



Changes in Tax Laws Means it's Time to Review Your Estate Plan

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by Kim V. Heyman

Recent changes in the federal tax law, uncertainty in regards to the law beyond 2009, and the economically volatile times in which we live means it is more important than ever to review your estate plan.

A significant consideration in estate planning is the impact estate tax laws will have on your estate plan. The federal estate tax exemption (the amount that can pass free of estate tax) has increased significantly over the past ten years and continues to be in a state of flux. The federal exemption amount is currently \$3.5 million per person, but it is scheduled to return to \$1.0 million in 2011 (after a year of no estate tax in 2010). However, legislation has been introduced in Congress that would extend the \$3.5 million exemption beyond 2009. Furthermore, the New York exemption amount is only \$1.0 million and there is no indication that it will change any time in the near future. The gap of \$2.5 million between the New York exemption amount and the federal exemption amount means that the difference between the two may be subject to New York State estate tax.

With these tax ramifications in mind, it is important to incorporate flexibility into your Will to provide your executor, your surviving spouse and your tax advisors the ability to do post-mortem tax planning at the time of the first spouse's death, and if appropriate, make decisions that reduce or eliminate the New York State estate tax. Four ways to accomplish this are:

- **Gift in trust for the surviving spouse, with the executor having the ability to elect to qualify part or all of the trust for the marital deduction:** The benefit achieved with this plan is the ability to do post-mortem tax planning. In addition, the amount that goes into the trust is protected from the surviving spouse's creditors. Furthermore, the predeceased spouse can be certain that he or she has control over the disposition of the property remaining in the trust at the surviving spouse's death. With this option, however, no portion of the estate of the predeceased spouse is distributed outright to the surviving spouse.
- **Outright gift to the surviving spouse, with a renunciation trust:** This option allows the predeceased spouse to leave his or her entire residuary estate to the surviving spouse, outright. For tax purposes, the surviving spouse will have the right to renounce part or all of what the predeceased spouse leaves to him or her. Any renounced property will pass into a renunciation trust, and any assets in this trust will escape taxation in the surviving spouse's estate. However, unlike a trust that a Will requires to be established, assets in a renunciation trust are not protected from the surviving spouse's creditors.

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- **Specify an amount to go outright to the surviving spouse, with the rest going into a trust, give the executor the ability to qualify a portion of the trust for the marital deduction, and give the surviving spouse the ability to renounce a portion of the outright gift:** This allows for some property to pass outright to the surviving spouse, some property to be in a trust that is protected from the spouse's creditors, the ultimate disposition of which is in the control of the predeceased spouse, and some property to pass into a renunciation trust, if the surviving spouse deems it appropriate in order to save estate taxes.
- **Residuary Trust with a New York "cut back", and an outright marital gift with the ability to renounce:** If the predeceased spouse is living in New York at his or her death, the formula will "cut back" from the federal exemption amount to distribute to the trust only the amount that will pass free of any New York estate tax (currently, \$1 million).

In addition to tax considerations, you may have other issues that will help determine what type of bequest you leave for your surviving spouse and your descendants. For example, if you want to control the disposition of your property at the death of your spouse, you will want to leave your property in trust. Likewise, if your spouse has or may have creditor issues, you will want to leave your property in trust for his or her benefit, and thereby help protect it from his or her creditors.

Change is all around us – in the administration, in the markets, and in the tax code. It is more difficult than ever to plan for the financial future of your loved ones and all the more important to review and update your estate plans. Please schedule an appointment with us to review your current estate plan.



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