

Estate Plan Simplification for Married Couples

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 2015, the exemption is \$5.43 million per person. ATRA also extended "portability," which allows a surviving spouse to utilize any of the \$5.43 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 \$10.86 million from federal estate taxes.

These new rules means that married couples should review their estate plans to see if the plans can be simplified to achieve the following:

- **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 "Marital – Credit Shelter Trust" plan. The purpose of the 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.

- **Avoid Unnecessary Probate.** In order to fund the 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 each spouse opened separate bank and brokerage accounts and ownership of real estate was divided. Sometimes even title to the marital residence was transferred to one spouse or 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. Since the new federal estate tax rules went into effect in early 2013, several clients who failed to update their plans have had to go through the time and expense of probate when the first spouse died, which could have been easily avoided.

- **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.

If you and your spouse have not reviewed your estate plan in the last 2 years, you may find that doing so now can make your lives simpler and save you some unnecessary expenses.

About the Author:

ROBERT J. WINTERS



Bob handles all aspects of estate and gift tax planning and preparation of estate planning documents, including wills, revocable living trusts, insurance trusts, personal residence trusts, generation-skipping trusts, split ownership trusts, charitable trusts and family limited partnerships. He also represents and advises

individual and corporate trustees and personal representatives in administration of trusts and estates, including related tax planning and fiduciary income tax matters.

rwinters@grblaw.com