

# Turning Low Value Lemons Into Estate Planning Lemonade – Part I Gifting Opportunities

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**The novel coronavirus pandemic has had a dramatic impact on the U.S. economy.**

Investors have experienced record-setting fluctuations in marketable security values on U.S. exchanges, and global markets are bracing for continued pandemic-related volatility.

Impulsive decisions to try and play these market swings can derail long-term investment, business succession, and personal goals, but as part of a comprehensive estate plan, it can be fruitful to focus on the "bright spots" that present themselves in a downturn. Lower asset values during these tumultuous times are the proverbial lemons that – with careful planning – can be transformed into estate planning lemonade.

For those considering the lifetime transfer of wealth by gift, certain steps can be taken in a low-value environment to sweeten the otherwise sour taste left from seeing all that red.

## **Federal Gift Tax Exemption: Still As Sweet As Ever**

Pandemic or not, the highest-ever federal gift tax exemption is still in effect, at least until the sooner of 2026 or an intervening change by Congress. The Tax Cuts and Jobs Act of 2017 increased the federal estate, gift, and generation-skipping transfer tax exemption to \$10 million per person with an annual inflation adjustment. As of January 1, 2020, the inflation-adjusted exemption amount is \$11.58 million per person with a top rate of 40%, and the federal gift tax annual exclusion per donee is \$15,000. The increased federal gift tax exemption since 2018 has enabled larger lifetime gifts of assets, income-producing or otherwise, and often at discounted values.

## **Gifts of Marketable Securities**

The recent pandemic-related decreases in asset values now sweeten the already sweet opportunity of lifetime wealth transfers as part of a comprehensive estate and business planning strategy. Gifts of assets that have dipped in value (e.g., marketable securities) efficiently leverage the large lifetime federal gift tax exemption

and annual exclusion amounts available under current law. By transferring lower-value assets now, individuals can use up less of their exemption amounts and thus retain more for future gifts. And when the markets recover, and asset values increase, that growth will occur outside the donor's taxable estate. Today, as compared to just a few weeks ago, donors may get significantly more bang for their exemption buck by gifting hard-hit assets, especially ones expected to rebound significantly. As an added bonus, if a recipient of an outright gift is in a lower income tax bracket than that of the donor, then any post-gift income generated by the gifted asset will be taxed a lower rate, resulting in additional overall tax savings.

## **Gifts of Closely-Held Business Interests**

Certain business interests or real estate holdings may not have declined in value as rapidly as marketable securities or donors may be reluctant to part with these assets by outright gift. Nevertheless, these assets may be good candidates for gifting under the current favorable federal gift tax exemption. Family limited liability companies or limited partnerships have long been used in the estate and business planning context to transfer the economic value of interests to a younger generation while still centralizing management and voting control. Depressed market values can highlight and compound the benefits of this transfer structure.

If you have been considering the creation of a closely-held entity, now may be an especially advantageous time to implement that plan. Business and real estate owners can take advantage of lower asset values for federal gift tax purposes, again removing any future appreciation from their taxable estates. Doing so with family entity interests rather than outright gifts of assets can provide additional opportunities for tax savings. In the realm of closely-held family entities, owners can usually apply discounts to values of transferred interests for lack of control (minority interest discounts) and for lack of marketability (since there is no public market). Thus, lower asset values combined with family entity valuation discounts may maximize the transferred value while minimizing use of the available federal gift tax exemption.

## **Charitable Gifts**

The pandemic and attendant economic downturn have drawn attention to charitable planning as our community and government resources are being strained. Tax-exempt charitable organizations are more important than ever in their protection of the most vulnerable members of our communities.

Before the pandemic took hold, the Tax Cuts and Jobs Act of 2017 increased the standard deduction and capped certain other deductions, resulting in a reduction in the number of taxpayers itemizing their deductions, including charitable deductions. In response, some taxpayers have started condensing more than one year's worth of planned charitable gifts into one tax year – perhaps skipping the next year altogether or just reducing the next year's gifts – in order to reach the higher threshold in the "bundled" year. If you have been looking for a way to help the charitable organizations in your community during the pandemic, this "bundling" of charitable gifts may be a tax-efficient way to support their important work.

The recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") promotes additional charitable giving by:

- allowing a \$300 above-the-line deduction for cash charitable gifts by non-itemizing taxpayers, and
- increasing the charitable deduction AGI percentage limitation from 50% to 100% for itemizing taxpayers.

## **Stay Home, Stay Safe, and Have the Talks**

As many of us hunker down, work from home, and practice social distancing to help flatten the curve of the COVID-19 pandemic, we are presented with an opportunity to carve out a bit of time with our loved ones to discuss these gifting techniques or to engage in the broader estate or business planning conversations that we may have been putting off. If you have any questions or would like to discuss any aspect of your estate or business planning, our firm's trusts and estates attorneys are up and running remotely and available to assist you.

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