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CUTTING THROUGH THE COVID-19 CHAOS: CRISIS PLANNING STRATEGIES FOR THE PRIVATE CLIENT

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IMMEDIATE TAX DEADLINE-RELATED ISSUES

- Federal tax payments and return filings due between April 1 and July 15 are automatically extended to July 15 (Notice 2020-23 and Rev Proc 2018-58). These include:
 - 2019 income tax return (including all related schedules) and tax payments
 - 2020 Q1 and Q2 estimated tax payments
 - Gift, estate and generation-skipping transfer tax returns and tax payments
 - Federal informational returns (Form 3520)
 - Private foundation (Form 990PF) returns

IMMEDIATE TAX DEADLINE-RELATED ISSUES

- Contributions to IRAs are normally due by the due date for filing a taxpayer's income tax return. The extension of the filing date to July 15 extends the time for making IRA contributions.
- Contributions to a Health Savings Account (HSA) are normally due by the due date for filing a taxpayer's income tax return. The extension of the filing date to July 15 extends the time for making HSA contributions.

IMMEDIATE TAX DEADLINE-RELATED ISSUES

- State relief provisions vary by state
 - States that have postponed income tax filing and payment dates until July 15 include:
 - California
 - Connecticut
 - Illinois
 - New Jersey
 - New York
- Visit the COVID-19 State and Local Tax Updates section of McDermott's website for a more complete list of the state tax relief provisions

FINANCIAL RELIEF FOR RETIREMENT PLAN AND IRA PARTICIPANTS UNDER THE CARES ACT

- Minimum Required Distributions
 - The minimum distribution requirements applicable to IRAs and other retirement plans are waived for 2020
- Withdrawals
 - Qualified Individuals can withdraw up to \$100,000 from IRAs in 2020 free of any penalties
 - Withdrawn amounts will be included in the individual's gross income ratably over 3 years starting in 2020
 - If the withdrawn amounts are repaid within 3 years, no income tax will be due
 - Withdrawals also permitted from retirement plans if employers amend them to permit the withdrawals

FINANCIAL RELIEF FOR RETIREMENT PLAN AND IRA PARTICIPANTS UNDER THE CARES ACT

- Loans
 - If an employer amends its plans to permit, in 2020, loans from plans by Qualified Individuals may be made in an amount up to \$100,000 for 6 years

FINANCIAL RELIEF FOR RETIREMENT PLAN AND IRA PARTICIPANTS UNDER THE CARES ACT

- Who is a Qualified Individual? An individual who is
 - Diagnosed with COVID-19,
 - Whose spouse or dependent is diagnosed with COVID-19, or
 - Who experiences adverse financial consequences as a result of
 - being quarantined, furloughed or laid off or having work hours reduced due the virus or disease;
 - being unable to work due to lack of child care due to the virus or disease;
 - closing or reducing hours of a business owned or operated by the individual due to the virus or disease; or
 - other factors as determined by the Secretary of the Treasury

EXPANDED CHARITABLE DEDUCTIONS UNDER THE CARES ACT

- Qualified Contributions
 - Taxpayers may make unlimited cash contributions in 2020 to public charities if they elect to treat the contribution as a “qualified contribution”
 - Normal AGI limitations for charitable contributions are suspended for 2020 for qualified contributions
 - Does not apply to contributions to supporting organizations or donor advised funds (DAFs)
 - Likely that qualified contributions can be paired with otherwise deductible gifts (of appreciated property and cash to private foundations or DAFs) under the traditional rules to create a charitable deduction equal to 100% of adjusted gross income (AGI)

REVIEW EXISTING ESTATE PLANNING DOCUMENTS

- Review and update documents to ensure they match current wishes
 - Will and revocable trust
 - Substantial decline in asset values may make some gifts of fixed amounts inappropriate
 - Rethink funding formulas in light of potentially decreasing values
 - Exercise of powers of appointment
- Ensure powers of attorney are in place in case of incapacity

REVIEW EXISTING ESTATE PLANNING DOCUMENTS

- Review and update health care directives
 - Consider carefully any directions that might encourage lack of access to artificial breathing devices such as ventilators
 - Make sure a copy of your health care directive is readily accessible
- Review appointment of various officeholders (trustees, executors, agents)

PRACTICAL ISSUES IN EXECUTING DOCUMENTS

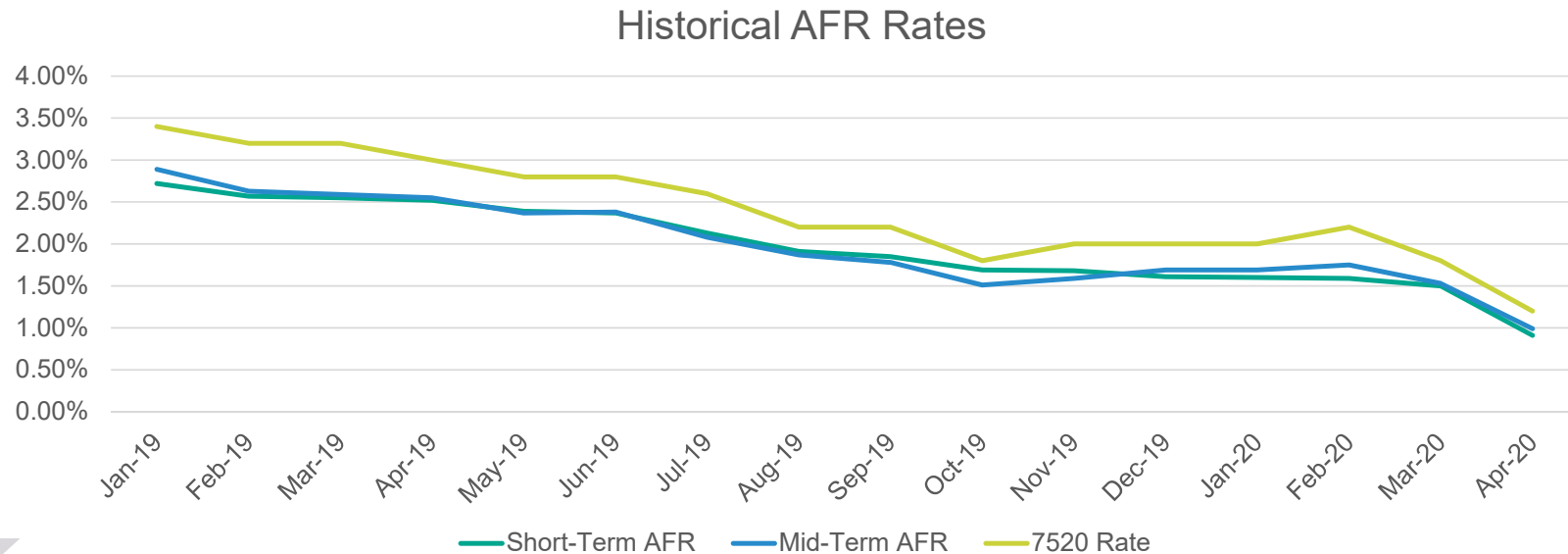
- Shelter in place / stay at home orders make it difficult to notarize and witness documents
 - Electronic signatures
 - Remote notarization
 - Remote witnessing of wills
 - Electronic wills
 - Holographic wills
- Appoint agent to sign documents where necessary and possible

VALUATION AND TIMING-RELATED OPPORTUNITIES

- Wealth transfer opportunities
 - Depressed asset values create a good opportunity for wealth transfer planning
 - Impact of current market uncertainty and volatility on valuation of interests in family controlled investment and business entities
 - Valuation firms tell us that lack of control and lack of marketability discounts are meaningfully higher for transfers made now when compared to transfers made three months ago
 - We are also told that required rates of return on fixed income preferred interests in family entities have likely trended higher

VALUATION AND TIMING-RELATED OPPORTUNITIES

- Time value of money
 - Historically low rates increase advantages of planning with grantor retained annuity trusts (GRATs) and low-interest family loans



VALUATION AND TIMING-RELATED OPPORTUNITIES

- Time value of money
 - The short term AFR used to value short term family loans is now at .91% down from 2.72% in January of 2019
 - The 7520 rate used to value retained interests in GRATs is now at 1.2% down from 3.4% in January of 2019

A 99-year zeroed-out GRAT that retains the value of its principal would remove about 50% of the GRAT's principal from the grantor's gross estate if the 7520 rate is 3.4% when the grantor dies

VALUATION AND TIMING-RELATED OPPORTUNITIES

- Political risks
 - Typical transfer tax planning techniques may be at risk. Tax reform proposals have included:
 - Elimination of zeroed-out GRATs**
 - Elimination of valuation discounts for non-controlling interests in family controlled entities**
 - Significant increases in estate and gift tax rates**
 - Decreases in estate and gift tax exempt amounts**
 - Upcoming election and need to pay for CARES Act and other COVID-19 aid packages increase uncertainty about future changes to tax laws

VALUATION AND TIMING-RELATED OPPORTUNITIES

- Family liquidity needs
 - Client needs
 - Shifting wealth between trusts / grantor
 - Turning off grantor trust status or tax reimbursement
 - Children needs
 - Distributions from existing trusts
 - COVID-19 related government programs

STRUCTURING GIFTS IN TIMES OF CRISIS

- Use of more flexible techniques that could grant access if needed
 - Spousal limited access trusts (SLATs)
 - Qualified personal residence trusts (QPRTs)
 - Self-settled asset protection trusts (SD, NV, offshore)
- Minimize loss of gift/estate tax exemption if values continue to decline
 - Grantor retained annuity trusts (GRATs)
 - Grantor retained testamentary powers over trust principal that are terminable by independent trustee

STRUCTURING GIFTS IN TIMES OF CRISIS

- Building in ability to delay decision as to whether to “complete” gift
 - Use of QTIP marital trusts – can fail to make QTIP election when gift tax return filed in year after gift is made
 - Disclaimer gifts

PRE-PAYING TAX WHILE VALUES ARE DEPRESSED

- Trigger 2519 for QTIP marital trusts
 - Accelerate taxes to lock in low values
 - Use beneficiary spouse's remaining gift tax exemption
- Consider late allocation of unused GST exemption to existing nonexempt trusts
- Trigger generation skipping transfer (GST) tax while values are low
 - Make taxable distributions from nonexempt trusts
 - Trigger taxable terminations for GST tax purposes

PLANNING FOR UNDERWATER TRANSACTIONS

- GRATs
 - Further planning with underlying GRAT assets
 - Further planning with GRAT annuity interests
 - Practical and tax considerations
- Refinance existing promissory notes with lower interest rates
 - Consider involving a third party lender to pay off existing debt
 - Consider paying down principal in conjunction with refinance
 - Timing if rates continue to fall

PLANNING FOR UNDERWATER TRANSACTIONS

- Revisit terms of profits interest partnership arrangements
- Decanting and trust modification
 - Decant assets that declined in value to new trust
 - Trustee of new trust has power to grant general power of appointment and to release the general power
 - Assets included in estate at lower value (assuming death while assets have lower value)

REVISITING RECENT TRANSACTIONS

- Attempts to undo recent transactions
 - When are gifts complete?
 - Disclaiming gifts
 - Rescinding transactions and the annual accounting period rules
- Late allocation of GST exemption to recent gifts if current values are lower than values on date of gift

THANK YOU



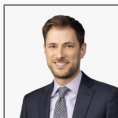
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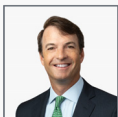
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