legally speaking

By **Patricia C. Marcin**, Esq. ©2020

"Estate Planning:

Is Now the Time to Use It or Lose It?"

The November election is right around the corner, and we could be looking at lower gift and estate tax exemptions and higher gift and estate tax rates. In addition, various estate planning techniques currently in use (for example, Grantor Retained Annuity Trusts ("GRATs"), discounts applied to fractional interests in property transferred to beneficiaries) may be limited, or entirely prohibited under future legislation. Now could very well be the time to use it or lose it.

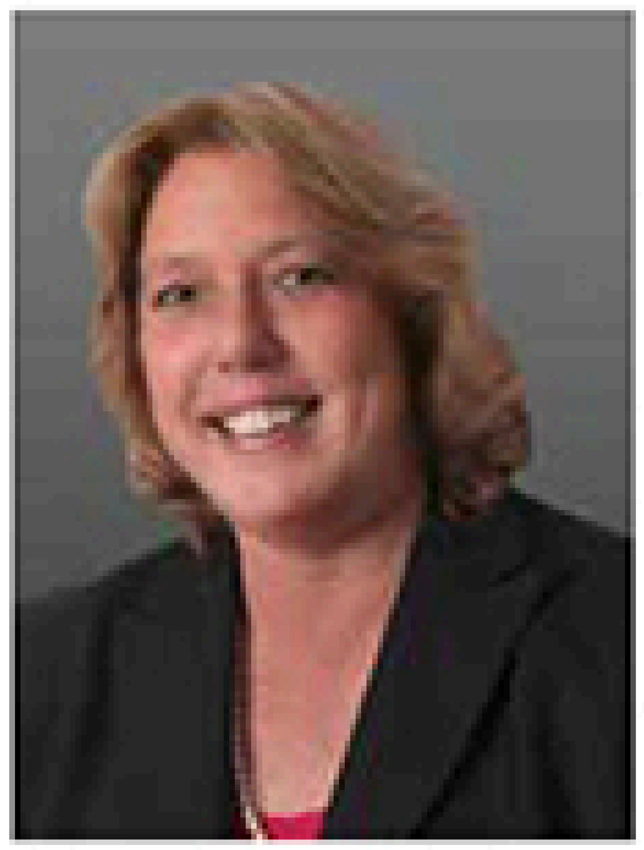
The current federal gift and estate tax exemption of over $11.5 million per person (over $23 million per married couple) is set to revert back to $5 million (almost $5.5 million, as adjusted for inflation) beginning in 2026. The November election may accelerate that decline in exemption amount, or even reduce it further. The current gift and estate tax rate is 40%, and it would be surprising if a Democratic Congress does not seek to increase the tax rate and further reduce the exemption, which is why it is important to think about your estate plan sooner, rather than later.

Under current law, when a taxpayer inherits property from a decedent, the income tax basis in that property is "stepped up" to the fair market value of the property on the decedent's date of death, and is treated as long term capital gain property in the hands of the beneficiary, regardless of the length of time owned by the decedent. That is, the capital gain for income tax purposes is wiped out at that time. An idea that has been mentioned recently is to tax the "built-in" gain on the assets a decedent dies holding.

That is, income tax would be owed by the decedent's estate as if the assets had been sold for an amount equal to their fair market value at the decedent's date of death at, presumably, ordinary income tax rates, which may be increased to 39.6%. This would be in addition to estate taxes owed by the estate. Techniques to "hedge" against these increased taxes (ex. using life insurance held in trust) may be warranted.

Now really *is* the time to address your estate plan to determine if you should use it or lose it.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column.



Patricia C. Marcin is a partner at the law firm of Farrell Fritz, P.C., concentrating in trusts, estates and tax law. Patricia has lived in Lloyd Harbor since 2005 with her husband John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.