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Foundation

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# "Giving" Advice

## Toledo Community Foundation

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### About Your Foundation

Since 1973, the **Toledo Community Foundation** has provided individuals, families and businesses interested in the well-being of our community with an *efficient, effective, low-cost, professionally managed* mechanism to achieve their charitable goals.

For philanthropists wishing to maximize the impact and life of their charitable gifts, the Foundation provides *resources for thoughtful giving*. Using its expertise and personalized services, **Toledo Community Foundation** helps donors transform their philanthropic impulse to measurable community impact. Beyond the gifting of assets, the Foundation helps donors identify issues of importance to them and *inspires engagement* with community organizations addressing these issues, thereby maximizing the impact of charitable gifts and creating a greater sense of fulfillment.

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## Congress, the New Budget, and High-Income Earners

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### Dow Jones *Newswires*

The Obama administration's proposed budget calls for lots of changes that could affect your estate plans, and ignorance isn't bliss--it's foolhardy.

Some of the proposals might become reality, some might get modified, and some may never see the light of day. Still, many experts have been sounding the alarm for a while, urging all who will listen that time is running out to take advantage of some sweet, once-in-a-generation chances to save money.

Given the relatively low interest rates and transfer tax values, and some Uncle Sam-sanctioned planning techniques, there is a window of golden opportunity, according to Steve Leimberg, the publisher of Leimberg Information Services Inc. and author of "Tools and Techniques of Estate Planning."

But now that Obama has released the 2011 budget, "the window of opportunity for a number of popular and highly effective estate and financial planning techniques is rapidly closing," according to a recent Leimberg missive.

So what should you consider doing given these potential changes?

#### 1. Tax basis consistency

Tax basis is generally the price you paid for property, plus the cost of improvements, less depreciation if applicable, according to Martin M. Shenkman, an attorney and certified public accountant.

"Tax basis is used to determine gain or loss when property is sold," said Shenkman, who has written several books, including "Living Wills & Health Care Proxies: Assuring That Your End of Life Decisions Are Respected."

"If you received property by gift, tax basis is generally the same as the person who gave it to you. This is called the 'carryover basis,'" he said. If you inherit property, the basis is generally the fair value of the property at death as reported for estate tax purposes.

Not surprisingly, he said there have been abuses. "For example, if someone gave you a gift that was worth less than the annual gift exclusion [\$13,000 in 2010] no gift tax return would report the information to the IRS," he said.

"Similarly, if someone bequeathed you property and their estate was less than the estate-tax filing threshold [\$3.5 million in 2010 assuming the estate tax is reinstated], no estate tax return has to be filed. If property was owned by you and the decedent jointly it passes to you by operation of law with no documentation necessarily required. How does the IRS know that you're 'fessing up to the real value?" Shenkman said.

Well, according to Shenkman, Obama's proposal would require that the basis of the property in the hands of the recipient be no greater than the value of that property as determined for estate or gift tax purposes, subject of course to subsequent adjustments.

"And to make sure this happens, reporting requirements will be added. Executors, for estates, and donors, for lifetime gifts, will be required to provide the necessary information to both the recipient and the IRS," Shenkman said.

And lest you think this is a tiger without teeth, Shenkman noted that the Treasury Department will be given authority to issue tax regulations. "So, in the words of Captain Jean-Luc Picard, the fictional Star Trek character, to Commander Will Riker, 'Well, make it so, No. 1,' the Treasury Department will make sure to cover the tax collector's back with guidelines as to the implementation and administration of these requirements."

The proposal would be effective as of the date of enactment, according to Leimberg.

## 2. Valuation discounts

According to Shenkman, gift, estate and generation-skipping transfer (GST) tax rates are applied to the value of assets transferred above certain threshold amounts. "While taxpayers can't change the rates they pay, they can reduce tax if values are made lower," he said. "So contractual and other restrictions were created that reduced the value of assets."

In essence, family-controlled entities got to use interest rates to value the business at discounts below what

some might consider a fair market value when ownership interests were transferred by bequest or as a gift to family members.

Given the potential loss in tax revenue from that practice, Obama wants Uncle Sam to have his due. So the administration is proposing a new category of restrictions called "disregarded restrictions."

Treasury will issue regulations identifying which restrictions will be ignored in valuing interests in family-controlled entities if the ownership interests involved are transferred by bequest or gift to family. These will include interests that can be removed by family members and even charity, said Shenkman.

"The reduction in discounts, long talked about, will impact a myriad of planning techniques and take the juice out of many deals that would have been quite effective prior to discounts," Shenkman said. "Alas, using grantor trust statutes to leverage gifts and other joyful tax techniques will likely become even more popular if the discount toy is taken off the game board."

According to Shenkman, these new rules will apply to transfers after the date of enactment if the restrictions were created after Oct. 8, 1990. Rules that apply to sales of life insurance contracts would be modified.

### 3. Grantor retained annuity trusts

Grantor retained annuity trusts have been a favored tool of the rich and famous. Just ask Robin Leach. Here's how it works, according to Shenkman: Assets are given to a trust for a short, say, two-year period. A very high annuity payment is paid back to the person setting up the trust--the grantor--that effectively makes the value of the GRAT zero for gift tax purposes. If the assets given beat a specified market interest rate, all that extra growth is out of the estate. No downside risk.

The Obama administration seeks to assure that taxpayers have a bit of skin in the game. "So GRATs have to last a minimum of 10 years, thus increasing the mortality risk of the technique," said Shenkman. "GRATs might have to have something more than a zero gift tax value and the annuity payments may not be permitted to be decreased during the GRAT term."

Yes, GRATs will remain viable, he said. But perhaps not for older taxpayers, and they just won't be as effective or as much fun.

These restrictions are to be effective from the date of enactment.

Keep in mind that "it's a long way from a proposal to effective law," according to Leimberg. "But with a fiscal crisis as severe as the one we are (still) going through--the probability of enactment is higher--much higher--and the time for effective action is getting shorter--much shorter."

(Robert Powell is editor of Retirement Weekly - a MarketWatch/Dow Jones service, and writes for MarketWatch. He can be reached at 415-439-6400 or by email at AskNewswires@dowjones.com.) [ 02-04-10 0824ET ]

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