

THOUGHT LEADERSHIP**Service**

Private Wealth

Professionals

PATRICK T. CONNER

ST. LOUIS:

314.480.1637

KANSAS CITY:

816.983.8637

PATRICK.CONNER@

HUSCHBLACKWELL.COM

KAITLYN A. BLANCHARD

DALLAS:

214.999.6100

KAITLYN.BLANCHARD@

HUSCHBLACKWELL.COM

LEGAL UPDATES

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Estate Planning Solutions for Year-End 2022 and Beyond

By most accounts, 2022 has been a tumultuous year from a planning perspective: the uncertainty of the midterm elections, stock market volatility, rising interest rates and the highest level of inflation in recent history have all played a part. Although 2022 brought challenging market dynamics, one of the few things that has remained relatively constant is the tax environment.

Despite several twists and turns in the various tax law proposals discussed over the past couple of years, no major changes have been enacted. While recognizing that legislation could change at any time and that flexibility is key, the end of unified Democrat control in Washington substantially reduces the likelihood of significant changes to federal tax law in the immediate future. This in turn allows taxpayers to look beyond the end of 2022 and position themselves to take advantage of opportunities in the planning environment ahead.

The Transfer Tax Exemption Sunset

Transfers of wealth during life and at death may be subject to certain transfer taxes at the federal level, including gift tax, estate tax and generation-skipping transfer tax; however, each taxpayer may transfer a certain amount of his or her assets before any transfer taxes will apply. This exemption amount is determined—and from time to time modified—by act of Congress. As part of the 2017 Tax Cuts and Jobs Act (TCJA), Congress temporarily increased the exemption amount to \$12,060,000 per person for 2022, adjusted for inflation, and the exemption amount is set to increase to \$12,920,000 per person for 2023.

The TCJA also included sunset provisions that will cause the exemption amount to be reduced by approximately 50% unless Congress takes further action before January 1, 2026. Given the current political landscape, such a

major legislative act appears unlikely; therefore, taxpayers should take advantage of the current exemption amount level while it still remains available.

The Impact of Interest Rates on Estate Planning

Each month, the Internal Revenue Service (IRS) publishes two interest rates that have an impact on planning strategies: the Applicable Federal Rate or (the AFR) and the Section 7520 rate. The AFR reflects the minimum interest rate that must be charged for loans between related parties based on the length of the loan term. The Section 7520 rate is used to calculate the value of certain annuity payments and remainder interests for split-interest trusts.

Because the AFR and the Section 7520 rate are used when implementing a number of estate planning techniques, the effectiveness of these techniques changes as interest rates change. Although rates have risen sharply from the record lows seen in 2020 and 2021, the current rates remain low by historical standards, but are likely to continue increasing in 2023 (see below for a chart of the 2022 applicable rates). Taxpayers should consider strategies that will enable them to lock in current interest rates that remain relatively low and prepare to capitalize on potentially higher rates in the near future.

2022 Valuation Month	Short-Term AFR*	Mid-Term AFR*	Long-Term AFR*	§ 7520 Rate
January	0.44%	1.30%	1.82%	1.6%
February	0.59%	1.40%	1.92%	1.6%
March	0.97%	1.74%	2.14%	2.0%
April	1.26%	1.87%	2.25%	2.2%
May	1.85%	2.51%	2.66%	3.0%
June	2.21%	2.93%	3.11%	3.6%
July	2.37%	2.99%	3.22%	3.6%
August	2.88%	3.15%	3.35%	3.8%
September	3.05%	2.93%	3.14%	3.6%

2022 Valuation Month	Short-Term AFR*	Mid-Term AFR*	Long-Term AFR*	§ 7520 Rate
October	3.40%	3.28%	3.43%	4.0%
November	4.10%	3.97%	3.92%	4.8%
December	4.55%	4.27%	4.34%	5.2%

**Based on annual compounding period*

Planning Strategies for High-Interest and Low-Interest Rate Environments

Many estate planning strategies involve leveraging low interest rates in order to transfer the appreciation of an asset to beneficiaries free from transfer taxes. Generally, these techniques enable senior family members to (i) “freeze” the value of assets that would otherwise be included in their estates for estate tax purposes, and (ii) transfer the appreciation to younger family members or trusts for their benefit.

However, as rates continue to climb, taxpayers will begin to see a greater benefit from strategies that leverage higher interest rates to reduce the actuarial value of a taxable gift. The higher the rate, the more favorable these strategies will be.

Click the links below to read more about effective planning strategies appropriate to high- and/or low-interest rate environments, including Intrafamily Loans, Installment Sales to Intentionally Defective Irrevocable Trusts (IDIT), Grantor Retained Annuity Trusts (GRAT), Charitable Lead Annuity Trusts (CLAT), Charitable Remainder Annuity Trusts (CRAT) and Qualified Personal Residence Trusts (QPRT).

[Planning Strategies for a Low-Interest Rate Environment](#)

[Planning Strategies for a High-Interest Rate Environment](#)

What This Means to You

The combination of rising interest rates and a sunsetting record-high exemption amount creates a number of unique planning opportunities both in the final weeks of 2022 and as we head into 2023. Under the circumstances, it is important to keep in mind that the strategies discussed throughout this article must be implemented and administered with great care in order to achieve their intended tax efficiency.

Contact Us

If you have questions or would like to discuss how these strategies and others can be used to help meet your planning goals, please contact a member of the Husch Blackwell Private Wealth team or your Husch Blackwell attorney.