legislative list of reforms under our new Administration.

The Trusts and Estates Team at Reinhart stands ready to assist you in determining if using the above strategies are right for you, and if so, to guide you through the process. Please contact your personal Reinhart attorney, or Christine Rew Barden, the Trusts and Estates shareholder in our Madison office.

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