

Hot Topics for 2021

March 2021

To our clients and friends:

Happy 2021! Although it is now a cliché, we could not have imagined what 2020 would bring as we wrote to you at the beginning of last year. We were fortunate to be able to shift to a virtually fully remote office in March and continue to provide high quality service to our clients. As we all adjust to a new normal, we appreciate you, our clients and friends, continuing to allow us to serve you during these uncertain times.

Even in the midst of the turmoil of 2020, many of our attorneys were recognized by their peers and the community for their excellence.

- **Laura Haley, Kandice Damiano, and Jennifer Sibley** became partners in the Firm. Laura (Fort Worth), Kandice (Fort Worth), and Jennifer (Dallas) each brings unique skills that make them an integral part of the team. Please join us in congratulating them on this achievement!
- **Marvin Blum** and **Amy Ott** were included in the third annual list of *Fort Worth, Inc.*'s Most Influential People.
- Four of our attorneys were selected to *Texas Monthly* magazine's 2020 Texas Super Lawyers list. **Marvin Blum, John Hunter, and Dyann McCully** were recognized in Estate Planning & Probate, while **David Bakutis** was recognized in Estate & Trust Litigation. **Marvin** was also named as a Top 100 Super Lawyer for the State of Texas.
- Seven attorneys were selected to *Texas Monthly* magazine's 2020 Texas Rising Stars list. **Amanda Holliday, Rachel Saltzman, Jeff Hamilton, Jennifer Sibley, Kandice Damiano, Beth Hamilton, and Amy Ott** all were named in the area of Estate Planning & Probate.
- 360 West magazine recognized **Len Woodard** as a 2020 Top Attorney in Tax Law and **Rachel Saltzman** as a 2020 Top Attorney in Wills, Trusts, Estates and Probate.
- Fourteen of our attorneys were named 2020 Top Attorneys by *Fort Worth* magazine. **Marvin Blum, Amanda Holliday, Rachel Saltzman, David Bakutis, Dyann McCully, Julie Plemons, Laura Haley, Kandice Damiano, Cathy Moon, Emily Taylor, Beth Hampton, and Amy Ott** were recognized in the Probate/Estates/Trusts category, while **John Hunter** and **Len Woodard** were recognized in the Tax category.

We have also had the pleasure of adding three attorneys to our team. **Matthew Rittmayer** and **Merritt Rose** joined the Dallas office, while **Keith Morris** joined the Fort Worth office.

Matthew came to us with ten years of experience, the last five years of which have been in estate planning, probate, and estate administration. Matthew earned his J.D. from Texas Tech University School of Law *magna cum laude* in 2009 and his B.A. in History from Emory University. While at Texas Tech, Matthew served on the Texas Tech Law Review and achieved academic recognition in several classes.

Merritt received her J.D. from the SMU Dedman School of Law *magna cum laude*, where she served on the SMU Law Review, as President of Phi Delta Phi, and as Treasurer of the Tax Law Society. Merritt earned her B.B.A. and Master of Professional Accounting from The University of Texas at Austin. Prior to attending law school, she worked for the international accounting firm of Ernst & Young LLP. Merritt is also a CPA.

Keith is a leading probate and guardianship litigation attorney, practicing across Texas. Keith also focuses on estate administration, estate planning, and serving as mediator for probate and guardianship matters and is experienced in representing companies in probate administrations who seek to open creditor's administration. Keith earned his J.D. from the University of Houston Law Center in 2001 and his B.A. in Political Science from Texas A&M University in 1997.

As we look to the future, uncertainties continue to abound, but the results of the election have brought clarity to at least one thing – tax laws will be changing sooner rather than later. We will be watching these developments closely and look forward to working with you to take advantage of the planning opportunities that continue to be available. In the following pages, we discuss these opportunities and other hot topics in more detail. As always, we are available to discuss any questions you may have as you review this information.

We wish you a happy and healthy 2021!

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THIS IS THE GOLDEN AGE OF ESTATE PLANNING

Too often, a golden age is not recognized as such until it has passed. We believe that is true with the current golden age in estate tax planning. Right now, **we have many tools available** to reduce and even eliminate the estate tax for those willing to undergo aggressive planning. Valuation discounts, the enormous gift tax exemption, low interest rates, and other tools have led some to call the estate tax a "voluntary tax." All of those tools can be lost whenever Congress and the President decide to eliminate them. We can think of about 27 trillion reasons why they may have little choice to eliminate many of these tools over the next few years. That's right, the national debt is that big!

One of the most effective tools in the estate tax reduction arsenal is the grantor trust. A grantor trust is an irrevocable trust that does not pay any income tax. Instead, the trust's income is taxable to a wealthy individual who is subject to the estate tax. The income tax paid by the individual is essentially a nontaxable gift to the grantor trust that is not subject to the estate tax. The growth of the assets owned by grantor trusts is "supercharged" because the trust growth is not reduced by any income tax. Here at The Blum Firm, our mission is to reduce your estate tax by using the tools that are right for you!

VALUATION DISCOUNTS ON THE CHOPPING BLOCK?

A limited partnership or limited liability company, when established for valid business or asset protection purposes, can provide significant transfer tax savings. **The main transfer tax benefit lies in the ability to apply a valuation discount to interests in such entities when transferred (either by gift or sale), thereby reducing the value of the gift or the sale price.** For years, family owned or controlled entities have qualified for valuation discounts. Frustrated with this, the IRS tried to take action prior to the end of President Obama's presidency that would significantly curtail valuation discounts for such entities but failed. Now that the House of Representatives and the Senate are controlled by the Democrats, there is a possibility that legislation could be passed to curtail valuation discounts. Consider planning with your limited partnership and LLC interests now to **lock in valuation discounts** before they go away.

TAKE ADVANTAGE OF THE \$120,000 EXEMPTION INCREASE

Each year, the estate and gift tax exemption (the "lifetime exemption") is adjusted to account for inflation. In 2021, the lifetime exemption increased to \$11.7 million. This is an increase of \$120,000 from the 2020 lifetime exemption levels. For those individuals who previously made gifts based on last year's exemption amounts, **consider making an additional gift of \$120,000 this year to use your full exemption amount.**

LOCK IN LOW INTEREST RATES BEFORE THEY RISE

Interest rates are at historic lows. Before rates begin to climb, consider: (i) refinancing existing promissory notes with a 3 to 9 year term to a long term note, which can often be set for 20 or more years; and (ii) engaging in tax-free wealth transfer techniques that work best in a low interest rate environment.

The premiere technique involves a sale of appreciating and/or income-producing assets to a Beneficiary Defective Trust (or "678" Trust) in exchange for a promissory note at the applicable federal rate (currently 0.62% for a 9-year note or 1.62% for a 10+ year note in March of 2021). **The 678 Trust is outside of your estate for estate tax purposes, but still subject to your control and accessible for your needs.** To the extent the appreciation and income generated by the property sold to the 678 Trust exceeds the interest, you will have reduced your estate tax exposure. When combined with valuation discounts typically available on the sale of a minority interest in a closely-held business, the estate tax savings can be significant. The sale technique can also be used with trusts for the benefit of a spouse or children.

BIDEN'S TAX PLANS COULD IMPACT YOU!

President Biden has called for several changes in the tax code that will have a significant impact on taxpayers. Below are a few key tax points that Biden is looking to change.

- **Return to 2009 Estate Tax Levels.** Biden has called for a return to the 2009 estate tax levels when the estate tax exemption was \$3.5 million, lifetime gift exemption was \$1 million, and the top rate for the estate tax was 45% (versus 40% today).
- **Raise top individual bracket** to 39.6% from 37%.
- **Raise corporate tax rate** to 28% from 21%.
- **Increase Capital Gains and Dividends Tax Rate.** Tax capital gains and dividends at 43.4% (39.6% and 3.8% NII tax) if income is above \$1 million.
- **Eliminate Step-Up in Basis at Death.** The step-up in basis helps reduce capital gains tax when inherited assets are sold. If the basis step-up is eliminated, it is unclear if there would be a carryover basis or a capital gain tax imposed at death on assets not passing to a spouse or charity.
- **Increase Payroll Tax for Wages above \$400,000.** Biden has proposed that wages above \$400,000 be exposed to the full 12.4% social security taxes, plus Medicare tax of 2.9% and 0.9% surcharge, for total payroll tax of 16.2%.
- **Repeal like-kind exchange** of real property if income is above \$400,000.
- **Phase out 20% pass-through deduction** if taxable income is above \$400,000.
- **Cut back itemized deductions** if income is above \$400,000 and cap benefit at 28%.

In addition to the above-mentioned items, President Biden and other elected Democrats have considered **enacting a Premium Tax** to pay for Medicare for All, **increasing funding to the IRS** to improve enforcement of tax laws, and **imposing an annual "Wealth Tax."** If any of these changes impact you, consider engaging in additional planning to minimize the impact of these changes.

PASS DOWN MORE THAN WEALTH

The Blum Firm is launching a new initiative: **Family Legacy Planning**. Over the years we have witnessed heartbreaking situations where an inheritance tore a family apart. However, by studying families who have succeeded throughout generations, **common best practices have been identified**: hold **family meetings** and family retreats; create a curriculum and process to **educate the heirs**; have a system of **family governance** (such as how family decisions are made); and work to preserve the **family's history** and heritage.

Traditional estate planning addresses the family's **valuables** – where, when, and how they pass to future generations. Family Legacy Planning addresses the family's **values**. Its mission is to pass down more than wealth, but also a family's ethos, improving the odds the family will remain meaningfully connected for generations to come. Its aim is to pass down the skills and tools to help heirs face life's inevitable challenges and not only survive as a family, but thrive.

We are pioneering a new type of trust called a **Family Advancement Sustainability Trust ("FAST")** that is dedicated to the family. A FAST does two things: (1) it is funded with assets that will be used to pay for family meetings, family enrichment, and to prepare heirs to successfully manage an inheritance; and (2) it creates a leadership structure to ensure these activities happen.

The bottom line: Don't just prepare the money for the family, prepare the family for the money. The Blum Firm is proud to partner with you on this critically important endeavor.

REVIEW YOUR RETIREMENT PLAN BENEFICIARY DESIGNATIONS

Historically, individuals name their spouse, children, parents, siblings, or other relatives as the primary and/or secondary beneficiaries of IRAs and other retirement plans in order to allow those individuals to take distributions based on the beneficiary's life expectancy (i.e., "stretch-out"). As a result of the SECURE Act effective in 2020, **a surviving spouse** is still eligible to receive a "stretch-out" distribution treatment. But for **most other beneficiaries**, IRA assets must be distributed within 10 years. **In order to protect your IRA from your beneficiary's creditors, divorces, income taxes, and unwise spending, you must change your beneficiary designations as they apply to any beneficiary other than a spouse.** Currently, the best option is to have your IRA pass to an **Accumulation Trust**, which will allow the IRA funds to remain protected once they are distributed within that 10 year period. Depending on the complexity of your estate plan, changing your IRA beneficiary designations may require a few small steps, or it may mean a more comprehensive update of your current plan to incorporate an Accumulation Trust. We would be pleased to assist you in coordinating your IRA beneficiary designation with your estate plan.

INCREASED CHARITABLE TAX BREAKS EXTENDED FOR 2021

The omnibus spending and coronavirus relief package which was signed into law on December 27, 2020 extends two provisions of the CARES Act that incentivize charitable giving. Most notably, for taxpayers who itemize there is **no limit on charitable deductions in 2021 for cash gifts to public charities**. (Typically, a deduction for cash gifts is limited to 60% of AGI.) However, note that gifts to donor advised funds and private foundations do not qualify for this special treatment (gifts made through a charitable remainder trust are also likely excluded). This could be very beneficial for charitably inclined taxpayers looking to offset high income this year. But beware, the law also increases penalties for overstating the value of charitable gifts (increased from 20% to 50% of the underpayment).

Second, the law extends the "above-the-line" deduction for cash gifts to charitable organizations of up to \$300 for individuals and up to \$600 for married filing jointly for 2021. This means the deduction lowers both adjusted gross income and taxable income. Taxpayers are eligible for this whether they itemize or take the standard deduction. Note that, as with the increased itemized deduction for cash gifts, gifts to a donor advised fund or private foundations do not qualify.

BUSINESS SUCCESSION PLANNING IS IMPORTANT TOO

Planning for the succession of family-owned enterprises is one of the most neglected areas of estate planning. Nearly a third of private business owners are over 67 years old and still actively running the business, and most lack a succession plan, leaving the families unprepared for a sudden or unexpected event.

It's important to have a plan in place for WHEN (not IF) you are no longer able to run the business you've built. Business succession planning allows you to decide who will own the business and who will run the business, as well as plan for the financial future of family members who are supported by the business.

We help guide business owners and their advisors through the process of creating and implementing the succession plan that is the best fit for the family.

Estate and Gift Tax Numbers to Know:

	2020		2021	
Annual Gift Tax Exclusion Amount	Individual \$15,000*	Married Couple \$30,000*	Individual \$15,000*	Married Couple \$30,000*
Combined Lifetime Federal Estate Tax and Generation-Skipping Transfer Tax Exemption Amount	Individual \$11,580,000	Married Couple \$23,160,000	Individual \$11,700,000	Married Couple \$23,400,000

Unless there is a sooner tax law change, the estate and gift tax exemption will sunset on **December 31, 2025.**

Starting January 1, 2026, the exemption will return to \$5 million adjusted for inflation.

***Plus unlimited amounts for education or medical expenses, paid directly to the service provider.**

This newsletter contains generalizations and simplifications. Prior to implementing any estate plan, you should consult with competent tax and legal counsel to assess your specific circumstances and determine whether any particular technique discussed in this communication would be appropriate for you and could be implemented in a manner designed to achieve the desired favorable outcome. This newsletter including any attachments is not intended to be, and should not be construed as, U.S. federal tax advice for purposes of Circular 230 and may not be used for the purpose of avoiding penalties under the Internal Revenue Code. Additionally, this newsletter including any attachments is for education purposes and is not intended to be used for, and should not be used for, the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.

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HOT TOPICS FOR 2021

TAKE YOUR ESTATE PLAN FOR A TEST DRIVE

Most folks don't think about taking their estate plan for a test drive. It's often just a set of documents that gets put on a shelf with the hope that it all works out when the time comes. This would be like leaving the racecar collecting dust in the garage until race day. A "test run" of estate administration is like a look under the hood that gives you the opportunity to tinker so that things run more smoothly for a winning finish. This puts you firmly in the driver's seat of your estate plan.

Basically, a test run of your estate administration would give you a look at the **big picture of how the documents would work if you passed away today**—who gets what, when they get it, who serves in what role—all based on your documents as currently written and the facts that exist now. Often, within the first days of losing a loved one, families discover aspects of the estate plan they wish they had changed. A test run can also allow you to make these changes.

Red flags on the course include any of the following:

- Existing documents were drafted **more than four years** ago
- **Significant life events have occurred** for you or your family members, such as marriage or divorce
- Serious health challenges have arisen for you or your family members
- **Children or grandchildren were born**
- Bank accounts were inadvertently **set up to pay on death to a certain person**, circumventing the will

We can help you perform a test run of your estate administration. Alternatively, if you take your estate administration for a test drive yourself and find that assets weren't distributed as you intended or the right people weren't appointed to the right roles, we can help you tune-up your estate plan.

The comments compiled for this newsletter are general in nature and are not tailored to any particular situation. As in the case with any estate, tax or financial planning recommendation, the planning tips suggested in this summary should not be implemented without carefully considering the total economic impact and obtaining the advice of counsel. The advice of an attorney, accountant, or other financial planning professional will provide valuable aid in analyzing the suitability of the particular estate, tax, or financial planning tip for you. By providing this information, The Blum Firm, P.C. does not assume any obligation to provide notification of future changes in laws. Please contact us if the information we have provided affects you and you would like to discuss. The content of this letter was prepared by Marvin E. Blum.