Altshuler and Spiro
EST. 1959

9301 WILSHIRE BOULEVARD, SUITE 504
BEVERLY HILLS, CALIFORNIA 90210-5412
(310) 275-4475 – (323) 272-5339
FAX (310) 858-6763

Bruce J. Altshuler*
Randy M. Spiro

* a professional corporation

Leo Altshuler
(1919-1999)
James J. Brown
(1918- 1987)

SHOULD THE SURVIVING SPOUSE FILE AN ESTATE TAX RETURN?
by Randy Spiro

For persons dying in 2011 and 2012, the estate tax exemption (the amount a person can die with and pay no estate tax) is $5,000,000. If a married couple had an all community property estate of less than $10,000,000, then the first spouse to die's half would be less than $5,000,000.

Normally, if a person dies and has assets worth less than the exemption for the year of death, a federal estate tax return is not required to be filed, but for first spouses to die dying in 2011 and 2012, that person's unused estate tax exemption can be transferred to the surviving spouse. This is true where assets of the first spouse to die pass outright to the surviving spouse i.e. such assets need not be transferred to an irrevocable trust for that survivor's needs

The election to transfer the first spouse to die's exemption is made on the first spouse to die's federal estate tax return, which is called form 706. Even if the first spouse to die's assets are below $5,000,000, it is critical that an estate tax return be filed so that the first spouse to die's estate tax exemption can be transferred.

Surviving Spouses may say that preparing form 706 is an unnecessary expense because the Surviving Spouse's own $5,000,000 estate tax exemption is enough. The estate tax exemption is scheduled to go back to $1,000,000 for people dying in 2013 and thereafter. Although it is hoped that the present law will be extended, there is not guarantee.

Thus if the first spouse to die dies in 2011 or 2012, the living spouse should do whatever it takes to protect the first spouse to die's exemption, including making the appropriate election on the estate tax return. This is true because the surviving spouse cannot be sure that his or her own estate tax exemption will stay at $5,000,000.