What's so special about 2020?

- Investments and business valuations are both down, reducing the tax impact of giving
- Interest rates are at all-time lows, and since many techniques are interest rate sensitive, lower rates make them more attractive
- The federal gifting exemption is at a historic high ($11.58M per person and $23.16M per couple), allowing families to leave much more wealth to the next generation tax-free

Why not wait?

- The last 20 years have been a "golden age" for estate planning, but it is unclear how much longer this will last
- The high gifting exemption is currently set to sunset at the end of 2025 and revert to the previous limit (around $6M per person, adjusted for inflation)
- There is much political risk; favorable techniques under the current law may go away as soon as 2021, depending on the November election
    - The federal exemption may be reduced, perhaps even lower than $6M per person
    - Business valuation discounts may be limited or disappear altogether
    - The step-up in basis at death to fair market value may disappear
- As the future remains uncertain, don't wait; take advantage of these techniques now while still available

How do I get started?

- Begin with an "estate plan physical": ensure you have a basic plan that makes sense for you given your life and relationship changes
    - Review designations for beneficiaries as well as successor trustees, executors, and agents
- Ensure you have the right documents in place for medical decisions in light of COVID-19
    - A springing power of attorney is often ineffective when a quick decision needs to be made; a durable power of attorney, on the other hand, gives a trusted individual immediate power
    - Review what your advanced healthcare directive says about intubation, a procedure often necessary to save lives with COVID-19
- Review beneficiary designations outside your will and trust (such as your 401(k), IRA, life insurance, and annuities)
- Tax and estate laws change, and so old tax formulas may now limit access for a surviving spouse
- Trusts can provide for heirs not yet financially responsible enough to inherit assets outright

What techniques are available?

- Intrafamily loans – Lend money to family members at low interest rates
    - Often a better strategy than giving outright
    - Create a legitimate loan document that all parties sign, preferably backed by collateral
    - Have family members pay interest annually
- Estate portability – File a 706 return for any deceased spouse within 2 years to pass the unused estate exemption to the surviving spouse

- Spousal Lifetime Access Trust (SLAT) – Take advantage of the full exemption by transferring assets to your spouse in trust
    - Buy life insurance on the receiving spouse to protect the giving spouse against premature death
    - Create similar (but not reciprocal) trusts for both spouses to protect against divorce
- Dynasty Trust – Each inheriting generation receives income for life without owning the funds outright, allowing for asset protection as well as no estate tax inclusion
- IRA strategies – Now that the SECURE Act eliminated the stretch provision for most beneficiaries, consider an accumulation trust, Charitable Remainder Trust (CRT) or Irrevocable Life Insurance Trust (ILIT) to provide beneficiaries with income over a longer period
- Roth IRA conversion
    - Convert part or all of a Traditional IRA or 401(k) into a Roth IRA; any pre-tax balance is includable in your taxable income for the year, while the Roth IRA balance can grow free of taxes and required minimum distributions (RMDs)
    - With RMDs waived in the CARES Act, as well as reduced income and investment gains for many taxpayers, 2020 could be an ideal year for a conversion
    - Combine with charitable giving to reduce the tax impact
- Cost basis management
    - This is important for anyone with assets below the federal gift tax exclusion; seek to increase the cost basis wherever possible
    - To give your estate the most flexibility, include language to grant a general power of appointment (which causes estate inclusion) should it be needed to increase cost basis; the estate plan should also have the ability to revoke the general power of appointment (and remove from your estate) if estate taxes do become a concern
- Upstream giving – Give low cost basis assets to older family members who don't have a taxable estate to obtain a step-up in basis after their passing
- Estate freezing
    - Make sure future appreciation of your wealth goes to your family, not the IRS
    - Freese the value of assets at a given point in time; generally, the best technique is the Intentionally Defective Grantor Trust (IDGT)
    - Start the appraisal process now, as it can take a while
- Charitable Lead Trust (CLT)
    - Leave income first to charity for several years, with the remaining balance left to family or other heirs
    - Often no taxes when you give or when your family receives down the road
- Business planning – Now is the best time for succession planning; don't wait until death or disability occurs, as this places your heirs at a serious disadvantage
    - If family members will be inheriting your equity, provide liquidity to cover taxes through life insurance or liquid assets (such as bank or brokerage accounts)
    - If individuals within your firm will receive your equity, consider a buy/sell agreement
    - For S Corps, give non-voting shares to younger generations to reduce the equity in your estate without relinquishing control of the firm