

## Year-End Review and Timely Tax Tips

At the end of each year we like to review what is new and not so new in tax planning and to remind you to reassess your estate planning goals. If there have been significant changes in your family life or in your financial circumstances, it is important to review your plan. Some examples of these triggering events are retirement, divorce, remarriage, the death of a family member, the marriage or divorce of a child, and the birth of a grandchild. If you are anticipating an event that will significantly change your net worth, it is important to plan the strategic use of your lifetime gift-tax exemption and to take steps to freeze the value of your estate, passing future appreciation on to the next generation at a reduced tax cost. If you feel inclined to share your fortune with those less fortunate, now is also an excellent time to consider philanthropic planning.

### Significant Changes

The end of 2010 brought significant changes to estate planning. While the new laws provide some exceptional windows of opportunity, they can also trigger unintended consequences for preexisting estate plans.

On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 made significant changes to the federal transfer tax system. The most important aspect of these changes is that they are only temporary — they will continue to be in effect only for 2011 and 2012. After December 31, 2012, unless Congress acts again, the pre-2000 transfer tax laws will be reinstated. It is, however, quite possible that Congress will act in the interim; as of this writing, legislation that would

modify the 2013 reinstatement has already been introduced.

#### ESTATE TAX EXEMPTION

The exemption from the federal estate tax has been raised to \$5 million per person, and the maximum rate of tax applicable to estates over \$5 million has been lowered to 35%.

The generation-skipping transfer tax exemption has also been raised to \$5 million per person.

If Congress fails to extend this law before the end of 2012, the exemption will go back down to \$1 million per person and the highest marginal rate will return to 55%.

#### UNIFIED SYSTEM

One of the surprises in the new law was the reunification of the gift and estate tax systems. Prior to 2000 (when the exemption was \$1 million), the same exemption applied to transfers made during life or at death. Since January 1, 2000 and through December 31, 2010, the exemption levels for estate and gift taxes were different. While the estate tax exemption rose gradually to \$3.5 million, the gift tax exemption remained at \$1 million.

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	2009	2010	2011–12*	2013*	
TYPE OF TRANSFER TAX	GIFT TAX				
	Exemption	\$1,000,000	\$1,000,000	\$5,000,000	\$1,000,000
	Top Rate	45%	35%	35%	55%
	ESTATE TAX				
	Exemption	\$3,500,000	\$5,000,000	\$5,000,000	\$1,000,000
	Top Rate	45%	0%	35%	55%
	GST TAX				
	Exemption	\$3,500,000	\$5,000,000	\$5,000,000	\$1,400,000
	Top Rate	45%	0%	35%	55%

\* Subject to change under proposed legislation.

### TRUSTS AND ESTATES AT DAVIS MALM

The trusts and estates attorneys at Davis Malm counsel individuals on legacy planning, wealth management, family business succession, and achieving philanthropic goals. Our estate planning and probate practice handles estates of all sizes and complexity, and we are sensitive to personal needs and family relationships. Estate planning is part of a broader practice that includes income tax planning, planning for disabled persons, administration of trusts and estates, and planning associated with executive compensation and benefits.

## DID YOU KNOW?

The Massachusetts Uniform Probate Code was scheduled to go into effect last year but did not due to budgetary constraints. It will now go into effect on January 2, 2012 and includes the following changes:

- If you die without a will and leave children, all of whom are from the marriage to your surviving spouse, or if you leave no children and no parent, your spouse will receive the entire probate estate (property held in your own name at death).
- If you die without a will and leave children, and your surviving spouse has children who are not yours, your spouse receives the first \$100,000 plus one-half of the remainder of the probate estate. Similarly, if your children are not children of your surviving spouse, your spouse receives the first \$100,000 plus one-half of the remainder of the probate estate. In both cases, your children receive the rest.
- If you die without a will and leave no children but leave a surviving parent, your surviving spouse receives the first \$200,000 plus three quarters of the remainder of the probate assets, and your surviving parent receives the rest.
- A will made prior to your marriage is no longer automatically revoked on the wedding day.
- Existing Massachusetts law that revokes a prior will provision in favor of a former spouse is extended to cover any disposition of property, including nonprobate property, and grant of a power of appointment or fiduciary nomination in favor of your former spouse or a relative of your former spouse.

## Thinking Ahead to 2013

The tax code currently provides that taxes will substantially increase in 2013. Unless they are changed by Congress in the interim, capital gains rates will increase as of January 1, 2013, for most taxpayers. In addition, on that same date a new “investment tax” will take effect for higher-income taxpayers: couples filing jointly who earn more than \$250,000 annually and single filers earning more than \$200,000.

These changes suggest that *taxpayers may want to plan now to cash out some of their investments before the end of next year*. In contrast to the traditional strategy, which is to defer income, taxpayers will want to ensure that their taxable gains are realized soon, before capital rates increase and before the investment tax takes effect.

### RESURGENT RATES

The income tax rate cuts originally enacted in 2001 were scheduled to “sunset” at the end of 2010; Congress extended the cuts but only until the end of 2012. Unless a further extension (or other change) supersedes, as of January 1, 2013, the highest tax rate on ordinary income will swell from 35% to its pre-2001 level of 39.6%. Similarly, the top rate on capital gains will increase from 15% to 20%.

### INVESTMENT TAX

For the first time, the United States will impose a payroll-like tax on unearned income, the Unearned Income Medicare Contribution Tax. The new levy will be a 3.8% tax on non-compensation income derived from interest, dividends, annuities, royalties, and rents. Also covered are the “net gains (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business...” Hence, the new

tax will apply to the gain on the sale of a personal residence, to the extent that the gain exceeds the amount excludable from taxable income. Current law provides an exclusion of the first \$250,000 (or \$500,000 for joint filers) in capital gains on the sale of a home used as the taxpayer’s principal residence for at least 24 months within the past five years.

**Example:** Ben and Claire purchased their home years ago for \$100,000 and have lived in it (for at least the last 24 months) as their principal residence. They just received an offer and can sell it now for \$1.6 million (after costs of sale), but they are not sure they are ready to move. They expect to be “higher-income taxpayers” for at least the next few years, and they expect that the value of their house will not change much in that time. Should they sell now or wait?

If they sell now, because Ben and Claire have lived in their home for at least two years, under preexisting law they can exclude the first \$500,000 of capital gains on the sale. Their taxable gain would therefore be \$1 million (that is, \$1.6 million in proceeds less \$100,000 in tax basis and the \$500,000 exclusion). If the house were to be sold before January 1, 2013, the federal income tax on that capital gain would be 15%, or \$150,000.

If they wait until 2013, Ben and Claire would increase their tax bill by 58%! Capital gains rates will automatically climb to 20%, so the income tax on the same sale would be \$200,000. In addition, Ben and Claire would pay another 3.8%, or \$38,000, to cover the new investment tax on the same transaction. The total tax bill would therefore be \$238,000. **DMD**

## Pet Trusts

Trusts for the benefit of pets are now valid in Massachusetts, as of April 7, 2011. Under prior law, only persons could be beneficiaries under a valid trust.

A pet trust can be established in your will, or it can be a separate trust established during your lifetime. If you create a pet trust, the trustee must use the assets for the sole benefit of the animals, although the trustee can charge reasonable fees and can be reimbursed for expenses.

When hotel heiress Leona Helmsley died in 2007, she left \$12 million to her dog, Trouble, and almost nothing to her family. Under the new statute, such arrangements will not be permitted in Massachusetts. The pet trust law provides that “[a] court may reduce the amount of property held by the trust if that amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the animal or animals.” Thus, when funding a pet trust it is important to calculate the amount reasonably necessary to care for your pet. You should give consideration to your pet’s life expectancy, daily living expenses, grooming, potential health-related expenses, burial costs, and compensation for the designated caretaker and trustee.

Unless the trust provides otherwise, the pet trust will terminate when the last of the animals named in the document passes away. If there are funds left in the trust on termination (or if the court reduces the amount

because it is excessive), the funds will be distributed as directed in the trust instrument. If the instrument is silent, the funds will be returned to the donor if he or she is still living; if the donor is not still living, the funds will pass under the residuary clause of the donor’s will; or, if the donor has died without a will, the funds will pass under the laws of intestacy.

The trust instrument should identify the caretaker for the pet and also designate a successor or a method of choosing a successor. This is especially important for animals such as horses that have a long life expectancy. The trustee will oversee the investment of funds and monitor the expenses. As in any well-drafted trust, the initial trustee, successor trustees, and a method for designating future trustees should be spelled out in the instrument. It is also possible to designate a monitor to oversee the caretaker and trustee — to ensure that they are performing their roles appropriately.

One in every three Massachusetts residents owns a cat or dog, and many others own horses and other long-lived pets. For pet lovers, this new law offers great peace of mind. They no longer have to leave money to a person and hope that person will do the right thing — they can now be assured that the plan they put in place will be legally binding and enforceable for the life of their pet. **DMD**

### PAYROLL TAX REDUCTION

Under legislation passed in late 2010, the employee share of payroll OASDI taxes (Social Security taxes) was reduced from 6.2% to 4.2%; this tax applies to wages earned in 2011 up to the maximum taxable wage base of \$106,800. As of this writing, this reduction has not yet been extended past December 31, 2011. Unless amended, the employee share of OASDI taxes will revert to 6.2% for wages earned in 2012.

However, Congress is currently considering new legislation. As proposed, the American Jobs Act of 2011 would provide further payroll tax reductions and other tax-based hiring incentives:

- The employee share of OASDI taxes would be reduced from 6.2% to 3.1% for 2012.
- The employer share of OASDI taxes would fall from 6.2% to 3.1% on the first \$5 million in wages paid during 2012.
- Employers would receive a 6.2% tax credit on any growth in 2012 payroll expenses as compared to 2011 up to \$50 million. For payroll growth for the period of October 1, 2011, through December 31, 2011, compared to the same period in 2010, employers would receive a tax credit of 6.2% up to \$12.5 million.
- Employers would receive tax credits for hiring individuals deemed to be long-term unemployed (i.e., out of work for more than six months) and for hiring unemployed military veterans.

## Significant Changes (continued from page 1)

This meant that some gifts that would have been tax-free if made at death were taxable if made during one's life.

Today and through 2012, the two exemptions are once again unified, and the \$5 million transfer tax exemption can be applied to lifetime gifts or to death-time transfers. Thus, for example, if you make \$2 million in nonexempt gifts in 2011 and then die in 2012, you can still pass \$3 million tax-free at death.

### PORTABILITY

With the new law comes a new acronym — the DSUEA, or *deceased spouse unused exemption amount*. In estate planning for married couples, advisors have traditionally recommended separating at least some of the couple's jointly held assets. This step has been necessary to ensure that both husband and wife could take full advantage of their estate tax exemptions. Without this separation, the exemption of the spouse who died first was wasted and all of the combined assets were subject to tax in the survivor's estate.

*For example*, under 2009 law, if all of husband and wife's \$6 million in assets were held jointly and husband died first, none of the estate would be federally taxed at that point. However, when wife subsequently died, \$2.5 million (\$6 million less her own \$3.5 million exemption) would be taxable. Had the couple separated their assets — \$3 million each — each estate would have been below the exemption and no tax would have been imposed.

The new Act provides a partial (and temporary) solution by making the exemption of the first-to-die spouse "portable" for federal (but not Massachusetts) tax purposes. A surviving

spouse can now elect to harvest the unused portion of the federal estate tax exemption of the deceased spouse, thereby providing the surviving spouse with a larger exemption upon his or her subsequent death.

*For example*, husband dies and uses \$1 million of his exemption on bequests to his children; the remaining assets pass tax-free to his wife. She can now add the remaining \$4 million of husband's exemption to her exemption, making her total exemption at her death \$9 million (under current federal law).

To take advantage of portability, however, the unused exemption must be transferred to the surviving spouse from the estate of the first-to-die spouse. This can be done only by filing a federal estate tax return (Form 706), even if no tax is due. If the return is not filed, any excess exemption is forfeited and cannot be used at the death of the surviving spouse.

Another issue is that under the new law, remarriage cuts off the portability of the surviving spouse's unused exemption, if the second spouse dies first.

*For example*, George dies in 2012 owning only property that is jointly held with his wife, Barbara — thereby dying with an unused exemption (DSUEA) of \$5 million. Barbara can add that to her own \$5 million exemption, which would shelter a total of \$10 million. Then Barbara marries Bill, who has used his whole exemption by making lifetime gifts to his children. If Bill then dies before Barbara, his death will cut off Barbara's access to George's unused exemption. If Barbara's estate exceeds \$5 million, her estate will pay a tax

### in-tes-tate adj

- 1: having made no valid will (died intestate)
- 2: not disposed of by will (an intestate estate)

that could have been avoided with proper planning by George.

For several reasons, we generally continue to recommend that couples separate their assets and balance their estates to the extent practicable, notwithstanding the advent of portability. The future of portability is uncertain after 2012; the benefit of portability can be lost by remarriage; and portability is not recognized under the Massachusetts estate tax system. We also continue to recommend that married couples employ the traditional estate planning device of a "bypass" trust (so named because it bypasses estate tax in both estates) along with a marital trust as the foundation their estate plans. Finally, we generally recommend that estates of married persons now file federal returns, even if no tax is due, in order to maximize the potential exemption for the surviving spouse.

### KEEP THAT BYPASS TRUST

A primary benefit of implementing a bypass trust is that it minimizes Massachusetts as well as federal estate taxes. Bypass trusts also protect the appreciation in the value of trust assets from estate tax at the second spouse's death.

Bypass trusts also provide many nontax advantages — they provide significant protection of assets, guarding against the possibility that, sometime in the future, your children could lose assets to their own creditors. They also provide an opportunity to restrict transfers by your surviving spouse to

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## Significant Changes (continued from page 4)

a succeeding spouse, ensuring that your legacy to your children will not be comingled with assets of a stepparent.

### GRANDCHILDREN

As noted, the generation-skipping transfer tax exemption has also been raised to \$5 million per person. The GST tax is a 35% tax that applies, on top of estate or gift tax, to assets given outright or in trust to grandchildren and later generations. Portability does not apply to the \$5 million exemption from generation-skipping transfer tax, so if you don't want to lose the exemption, you must use it, either by making lifetime gifts or by creating a generation-skipping trust in your estate plan.

### THE GIFT TAX WINDOW

The new law means that 2011 and 2012 form a unique window during which individuals can make substantial gifts tax-free. The increased gift tax exemption and the decreased gift tax rates make giving (including giving to grandchildren) more attractive than ever.

The \$5 million gift tax exemption will allow you to make substantial taxable gifts without having to pay any gift tax currently. Making current gifts will remove the gifted property from your estate, and, just as important, any

future income or appreciation related to that property will escape transfer tax altogether.

If you make current gifts that exceed your available gift tax exemption, you will pay a gift tax currently, but the amount of the gift tax paid will also be removed from your estate, provided that you survive for three years after making the gift. The icing on the cake is that Massachusetts does not tax gifts at all.

Taking advantage of this window of opportunity may result in your heirs receiving significantly more, in after-tax dollars, than they would receive from your estate if passed entirely at death.

Importantly, as of this writing, we expect that legislation will soon be introduced in Congress that would, if passed, repeal the \$5 million gift tax exemption and reinstate the \$1 million exemption as early as January 1, 2012. The remaining window of opportunity may therefore be only a few weeks.

### AVOIDING UNINTENDED CONSEQUENCES

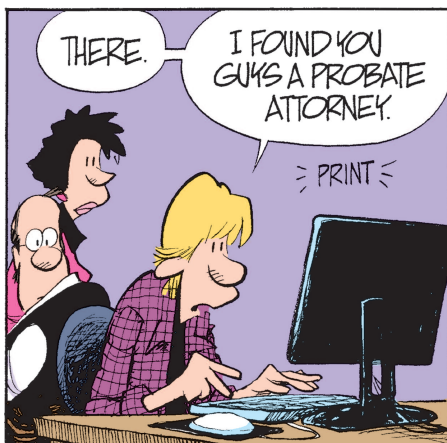
The increased estate and GST exemptions may distort an estate plan in ways that disadvantage the intended primary beneficiary. Most trusts, in an effort to enhance tax planning under prior law,

employ a formula to determine how to allocate assets between the bypass trust and its associated marital trust. When the exemption increases, the value of assets transferred to certain beneficiaries may automatically increase, tracking the increase in the exemption. This may have unintended consequences, and it may leave the surviving spouse with significantly fewer assets than anticipated.

For example, George and Barbara each have children from prior marriages and no children from their current marriage. They executed estate planning documents in 1997 when the exemption was \$600,000 and George's estate had a value of \$6 million.

George and Barbara agreed that if George died first, his children would receive the maximum amount that would not incur estate tax — \$600,000 in 1997. This amount would be set aside in a bypass trust for the benefit of George's children. The remaining \$5.4 million of George's assets would pass to a marital trust for Barbara's benefit. Since the property passing to the marital trust is tax-deferred, no tax would be imposed on George's estate and Barbara would have a \$5.4 million trust held for her sole benefit.

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# Home Sweet Homestead: New Changes To The Massachusetts Homestead Act

The venerable Massachusetts Homestead Act has been completely rewritten and the revised statute went into effect on March 16, 2011.

A homestead exemption provides protection to homeowners and their families from some — but not all — debts. Generally, a homestead will protect the home from liens and levies by creditors, but will not affect a mortgage on the home itself, and will not protect against claims for taxes, spousal support, child support, or claims arising from fraud or mistake, or liens recorded prior to the recording of the homestead declaration. A homestead may be declared if the property is a one- to four-family dwelling (including a manufactured home, residential condominium and residential cooperative) and the property is the principal residence of the owner. A homeowner can have only one principal residence.

There are now three types of homestead exemptions:

- **Automatic Homestead Exemption**  
Prior to March 16, homeowners were required to record a homestead declaration in the registry of deeds in order to receive protection from creditors' claims. The revised act institutes an automatic exemption in the amount of \$125,000. No documentation or filing is required to secure this automatic homestead exemption.
- **Declared Homestead Exemption**  
In order to receive homestead protection of \$500,000, homeowners must sign a declaration of homestead and file it in the registry of

deeds where the deed to the home is recorded.

- **Elderly or Disabled Homestead Exemption**  
This is available to homeowners age 62 or older (elderly), and to legally disabled homeowners. Each elderly or disabled homeowner may file a separate declaration of homestead, each of which will provide \$500,000 in protection. Hence, if two people, both elderly and/or disabled, own a home, the homestead protection would be \$1 million.

## TRUST PROPERTY

While there was previously no homestead protection for trust property, the new legislation affords homestead protection to the beneficiary of a trust. The declaration of homestead is signed by the trustee. An important caveat is that the beneficiary of the trust must be identified in the homestead declaration.

## MORTGAGE TRANSACTIONS

Prior to the enactment of the new bill, there was confusion as to whether a new homestead declaration had to be filed after each mortgage transaction. The new statute eliminates any doubt, because the act provides that no language contained in a mortgage instrument can terminate a homestead (although it can subordinate the homestead to the mortgage). Therefore, there should be no occasion to have to file a new homestead declaration after a refinancing.

## HOMESTEAD TERMINATION

The revised law also solves the so-called "silent deed termination issue."

Previously, if one co-owner deeded his/her interest in the home to another co-owner(s), the homestead estate would terminate (unless the deed expressly stated otherwise). Under the new statute, a deed from one co-owner to another will no longer automatically terminate the homestead.

## SALE AND INSURANCE PROCEEDS

Proceeds from the sale of a home and insurance proceeds recovered if the home is damaged by casualty are now entitled to homestead protection. Sale proceeds are protected until one year after the date of the sale, or until a new residence is purchased, whichever is earlier. Insurance proceeds are protected for two years after the date of the casualty or until the home is reconstructed or a new home is purchased, whichever is earliest.

## WHO MUST SIGN?

Each co-owner who wishes to benefit from the homestead exemption must sign a homestead declaration. As mentioned previously, if the property is held in trust, the trustee must sign the declaration. Under the new law, all homestead declarations recorded prior to March 16, 2011 will remain in effect and be entitled to the provisions of the new statute. **DMD**

## Overhaul of Massachusetts Alimony Law

On September 26, 2011, Governor Deval Patrick signed into law the Alimony Reform Act, providing a major overhaul of Massachusetts alimony law. The new law provides more consistency in alimony judgments by curbing lifetime alimony payments and by providing limits on the number of years a spouse can receive alimony.

Previously in Massachusetts, in contrast to most states, judges could award lifelong alimony after both short- and long-term marriages. In addition, judges often required payments to continue after the payor spouse retired or if the receiving spouse moved in with a new partner, as long as he or she didn't remarry.

Effective March 1, 2012, the new Alimony Reform Act establishes a formula for alimony based on the length of the marriage. For example, a marriage lasting five years or less would have alimony capped at half the length of the marriage. A marriage lasting 15–20 years would have alimony capped at 80 % of the length of the marriage. The new act also requires that alimony payments end when the payor spouse reaches retirement age or be suspended, reduced, or terminated when the receiving spouse cohabitates with a new partner. In addition, judges will have discretion to step outside the new rules in particular cases; for example, judges can award indefinite alimony for marriages of 20 years or longer, and judges can exceed the formula limits by taking into account factors such as the length of the marriage, skills of the recipient, and other financial obligations of the payor and payee, such as child support and health insurance.

Enactment of the new alimony law is not deemed a change of circumstances

that in and of itself warrants a modification of existing alimony judgments. However, if existing alimony judgments exceed the durational limits established by the formula under the new law, a modification may be made by a complaint to the court. This is great news for payor spouses who would like to modify existing alimony judgments that are excessive and fall outside the new limits. For example, perhaps a payor spouse has an unlimited alimony judgment from a five-year marriage. He or she may now seek a modification under the new alimony law because the existing judgment exceeds the durational limits under the formula of half the length of the marriage, or two and a half years.

As with any new law, opinions differ. Critics say it is too strict and will encourage spouses to stay in abusive marriages longer in order to be eligible for more alimony. In contrast, proponents argue that child support responsibilities will not be undercut by the new alimony law, providing spouses additional income, and that the prior law discouraged marriage by providing a financial incentive for persons living together not to marry. Most experts agree that whether fears about the new law are realized will largely depend on the judges who will implement it.

In any case, the new Alimony Reform Act aids estate planning by lending predictability that is currently lacking in alimony orders. Families can now plan ahead with more security for their futures and can get their estate plans in order. **DMD**

### Opportunity to Reduce Penalties for Worker Misclassification

The IRS has recently announced a new program, called the Voluntary Classification Settlement Program (VCSP), which permits eligible taxpayers voluntarily to reclassify a class or classes of workers as employees rather than independent contractors for future tax periods. In exchange for doing so, the employers' liability for past payroll taxes will be reduced significantly.

To be eligible, among other requirements, the taxpayer must have consistently treated the class of workers as nonemployees and must have filed all required Forms 1099 for the workers for the previous three years. The taxpayer cannot currently be under an IRS audit, or under an audit by the Department of Labor concerning the classification of workers. Benefits of participating in the VCSP include:

- The employer will pay only 10 % of the employment tax liability that may have been due on compensation paid to the workers for the most recently closed tax year.
- The employer will not be liable for any interest and penalties on the tax liability.
- The employer will not be subject to an employment tax audit with respect to the classification of the workers for previous years.

It is important to review your worker classifications, because the government is clearly ramping up efforts to combat misclassification. Shortly before announcing the VCSP, the IRS signed an agreement with the Department of Labor to improve its coordination regarding worker misclassification. Additionally, agency leaders from seven states signed similar agreements, with four other states planning to sign in the near future.

## Loss Planning

Taxes are paradoxical. What is good for your business is often bad for your tax return. Conversely, if the down economy has cast a grey cloud over your enterprise, the silver lining may be that tax losses can be harvested for real dollar gains. The key to accessing these dollars is *loss planning* — structuring to avoid the tax code's various limitations on loss deductions. Tax losses can thus be “monetized” to improve current cash flow.

### BUSINESSES IN PARTNERSHIP OR LLC FORM

To the extent you have flow-through losses from a partnership or LLC in which you are invested, these losses will generally be limited by (a) your tax basis in the partnership; (b) the amount you have “at risk” in the enterprise; and (c) if your investment is “passive,” the amount of your passive income. Owners of a partnership-form business can therefore often access losses by maximizing their tax basis and “amount at risk,” and by taking steps to ensure “active” status. These goals can often be accomplished without requiring any additional cash investment and without significantly increasing economic risk.

### BUSINESSES IN CORPORATE FORM

Net operating losses — “NOLs” — can be generated by real economic losses during the current year, and also by “paper” losses such as amortization and depreciation. NOLs can also be carried forward from prior years; hence, losses can in effect be “banked” and saved for use later, to offset taxes on future profits. An even better tax result, in many

cases, is to translate those NOLs into current cash.

As a rule, the Tax Code and the IRS discourage “trading” in tax losses per se, and the code's key method of policing trading in tax losses is to prevent the buyer of a business from fully using pre-transaction losses to offset other income and gain. It is nevertheless the case that “NOLs want to be free.” The benefit of current and past-year NOLs can often be effectively passed to new investors, if structured properly.

This is especially true when a company is near insolvency. In that case, the dollar value inherent in the company's NOLs is too often ignored. In fact, NOLs can represent the largest asset of a company and the chief source of potential capital. NOLs have a discrete value and can be very useful in a potential restructuring, merger or acquisition. **DMD**

## CONTACT

If you would like to discuss any of these topics or any other tax or planning strategies in more detail, please contact Marjorie Suisman or Avi M. Lev at the phone numbers below or at [msuisman@davismalm.com](mailto:msuisman@davismalm.com) or [alev@davismalm.com](mailto:alev@davismalm.com).

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## Significant Changes

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If his estate plan is unchanged, the result would be very different if George were to die in 2011. Assuming the value of the assets remained at \$6 million, a full \$5 million would pass to the bypass trust for the benefit of George's children, and the marital trust for Barbara's benefit would be funded with only \$1 million.

A similar unexpected result can arise in the context of an estate plan that benefits both grandchildren and children. A gift to grandchildren equal to the GST tax exemption amount (now \$5 million), with the balance left to children, may operate in a manner that was not intended. Documents prepared in the 1990s may also have tax formulas do not work efficiently because of changes in Massachusetts estate tax laws.

In short, in this era of uncertainty and volatility, it is important to review your existing plans frequently to ensure that they still work as you intended. It is still possible to plan efficiently, implement strategies, and craft documents that will accomplish your goals — even in this environment of constant change. **DMD**

## REGULATION OF TAX RETURN PREPARERS

In January 2011, the IRS began implementing rules aimed to regulate a new class of federal tax return preparers known as Registered Tax Return Preparers (RTRPs). All Davis Malm tax attorneys qualify as RTRPs.