

FAMILY OFFICE EXCHANGE NEWSLETTER
FEBRUARY 02, 2009

**THE SILVER LINING IN THE CURRENT ECONOMIC
CRISIS**

Background

There has been significant press over the past several months about the global economic crisis, and wealth holders throughout the world are facing unprecedented declines in the value of their assets. Most experts are in agreement that we are currently facing the worst economic downturn since the great depression. The collapse of stalwart companies such as Lehman Brothers and Bear Stearns, the largest single year decline in the Dow Jones since 1931 and the failure of several banks have left most investors facing significant uncertainty.

There is, however, a silver lining created by all this turmoil. The silver lining is that timing is currently ideal for aggressive planning regarding wealth transfer and asset protection. Many wealth holders and business owners are often too busy, or too distracted to make decisions regarding estate and wealth planning. The time for procrastination has passed and it is critical that action be taken now. There are several factors for this, but the primary drivers are 1) the value of assets in all major asset classes is greatly depressed, (2) interest rates are at historically low levels, enhancing the effectiveness of certain strategies and 3) legislation around estate tax is currently in a state of flux.

Planning Considerations

Current motivation for planning for many investors is reduced as they worry about investments, cash flow, asset allocation and planning for eventual retirement. However, planning is still essential for several reasons including:

- Planning for unforeseen events (e.g. incapacity)

- Desire to pass along a family business
- Retirement and income-tax planning
- Asset protection
- Distribution of wealth to children
- Other objectives such as charitable donations

Asset Transfer Opportunities

The existing financial market environment has created several opportunities around estate planning. Simple strategies can revolve around traditional non-taxable gifts such as the \$13,000 annual exclusion gift per donee, the “lifetime gift” which is exempt up to \$1 million and other gifts earmarked for educational and medical expenses. More complex strategies are also highly appealing as historically low stock values and low Applicable Federal Rates (“AFR”) combine to create unique transfer opportunities utilizing several different vehicles including:

- Grantor Retained Annuity Trust (GRAT)
- Installment Sales
- Charitable Lead Trusts
- Qualified Personal Residence Trust (QPRT)

In all of the above instances, it is necessary to have an independent valuation advisor document the discounted value of the assets being transferred out of the estate. As values in most major asset classes including equities and real estate have eroded significantly within the past year, now is an excellent time to review and assess opportunities.

Estate Taxes

The estate tax as it currently stands is summarized below:

<u>Year</u>	<u>Exemption</u>	<u>Tax Rate</u>
2009	\$3.5 million	45%
2010	No estate tax	No estate tax
2011 and beyond	\$1.0 million	55%

However, federal estate tax law changes are on the horizon. Several factors point to the fact that the planned repeal of the estate tax in 2010 will likely be overturned. President Obama

has clearly stated that he does not want the estate tax repealed. In fact, there are compelling reasons to think that the era of low taxes is drawing to a close. Among them:

- The Federal budget deficit is over \$500 billion and is likely to become larger
- Bailouts of Freddie Mac, AIG, Fannie Mae and others total approximately \$1 trillion
- The Obama Administration's impending \$1 trillion "Economic Stimulus Package"
- Slowing economy is shrinking tax revenues substantially

All of these factors are going to drain President Obama's ability to fund his campaign promises and will put significant upward pressure on taxes. During his campaign, President Obama's proposal was to keep the 2010 and beyond estate tax at 2009 levels, namely a \$3.5 million exemption and then a rate of 45%. However, it is important to note that this proposed plan for the estate tax was formulated early on in his campaign and long before the current economic crisis and series of bank and business bailouts.

Going forward, there are two different paths that President Obama and Congress can take. Their first option is to make a quick fix in 2009 to eliminate the full repeal of the estate tax in 2010 and then in future years make a series of one year patches that will either raise or lower the estate tax exemption and rate based on the government's current monetary needs. Their other option is to make a quick fix in 2009 to eliminate the full repeal but then take the time to study and implement a permanent estate tax exemption and rate that will meet the government's current and projected monetary needs. In these turbulent economic times, the former seems much more likely.

Finally, there is also the grim prospect that in light of the economic situation, President Obama and Congress could revert back to the pre-2002 estate tax system (which is in fact, what is currently scheduled to happen in 2011, unless there is legislative change). Under this scenario, the exemption drops from \$3.5 million to only \$1.0 million and the tax rate increases from 45% to 55%. The difference in potential tax revenue to the government is significant and it is not out of the realm of possibility that this could come to pass.

Tax law changes may be enacted this year in other areas that impact estate and wealth transfer planning. Multiple bills dealing with the estate tax and estate planning related provisions are currently pending in the House of Representatives. A bill was recently referred to the House Ways and Means Committee, for example that could eliminate minority interest and lack of marketability discounts with respect to interests in family partnerships and similar entities. In addition, the IRS could potentially issue regulations this year that restrict the use of valuation discounts in estate planning. Given the potential tax law changes, it is even more critical to

take advantage of planning opportunities now, before any unfavorable tax law changes take effect.

Valuation of Assets

In addition to the uncertainty around forecasted estate tax rates, the primary factor that makes wealth transfer highly favorable now is that the majority of estates are currently valued at a significant discount to prior years. This allows for a greater transfer of ownership out of one's estate.

Equity prices were down over 37% in 2008 as represented by the S&P 500 index, which posted its largest annual drop since its inception in 1957. The decline in publicly traded stocks has a direct correlation to valuations of privately held and family owned businesses. Additionally, the value of real estate assets has declined by over 40% in many areas since the beginning of 2007, as evidenced by the Dow Jones U.S. Real Estate Index. This presents a highly unique opportunity to transfer wealth at discounted values, thereby significantly reducing, or eliminating, tax consequences.

To provide the required documentation to comply with IRS reporting requirements, a qualified valuation advisor must be retained. This applies to all classes of estate interests including, but not limited to:

- Operating companies and related ownership interests
- Real estate ownership interests
- Family limited partnerships and LLC's
- Intangible assets including patents, royalties, claims, etc.
- Private notes and loans receivable
- Promissory notes in connection with estates, gifts, sales, and exchanges in grantor retained annuity trusts.

Conclusion and Actions

The combination of economic turmoil and forecast legislative changes resulting from the Presidential election have created a once in a lifetime opportunity for the planning of wealth transfer. Asset values are at their lowest point in recent history allowing for the minimization of taxation. It is critical for estate owners and fiduciaries to work closely with their advisors to determine the optimal strategy to take advantage of this opportunity. At minimum, they should:

- Review and assess current estate plan. Review 2008 net worth to ensure the estate plan remains effective
- Determine goals and priorities. Review wills and trusts and revise if necessary. Assess appropriateness of fiduciary and guardian selections.
- Review healthcare proxies and living wills as well as all insurance coverages
- Work with wealth manager to identify opportunities for tax-efficient transfer of wealth
- Determine appropriate vehicle for transfer
- Retain independent valuation advisor to determine value of estate assets

ABOUT ATLANTIC TRUST:

Atlantic Trust is a boutique advisory firm focused exclusively on serving a select group of wealthy individuals, families, foundations and endowments. Atlantic Trust has 12 offices with more than \$15.3 billion under management* and has long standing client relationships dating back to 1932. The firm is part of the group of companies that make up Invesco Ltd, one of the world's leading investment firms with approximately \$409 billion under management* and offices in 20 countries.

Wanda Colburn is a senior client development professional, leading the business development, marketing, and public relations initiatives for the Denver office of Atlantic Trust. Wanda has more than twenty-five years of experience in meeting the investment management and trust and estate needs of high-net-worth families. Before joining Atlantic Trust in 2001, she was with Mellon Private Asset Management where she was responsible for new client development in their Denver office. Prior to Mellon, Wanda spent twelve years with Norwest Investment Management and Trust developing private client business in the Colorado region. Wanda serves as a board member of Colorado Uplift. She is currently a member of the Rocky Mountain Estate Planning Council and is a past president of the Denver Estate Planning council and the American Lung Association of Colorado. Wanda earned a BS from Georgia Southern University graduating Cum Laude with University Honors, and is a graduate of the Graduate Institute of Marketing at Louisiana State University. She also is a General Securities Registered Representative.

**All information is as of 9/30/08*

All material is compiled from sources believed to be reliable and current, but accuracy cannot be guaranteed. The opinions expressed herein are based on current market conditions and are subject to change without notice

ABOUT JD FORD & COMPANY:

JD Ford & Company is a specialized Investment Bank offering sophisticated solutions to both private and publicly-held companies in a variety of industries, including consumer products, specialty retail, building products, and specialized services throughout the United States. Since the Firm's founding in 1996, JD Ford & Company has consistently provided clients, operating throughout all phases of the business cycle, with a wide variety of professional services, including: Strategic & Financial Advisory Services, M&A Transaction Services, Business Valuation Services, and a wide array of Financing Solutions.

Joe Durnford is the Senior Managing Director and CEO of JD Ford & Company, Investment Bankers and its affiliated companies. Mr. Durnford has over twenty years experience in corporate finance and has structured, negotiated and completed in excess of \$1 billion in mergers, acquisitions, divestitures and financing transactions. Mr. Durnford is also the founder and chairman of numerous private companies, and has served as audit and finance committee chairman for publicly listed corporations. Prior to founding JD Ford & Company in 1996, Mr. Durnford was a corporate finance and business consultant at the predecessor firms

of Pricewaterhouse Coopers and Deloitte. Mr. Durnford earned a BSBA (Accounting) at the University of Colorado Leeds School of Business, is a Certified Public Accountant, a Certified Valuation Analyst, a Certified Merger & Acquisition Advisor, and holds Series 24, 27, 7 & 63 securities licenses.

Any questions, inquiries or requests for additional information relating to this article should be directed to the following individuals at Atlantic Trust & JD Ford & Company, respectively:

Wanda G. Colburn
Atlantic Trust
www.atlantictrust.com
720-221-5006
wcolburn@atlantictrust.com

Joe Durnford
JD Ford & Company
www.jdford.com
303.333.3673
durnford@jdford.com