

**THE SUDDEN AND UNEXPECTED** impact of the COVID-19 pandemic has changed our daily lives and has many implications for personal planning. We have been counseling clients about immediate practical concerns as well as refocusing on charitable and estate planning in this new environment.

This newsletter was updated on April 30, 2020 to reflect the passage of legislation in Massachusetts permitting remote notarization and witnessing, and the issuance of CARES Act guidance relating to charitable remainder trusts.

## IMMEDIATE PRACTICAL CONCERNS

■ **TAX FILINGS** The Internal Revenue Service (IRS) has extended until July 15, 2020 the deadline for individuals, trusts, estates and other taxpayers to file a variety of tax returns and make a variety of tax payments otherwise due on or after April 1, 2020, and before July 15, 2020. In particular, the extension applies to individual, estate, and trust income tax returns and tax payments ordinarily due during that timeframe, and to gift, estate, and generation-skipping transfer tax returns and payments ordinarily due during that time period. The extension applies also to first and second quarter estimated income tax payments for 2020 owed by individuals, trusts and calendar-year estates. The IRS has expanded the scope of the extensions available to taxpayers in several notices issued over the past several weeks, and, depending on the trajectory of the current crisis, it is possible that the IRS will offer further extensions in the future.

Many states have also followed the IRS in providing tax filing and tax payment relief. For instance, in Massachusetts, all personal income tax returns and payments for the 2019 calendar year ordinarily due on April 15 are now due July 15, 2020. The extension applies in particular to the personal income tax and estate and trust income tax. (More limited relief is provided to corporations.) Massachusetts has also provided that, for individuals and fiduciaries, payment of both first and second quarter income tax estimates for

2020 can be delayed until July 15, 2020. Like the federal government, New York has also extended to July 15, 2020 the deadline for filing state personal income and corporation tax returns and making related tax payments, including first quarter estimated payments for 2020, otherwise due on April 15. The extension applies to individuals, fiduciaries and corporations.

## ■ EXECUTING OUTSTANDING ESTATE PLANNING DOCUMENTS

We are working with a number of clients who are in the process of making changes to their estate plans. This process can be challenging, because people need to execute documents while complying with important social distancing requirements. Many documents require notarization, and some require witnessing, but these challenges can be addressed. First, for some documents, notarization is a best practice but is not essential. Second, a number of states have put into effect temporary rules that permit remote notarization and, in some cases, remote witnessing during the current state of emergency (and a small number of states already have such laws in permanent effect). For example, Massachusetts has enacted temporary legislation permitting both remote notarization and witnessing in the Commonwealth, and executive orders issued in New York State temporarily permit remote notarization and witnessing there. Finally, there may be alternative ways of achieving the desired planning objective where a particular document cannot be signed with the requisite formalities—for example, it may be possible to fund a revocable trust where it is not possible to execute a will.

## ■ REQUIRED MINIMUM DISTRIBUTIONS FROM RETIREMENT PLANS

The Coronavirus Aid, Relief, and Economic Security Act (known as the CARES Act), enacted March 27, 2020, permits taxpayers to suspend required minimum distributions (RMDs) from IRAs and qualified retirement plans for 2020. If you already took an RMD in 2020, it may be possible to recontribute it to the plan, and you should consult us or your tax advisor right away. If you have not yet taken an RMD in 2020, you should consider whether or not to do so. For more information about the effect of the CARES Act on your retirement plan, see Ropes Wealth Advisors' ["The CARES Act Offers Tax Planning Opportunities for 2020."](#)

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## CHARITABLE GIVING OPPORTUNITIES

While our daily lives have been interrupted by the COVID-19 pandemic, creating new personal challenges, many people are looking outward, seeking ways to help those most affected by the crisis.

In particular, charitable organizations in all segments of the nonprofit sector that provide vital services throughout the country are facing unprecedented financial and operational challenges in the face of COVID-19. Organizations that offer health care, financial assistance, housing and more have unexpectedly found themselves on the front lines of a pandemic, while organizations throughout the sector have been forced to suspend services, cancel fundraising events and potentially lay off employees.

The CARES Act temporarily eliminates the 60% of adjusted gross income (AGI) cap that ordinarily applies to cash gifts to charities made by individuals who itemize their deductions. Under the new law, itemizing taxpayers may claim a deduction of up to 100% of their AGI for cash gifts made in 2020 to qualified public charities and certain foundations. Likewise, in 2020, individuals who do not itemize their deductions may deduct up to \$300 in cash gifts paid to such organizations. Notably, the CARES Act does not require that a contribution be used for activities related to COVID-19 relief in order for a donor to take advantage of the law. However, gifts to donor advised funds (DAFs), most private foundations and so-called supporting organizations are not eligible under the law. In particular, keep in mind that some organizations, such as hospitals and universities, use supporting organizations to accept charitable gifts. If you want to use the new tax benefit, confirm that your chosen charity is eligible.

For those who have the financial means to make new charitable gifts now, the CARES Act makes cash gifts more valuable than ever. In particular, you might consider the following approaches:

- **CAPITALIZE ON OTHERS' EXPERTISE** Community foundations are uniquely positioned to assist localities affected by COVID-19, because they are familiar with the nonprofits serving their communities. Further, many community foundations have established relief funds designed to identify and distribute funding to local organizations providing health, financial and other support to communities affected by the COVID-19 pandemic. If you want to direct your philanthropy to relief efforts, consider making your cash contribution to a fund hosted by a community foundation. The organization sponsoring the fund will ensure that your gift reaches the charities that need it most and, therefore, that it has the greatest impact.
- **REVISIT CHARITABLE PLEDGES** Do you have an outstanding multiyear cash pledge with a favorite charity? Consider accelerating some—or even all—of the payments to 2020. In addition to enabling you to take advantage of the unlimited charitable deduction, this strategy will provide the charity with much-needed funding at a time when fundraising events are on hold. If this would require revisions to your gift agreement, we would be happy to help you address those.
- **RECONSIDER FUTURE GIFTS** Do you typically use spring fundraising events as an opportunity to satisfy your annual gifts? Consider making those gifts now, while the future of the fundraising events is uncertain; or where events have already been canceled, consider making a contribution in the amount of what you would have spent on tickets, auctions or other fundraising opportunities. Alternatively, consider accelerating charitable bequests. For instance, if you are 59.5 years old or older, have an IRA, and intend to bequeath the IRA to charity, the CARES Act provides a unique opportunity to accelerate all or part of your gift without generating any federal income tax. If you withdraw an amount equal to the anticipated bequest now and contribute the proceeds to charity in 2020, you can offset 100% of the resulting federal

taxable income with a charitable deduction. In addition, by withdrawing the funds now, you will reduce future RMDs from the IRA and the associated income tax on them. The state income tax consequences of such strategy will vary by state, and we would be happy to help you evaluate them.

- **DO NOT FORGET ABOUT SPLIT-INTEREST GIFTS** If you would like to make a contribution, but have reservations about giving away assets given current economic conditions, consider a charitable gift annuity (CGA), a charitable remainder unitrust (CRUT) or a charitable remainder annuity trust (CRAT). Each of these gift vehicles will enable you to help an organization in need while retaining an income stream for yourself or your family and receiving a charitable tax deduction. Note that contributions to split-interest trusts, such as CRUTs and CRATs, do not constitute qualified contributions under the CARES Act. In contrast, a cash contribution to a qualified public charity in return for a CGA should. In addition, keep in mind that unitrust payments from a CRUT may be affected by the economy, and could therefore be adversely impacted if economic conditions remain depressed. As a result, you might prefer a CGA or CRAT, both of which provide consistent annual payments. On the other hand, the current low interest rate environment means that CGAs and CRATs generate lower charitable deductions and that CRATs are available only to older annuitants. We would be happy to help you evaluate which vehicle would be best for you.

Whether or not you are able to make new charitable commitments now, there are also other ways you can make high-impact contributions to charity, including:

- **MAKE DISTRIBUTIONS FROM DAFs** If you have a previously funded DAF, consider increasing the grants you recommend from your DAF account. While you will not receive any additional tax benefit for such gifts, the grants will enable you to have a charitable impact now—when it is most needed—without parting with wealth while the economy is volatile.
- **RECONSIDER RESTRICTED GIFTS** The COVID-19 pandemic has required that many charitable organizations re-evaluate their priorities and reallocate funding. If you previously made restricted gifts to organizations adversely impacted by the COVID-19 pandemic, consider revising, loosening or even eliminating the restrictions to enable the organizations to

redeploy the funding. With this strategy, you can have an impact without parting with additional assets during an uncertain time.

## ESTATE PLANNING OPPORTUNITIES

For many clients, managing their ultimate estate tax liability includes making substantial family wealth transfers to move both assets and future growth on them out of their taxable estates. The current public health and economic crisis has a significant potential impact on planning for such wealth transfers.

- **BE THOUGHTFUL ABOUT SUBSTANTIAL FAMILY WEALTH TRANSFERS** The most important consideration before undertaking a program of shifting wealth to children and beyond is whether there will be sufficient assets remaining for your future needs. The recent market downturn and continuing volatility have given rise to both real and perceived concerns about the ability to make gifts. Those concerns should, of course, be given careful consideration, but it is important to be realistic in assessing the impact of the downturn and potential future volatility and not let unfounded fears keep you from taking sensible steps.
- **SUBSTANTIAL GIFTS MAY NOW BE MORE ATTRACTIVE GIVEN REDUCED VALUES** The current downturn's impact on values presents the opportunity to give away assets at a much lower tax "cost" than before. Under current law, in 2020, each individual has an exemption from gift and estate tax that permits him or her to transfer \$11,580,000 without generating a gift tax. For a married couple, this means that they can give away \$23,160,000 without any immediate tax liability. Every dollar of exemption used during lifetime is a dollar less that is available to shelter assets from estate tax at death. By giving away assets now at reduced values, though, it is possible to give away more assets—and therefore more future appreciation—within the current exemption amounts. In addition, the current exemption levels are scheduled to be cut in half after 2025, and so there is also a benefit to using the exemption before it disappears.
- **REDUCED INTEREST RATES MAKE LEVERAGED TRANSFERS EVEN MORE ADVANTAGEOUS** It is also possible to transfer wealth without using lifetime exemption by instead using leverage. One example of leverage is making a loan to children or to an irrevocable trust. Such loans must be made at the applicable federal rate to avoid adverse gift tax

consequences. This rate, for a loan of up to nine years, has dropped to 0.99% for April 2020. The rate for a loan of three years or fewer is even lower, and the rate for a loan of longer than nine years is a bit higher. Another example of leverage is the use of a special kind of trust called a grantor retained annuity trust (GRAT). With a GRAT, you can transfer \$X of assets to a trust that lasts for a set term of years (at least two years). During that term, you retain the right to receive annual annuity payments that have a total value of \$X, plus a return equal to an IRS-designated interest rate. In April 2020, that interest rate is 1.2%. Because you receive from the GRAT the value of what you contributed, plus the IRS-designated return, you make no

gift for tax purposes. Any appreciation in the GRAT assets in excess of the 1.2% rate of return will be transferred to your family members at the end of the GRAT term at zero transfer tax cost.

Whether you are interested in making or finalizing changes to your estate planning documents, strategizing about charitable giving, or considering ways to transfer wealth to your family, we are available to talk with you about your planning. Each of us can be reached at our office telephone number and email address, and we look forward to being in touch with you. Most importantly, we hope you and your families are safe and healthy.

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