

# TRUST AND ESTATES ALERT

Alert

June 2012

## Estate Planning Opportunities Set To Expire In Six Months

### *The Cost of Making Gifts After January 1, 2013 Will Increase Dramatically*

The next six months provide a short window of opportunity to make substantial gifts without incurring any gift tax. The Federal gift tax exemption is currently \$5,120,000, enabling an individual to make aggregate lifetime gifts up to that amount without incurring gift tax (and twice that amount for a married couple). Unless Congress acts, on January 1, 2013, the Federal gift tax exemption will decrease to \$1,000,000, and the maximum Federal gift tax rate on gifts in excess of that amount will rise from 35% to 55%, significantly increasing the cost of making gifts. Similar changes to the Federal generation-skipping transfer ("GST") tax rate and exemption will significantly increase the cost of gifts to grandchildren and more remote descendants.

In light of these pending changes, we recommend that you consider making gifts before year-end. By making gifts now, you can remove property from your estate, including any future appreciation on the property, and avoid estate tax on that property at your death. Gifts can be made outright or in trust and can be funded with a variety of assets, including cash, public or private securities, real estate and personal property such as art and jewelry. There are a number of techniques that can be used to structure gifts in order to preserve flexibility and control and to maximize tax advantages. For example, a donor can establish a "dynasty trust" to benefit multiple generations, with the potential to avoid transfer tax in perpetuity. To preserve flexibility, a married couple can set up a trust of which one spouse is a beneficiary. A donor with limited liquidity can consider creating a trust that holds a residence or valuable art.

### *Historically Low Interest Rates Make GRATs and Intra-Family Loans Highly Attractive*

Interest rates are at historical lows. Consequently, it is a particularly desirable time to create grantor retained annuity trusts ("GRATs") and to make or refinance intra-family loans.

- **GRATs:** In a GRAT, the donor transfers assets to a trust and retains the right to receive an annual payment from the trust for a period of years. If the assets in the GRAT appreciate at a rate greater than the so-called hurdle rate, the excess appreciation will pass to the donor's beneficiaries free of gift tax when the trust terminates. The "hurdle rate" is published monthly by the Federal government. The hurdle rate for July is 1.2%, which is at a historical low. For donors who are charitably inclined, the low hurdle rate also makes charitable lead annuity trusts ("CLATs") highly attractive.
- **Intra-Family Loans:** By making a loan, you can provide a family member or family trust with funds at a low interest rate. The minimum interest rate that you can charge without having the foregone interest be considered a gift is published monthly by the Federal government. For July, the minimum annual interest rate applicable to an intra-family loan with a nine year term is 0.92%, which is at a historical low.

*Act Now to Take Advantage of Expiring Opportunities*

We anticipate a busy fall season as what the media have dubbed “Taxmageddon” approaches. If you wish to consider taking advantage of these tax-saving opportunities, we urge you to contact us as soon as possible in order to allow sufficient time to design and implement an estate planning strategy that is appropriate for you.

---

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

<b>Christopher C. Angell</b>	<b>212.336.2770</b>	<b>ccangell@pbwt.com</b>
<b>Michael S. Arlein</b>	<b>212.336.2588</b>	<b>msarlein@pbwt.com</b>
<b>Susan F. Bloom</b>	<b>212.336.2976</b>	<b>sfbloom@pbwt.com</b>
<b>Hugh J. Freund</b>	<b>212.336.2370</b>	<b>hjfrend@pbwt.com</b>
<b>Carolyn B. Handler</b>	<b>212.336.2480</b>	<b>cbhandler@pbwt.com</b>
<b>Dana W. Hiscock</b>	<b>212.336.2290</b>	<b>dwhiscock@pbwt.com</b>
<b>John Sare</b>	<b>212.336.2760</b>	<b>jsare@pbwt.com</b>
<b>Catherine Grevers Schmidt</b>	<b>212.336.2116</b>	<b>cgschmidt@pbwt.com</b>

**IRS Circular 230 disclosure:** Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)

To subscribe to any of our publications, call us at 212.336.2186, email [info@pbwt.com](mailto:info@pbwt.com), or sign up on our website, [www.pbwt.com/resources/publications](http://www.pbwt.com/resources/publications)

1133 Avenue of the Americas | New York, NY 10036-6710 | 212.336.2000 | fax 212.336.2222 | [www.pbwt.com](http://www.pbwt.com)

This publication may constitute attorney advertising in some jurisdictions.

© 2012 Patterson Belknap Webb & Tyler LLP.

To unsubscribe, please [click here](#).

---

**Patterson Belknap Webb & Tyler** LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 [www.pbwt.com](http://www.pbwt.com)