

ESTATE PLANNING**RECENT CHANGES IN ESTATE PLANNING LAWS MAY BE CAUSE FOR REVIEW OF YOUR ESTATE PLAN**

by Les Raatz and Robin L. Miskell

Recent change in tax laws have many people rethinking their estate plans. Also, changes in the normal course of life make it a good idea for persons with estates that range from small to large to review wills, trusts, powers of attorney and beneficiary designations of insurance, IRAs, and other interests to achieve the most beneficial tax advantages.

In the beginning of January 2013, Congress made permanent the ability of a person to acquire his or her deceased spouse's unused estate tax exemption through portability, and approved the larger estate and gift tax exemption of \$5.45 million (for 2016) per person adjusted every year for inflation. For a married couple the exemption is potentially double that amount, or \$10.9 million (for 2016). We believe that it is important for you to know that you may have an alternative to simplify your current trust structure without paying any estate tax, and in fact, for your beneficiaries to pay less income tax.

You may have an "AB Trust" or "ABC Trust," or a Family Trust that creates a Decedent's Trust (also referred to as a "Bypass Trust") and a Survivor's Trust on the death of the first of you or your spouse. The recent legislation makes it useful to examine whether such trusts should be changed to simplify their operation. The trust could be simplified by eliminating the need to create new trusts if one spouse passes away survived by the other. Simplification of a trust would result in several benefits:

1. no additional income tax return that would be required for a Bypass Trust on the death of the first of you;
2. the surviving spouse owns all of the property; and
3. on the death of the surviving spouse, there will be a step-up in basis on all of the assets held in the trust on the surviving spouse's death with a simplified trust. With a more complex trust, the assets in the Bypass Trust are not includable in the surviving spouse's estate resulting in no step-up in basis for those assets. The step-up in basis on all of the assets in the trust offers an opportunity to reduce capital gain on the sale of inherited assets by children or other beneficiaries.

For example, if a residence that was the decedent spouse's sole and separate property was funded into the Bypass Trust and had a basis of

\$100,000, but the fair market value was \$300,000 upon the survivor's death, the residence would not have a step-up in basis at the death of the second spouse and if sold, there would be a capital gains tax on the \$200,000 increase in value. In contrast, if the residence was held in the simplified trust and includable in the estate of the surviving spouse on his or her death, there would be a step-up in basis to \$300,000 on the death of the surviving spouse and no capital gains tax would be due if sold at that price.

But this change might not be for everyone, as there may be reasons to retain your current trust structure, such as:

1. protection from creditors of assets held in the Bypass Trust;
2. assurance that the deceased spouse's property passes to descendants;
3. protection from decline in the surviving spouse's mental acuity (by limiting or preventing the transfer of assets held in Decedent's Trust by the surviving spouse); and
4. for larger estates, more of the family estate that can be held in trust over many generations with increased asset protection and free of estate taxes on the estates of descendants.

Another **very important** development in estate planning is the use of proper beneficiary designations for qualified plans and IRA interests. If the beneficiary designation for a qualified plan provides that a revocable trust is the beneficiary, without any special provisions, there is a concern that IRAs and qualified plan interests may have to be distributed earlier than necessary, potentially causing substantial income tax liability to be payable within five years. There are many other alternatives that can save income tax for your beneficiaries, including adding a few provisions to your current trust such that, if your trust is designated as a beneficiary for asset protection and other reasons, the tax benefits of a qualified plan or IRA interest may be retained.

Also, many parents are concerned about property inherited from them being subject to creditor or spousal claims. One means to address these concerns is to have the share that is inherited by a child being retained in a trust controlled by the child (who in many jurisdictions, can be its sole trustee), yet it will be asset-protected and avoid estate tax if the child passes away. There is also the additional possibility of retaining the trust property in trust for a child for asset protection purposes (in certain states) and achieve the benefits of having the child's trust taxed at his or her income tax rate rather than the higher tax rate for trusts.

If any of these issues cause you to rethink your current estate plan, please contact one of Dickinson Wright's estate planning lawyers at your earliest convenience to discuss your options.

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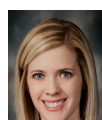
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