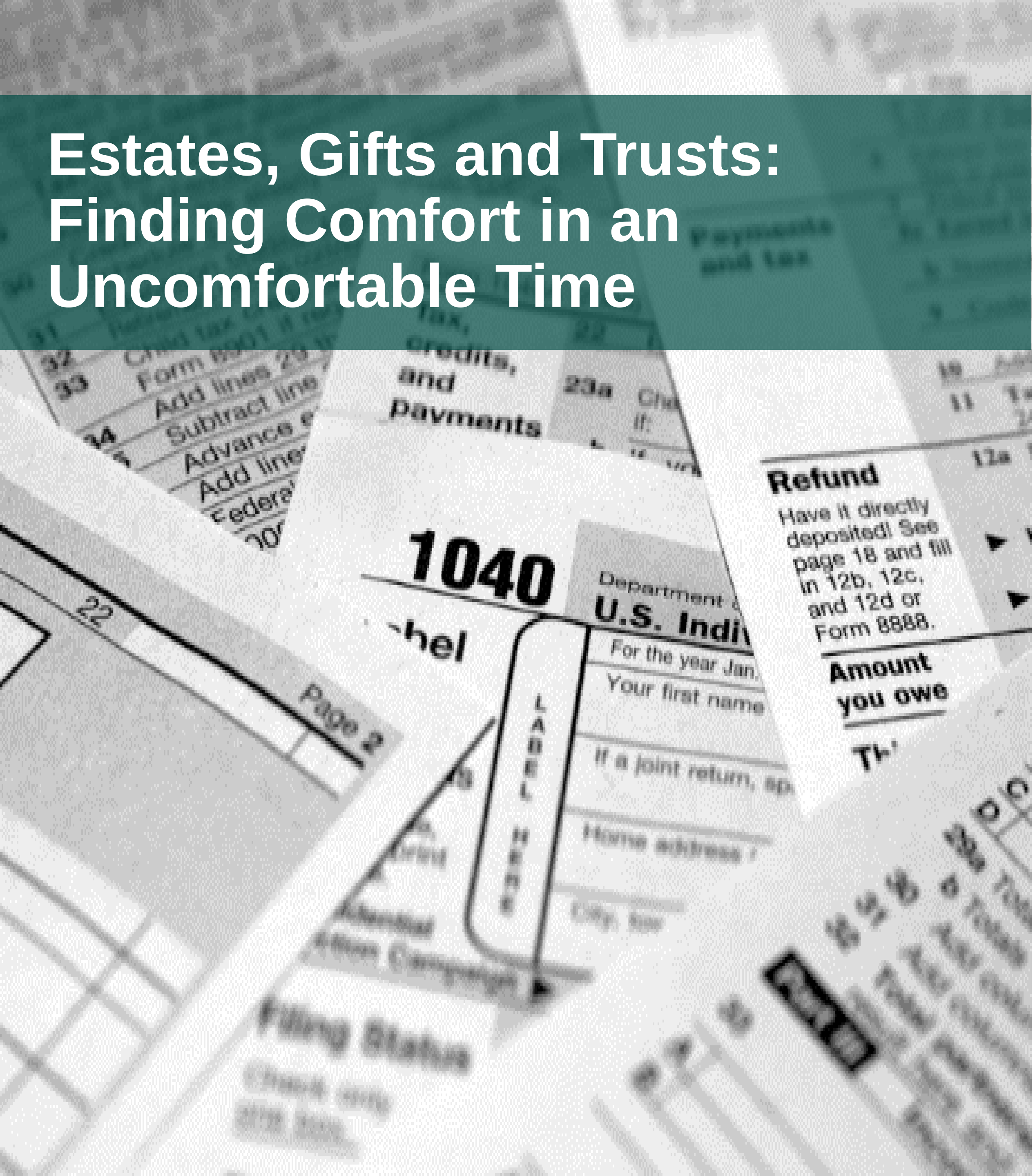
Estates, Gifts and Trusts: Finding Comfort in an Uncomfortable Time



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Agenda

1. Current environment and opportunity
2. Estate planning documents
3. Beneficiary designations and titling of assets
4. Exemptions for estate, gift and generation skipping tax
5. Estate planning opportunities

Uncertainty

- Personal uncertainty
- Future uncertainty
- Overwhelming impact:
  - Our families
  - Health care system
  - Education system
  - Economy

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Opportunity

- To be prepared for the unexpected
- To take control of your life and the well-being of your family
- To gain peace of mind

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Review Your Estate Documents

- Last Will and Testament
- Power of Attorney for Health Care
- Living will
- Financial Power of Attorney

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Review Beneficiary Designations

- Certain assets have beneficiary designations which override provisions in a will
  - Life insurance policies
  - Certain pensions such as an IRA, 401k, 403(b) or SEP plans

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Review How Your Assets Are Titled

- How are your assets titled?
  - Joint
  - Joint with rights of survivorship
  - Individually
  - Tenants in common
- Does it make sense? Does it accomplish what is intended?

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Estate Planning Opportunities

- Asset values have declined
- Interest rates are at a historical low
- Estate, gift and generation skipping tax exemptions are high

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Exemptions

- Annual gift tax exclusion is $15,000 per person
- Exemption for estate tax, gift tax and generation skipping transfer tax is $11.58 million (married is $23.16 million). Reverts back to $5 million (adjusted for inflation) at end of 2025
  - Exemption can go lower before 2025 depending upon congress and the November elections
  - Keep in mind a taxable estate in excess of the exemption amount is taxed at 40%
  - IRS has stated there will be no clawback of exemption

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Take Advantage of Low Interest Rates

Applicable Federal Rates June 2020

- Short-term rate (loans with maturities of 3 years or less – **.18%**
- Mid-term rate (loans with maturities more than 3 years but not more than 9 years – **.43%**
- Long-term rate (loans with maturities of more than 9 years) – **1.01%**
- Applicable Section 7520 rate – **.6%**

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Take Advantage of Lower Values

- Asset values have declined
  - Stock market is still down from its high in mid-February
  - Real estate values may have declined
  - Values of closely held businesses have declined

- Lower values means:
  - You can gift more away and use less of your lifetime exemption
  - Can offer greater value to recipients as valuations recover in the future

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Take Advantage of Lower Values

Discounts

- Discounts available under the current law may enable you to reduce the transferred fair market value even lower
- If properly structured, real estate, stock of closely held businesses and even marketable securities can be discounted
- Discounts can go as high as 45%
- Common discounts are for lack of control and lack of marketability

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Intra-Family Loans

Planning

- Refinancing existing intra-family loans at lower rate
- Making loans to family members or a trust for their benefit:
  - Used to purchase assets or assist family members in need of liquidity
  - Used by younger family members to invest in assets

***Current AFRs June 2020	
Less than 3 years	.18%
4 to 9 years	.43%
Greater than 9 years	1.01%

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Take Advantage of Lower Values

Gifting

- Annual exclusion for 2020 is $15,000 to any individual ($30,000 for married couple who elect gift splitting)
- Large gifts of assets with depressed values to take advantage of the large exemptions existing now

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Grantor Trust

- Many variations and names for grantor trusts. There are concerns that some of these rules could be eliminated

- Gift to grantor trust
  - All income and deductions pass through to the creator of trust (Grantor)
  - The Grantor pays tax out of their personal assets. This allows the income and appreciation in the trust to grow tax free
  - Additional benefit of trust is asset protection from the beneficiaries creditors including divorcing spouses if drafted properly
  - Asset valuation discounts may apply

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Sale to an IDGT

Sale to an Intentionally Defective Grantor Trust

- Sell an asset to the trust for an interest only promissory note with a balloon payment due after a set period of time
- Trust required to have assets prior to sale. Usually 10% of the value of the assets sold
- Commonly used for business interests, real estate and other investment assets
- No gain or loss recognized on the sale. In effect a sale to yourself
- Trust income is taxed to you

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Sale to an IDGT (continued)

Sale to an Intentionally Defective Grantor Trust

- Removes asset from your estate at the time of the sale
- Asset valuation discounts may apply
- Future appreciation is in the trust and outside of your estate
- Promissory note is at the AFR
- Goal is for the asset to have appreciated enough to pay off the note
- If you die before the note is paid off, only the balance due on the note is included in your estate
- Consider using self-cancelling installment notes

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GRATs

Grantor Retained Annuity Trust (GRAT)

- Transfer assets to an irrevocable trust in exchange for an annuity for a set period of time usually two to ten years
- Annuity payment is combination of:
  - Partial return of principal, and
  - Interest calculated at the Section 7520 rate (June 2020 .6%)
- At end of term the trust beneficiaries receive the remaining trust assets
- For GRAT to be successful the trust assets must appreciate more than the value of the interest payments

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GRATs (continued)

GRAT

- Let's say we have a two year "zeroed out GRAT"
- This means that the GRAT pays back the full value of the assets transferred and the minimum required interest rate in two years
- The IRS's defined rate of return for a GRAT created in June 2020 is .6%
- This means that if the GRAT's assets appreciate in value greater than .6%, that appreciation passes on to the beneficiaries of the trust
- There is no reduction in your estate or gift tax exemption
- Growth in assets is tax free gift to trust

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Spousal Lifetime Access Trust (SLAT)

- Use if concerned that your family might need access to the assets
- Married couple
- Spouse (1), with assets in their own name, transfer assets to the trust for the benefit of spouse (2) and children
- Permits spouse (2) through trustee to have access to the income and principal
- Trust is attractive because of the control of the cash flow. Probably not a good idea if divorce is a concern
- Take advantage of the high estate, gift and GST exemptions

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Charitable Lead Annuity Trusts (CLATs)

- Grantor transfers assets to a trust
- Charity receives an annuity for a term of years
- At the termination of the trust, remaining assets pass through to the beneficiaries
- Value of annuity is based upon the IRS determined rate. A lower rate means a higher present value to the charity and a lower expected value to the beneficiaries
- The value of the gift is based upon the expected value to the beneficiaries

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Conversion of Traditional IRA to a Roth IRA

- Lower values minimizes the ordinary income taxes on the conversion
- Allows future appreciation to occur tax free in the Roth IRA
- Distributions from the Roth IRA will be tax free
- Unlike a traditional IRA, Roth IRAs are not subject to the required minimum distribution rule beginning at age 72

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Rich has extensive experience providing domestic and international tax planning and services to a variety of middle market companies and entrepreneurial businesses in a number of industries including manufacturing, distribution, real estate, financial, and professional services. He also has significant experience and expertise with high-net-worth individuals, investment companies and pass-through entities and has been involved in federal, state, and local tax audits, settlements, and appeals.

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