

NO LONGER SUBJECT TO FEDERAL ESTATE TAXES. WHAT TO DO?

Many are aware that in prior years the Federal Estate Tax threshold varied considerably. At one time, not that long ago, the threshold was \$250,000. Over time the threshold varied drastically but currently for 2017 is \$5,490,000 per individual (the amount by legislation is generally adjusted by inflation on a going forward basis). Many individuals who were previously subject to Federal Estate Taxes adopted the technique of creating what is known as "Credit Shelter Trusts" as part of their estate plan so as to double the exemption for a husband and wife in order to reduce or in many cases eliminate the risk of Federal Estate Taxes. The Federal Estate Tax effective rate varied from approximately 37% up to approximately 50%.

The current Federal Estate Tax rate for those very few people who are subject to Federal Estate Taxes is 40%. In the calendar year 2016 there was something less than 3,000 Federal Estate Tax returns filed for decedents estates in the entire country.

For those who did Federal Estate Tax Planning years ago, that planning if maintained would require some care and feeding upon the death of the first spouse. Generally, such would require the establishment of a Credit Shelter Trust and the administration of the Trust, typically for the surviving spouse's lifetime. All of that creates some additional time involvement and expense.

There are several alternatives that can be offered to eliminate the time and expense of administering a credit shelter trust. Two of the most common alternatives are;

- A. To eliminate the Federal Estate Tax Plan and to retitle most assets as Tenants by the Entireties, between the spouses, and for each spouse to name the other spouse as the primary beneficiary of investment vehicles that allow for beneficiary designation. That is a simple method of undoing a Federal Estate Tax Plan. Then when one spouse dies, the surviving spouse with the presentation of a death certificate inures to the benefit of all the jointly held assets. Also, there is no Pennsylvania Inheritance Tax in that instance because the surviving spouse is currently at the zero percent Pennsylvania Inheritance Tax rate.

Certain couples choose not to adopt the above noted method because some have a concern that the surviving spouse may get remarried or may, as aging progresses, make imprudent decisions with the assets received. Those individuals often want to maintain the Federal Estate Tax plan so that usually one half of the assets that would flow to the Credit Shelter Trust and would generally be protected and used for the benefit of the surviving spouse (but not a subsequent spouse) and ultimately would pass to the agreed upon beneficiaries, typically children and grandchildren.

- B. Another technique that some planners suggest is for the husband and wife to create a Revocable Trust and to title most of their assets in the husband and wife's name, as Trustees, in the Revocable Trust. Then, when the first spouse dies, the Trust becomes irrevocable and is used for the benefit of the surviving spouse to provide security for the surviving spouse but the Trust will not benefit a subsequent spouse of the surviving spouse. Essentially the funds are largely protected for the ultimate beneficiaries, typically the children or other family members.

The Revocable Trust planning technique which becomes Irrevocable when the first spouse dies, also protects assets in the Trust from imprudent decisions that the surviving spouse may otherwise make as one ages, since, major decisions are typically handled under the watchful eye of the Trustees the planner selects.

There are other techniques that can be applied as well but the above are two of the most common techniques.

This article was offered by Attorney Charles W. Stopp of Steckel and Stopp, Attorneys at Law.

Foot Note: This article provides general information. It should not be construed as legal advice. Also it should be noted that the laws and regulations pertaining to this sort of planning change from time to time.

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