

## How is Your Estate Plan Impacted by the American Taxpayer's Relief Act?

On January 2, 2013, the American Taxpayer's Relief Act ("ATRA") was signed into law by President Obama. Under ATRA, the federal estate tax exemption was made "permanent," and indexed for inflation. In 2013, the exemption is \$5.25 million per person. ATRA also extended "portability," which allows a surviving spouse to utilize any of the \$5.25 million exemption that the deceased spouse did not use during his lifetime or at his death. This means that with portability, a married couple will be able to exempt up to \$10.5 million from federal estate taxes.

For now, the threat of the federal estate tax exemption being reduced has been removed. Of course, "permanent" is only permanent until Congress changes the law. With the increase in federal exemption amounts, you are able to transfer more assets to your heirs without payment of federal estate tax.

But what does this mean for existing estate plans? And if you have an estate with a value of less than \$5.25 million, is there still a need for you to do any estate planning at all?

### Existing Estate Plans

If you are single, the new federal estate tax rules should have no impact on your existing estate plan. But the new law means that married couples should review their estate plans to see if the plans can be simplified if any of the following apply:

*Eliminate Unnecessary Trusts At First Death.* In prior years, standard estate plan for married couples who might have estates in excess of the federal estate tax exemption involved the creation of one or two trusts at the death of the first spouse, such as the typical "A-B trust" or "Marital – Credit Shelter Trust" plan. The purpose of the "B trust" or "Credit Shelter Trust" was to utilize the exemption of the first

spouse to die so his or her exemption would not be wasted and more assets could be sheltered from tax. Because the exemption of the first spouse to die is now "portable" – that is, can be carried over and used by the surviving spouse - it is no longer essential to create a trust at the death of the first spouse for federal estate tax purposes. That means that you may be able to modify your existing Will or Revocable Trust to simply leave everything outright to your spouse and will still be able to use both exemptions to reduce or eliminate exposure to federal estate tax.

*Reunify Assets.* In order to fund the B Trust or Credit Shelter Trust of the first spouse to die, often ownership of assets that had been jointly held was split between husband and wife. Often separate bank and brokerage accounts were opened and ownership of real estate was divided. Sometimes even title to the marital residence was changed to tenants in common, which means that each spouse owns one-half and that the home may need to go through probate at the first death. With the new portability of the federal estate tax exemption, you and your spouse can once again jointly own your home and financial assets, reducing the number of accounts and eliminating the need for probate when the first spouse dies.

*Combine Trusts.* If you and your spouse have established separate Revocable Trusts to avoid probate, you may want to consider combining them into a single joint trust, again to make things simpler for you.

### Do I still need an Estate Plan?

In short, yes. While this may be the first question that comes to mind, it is essential to remember that, for the majority of individuals, an estate plan is more than simply federal estate tax planning. An estate plan should take into consideration the needs of your family members, your goals and life situation, not only federal estate taxes. A comprehensive estate plan allows you to divide your assets amongst your heirs and beneficiaries based upon each individual's life situation, particular needs and abilities, and to maximize the benefits each will receive. A good estate plan is more than simply planning for avoidance of federal estate taxes. Below are some of the most important reasons why an estate plan is still needed.

*Ensuring Your Assets Pass To The People and Organizations You Choose.* Without an estate plan, you lose the ability to designate your heirs, and the assets you have worked a lifetime for will be distributed according to the provisions of state statutes. If you die without a Will in Pennsylvania, your estate is considered “intestate” and property will pass to heirs based solely upon state statutes. These statutes do not consider things such as fairness, the needs of your heirs, and your wishes for the legacy you leave behind. Sometimes the results are unexpected. For example, it is commonly assumed that if a married person dies without a Will, all of that person’s assets would automatically pass to the surviving spouse. While that is true of jointly-held assets, if he were survived by either a parent or issue (children/grandchildren), only the first \$30,000 and one-half of the balance would pass to his spouse, and the rest would pass to his parent or issue, even if the issue were an infant.

*Preventing Disputes and Estate Litigation.* When family members don’t have a clear idea as to what your wishes are, the chances of family disputes are significantly higher and litigation may result. Having your wishes plainly set forth eliminates ambiguities and reduces the potential for argument among family members who each believe they “know what you would have wanted.” Estate litigation is very costly, time consuming and often causes irreparable harm to family relationships.

*Asset Protection.* With an ever increasing divorce rate in the United States, the use of trusts and prenuptial agreements provides invaluable protection for family assets. Asset protection is an essential component of estate planning; an estate plan with built-in asset protection can assist not only you, but also protect your child’s inheritance from a potential divorce. In addition, an estate plan can also include “spendthrift” provisions, which help protect your estate from creditors of your heirs, and from poor decisions of your heirs, in cases where heirs may not be able to responsibly manage money.

*Avoiding Guardianship.* If you become ill or injured and need someone to handle financial matters or make medical decisions for you, your family may have to go to court to have someone appointed as your legal guardian to act for you. But a court appointed guardian would not be necessary if you had signed Powers of Attorney in which you designated an agent to handle those matter for you.

*Disability and Long Term Care Planning.* Estate planning is not simply planning for after your death; a good estate plan considers both your current situation as well as your future. For many people, the need for long term care, whether in a residential setting such as a nursing home or with in-home care providers, is an expensive but inevitable reality. In 2012, the average cost of nursing home care was more than \$99,000 per year. While government assistance is available, the asset limits imposed by Medicaid drastically limit your ability to qualify for Medicaid while retaining the assets you worked a lifetime to accrue. A valuable component of estate planning is Medicaid planning, which helps preserve assets through lifetime gifts and other qualified transfers.

Use of documents such as Powers of Attorney allow you to designate agents to manage your affairs, and to make medical and financial decisions on your behalf in the event that you are alive but are unable to make or communicate decisions.

In addition to personal planning, your estate plan can provide for family members with disabilities. Through the creation of a special needs trust, you have the ability to provide supplemental benefits to a disabled person without jeopardizing the government benefits he or she may receive. Your estate plan should consider both your current situation, as well as the needs of the people you wish to provide for.

Estate planning is much more than simply federal tax planning. A good estate plan will take into consideration your current needs, and will help ensure that your future plans are carried out. It will provide for your family members and heirs in the manner in which you intend, will maximize your assets and ultimately, will protect the legacy you leave behind.

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