LEGAL EASE

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Do not miss an opportunity to save on estate tax

Federal Estate Tax has not been an issue for many people since 2010. The exclusion, i.e. the asset level beyond which federal estate tax would be assessed, has been climbing since 2001, reaching a peak in 2010. For decedents that died in 2010, there was no federal estate tax collected no matter how wealthy the individual was. Then in 2011, the amount excluded was set at $5 million and a concept of portability for the surviving spouse was added; however, the law was set to "sunset" or go away in two years. Congress stepped in at the last minute in 2013 and "saved" the exemption amount of $5 million, adjusted yearly for inflation, and continued the portability provision. Currently (2014) the federal estate tax exemption is $5.34 million for each individual.

Since only a relatively small portion of married couples own assets in excess of $10.68 million, estate planning has simplified for most people. Instead of more complicated marital deduction trusts and/or disclaimer trusts in Wills, more and more people are opting for a straightforward type of estate planning, especially since Pennsylvania residents who are married do not pay any State inheritance tax on the death of the first spouse. What many couples do not consider however, is when the first spouse dies, and even if the estate is not large enough to trigger federal estate tax, the surviving spouse should consider capturing the spousal portability option.

Portability means that the surviving spouse can take advantage of a deceased spouse's unused tax exemption. For instance, if the husband dies with a $2 million estate, it is not necessary for the wife to file a federal estate tax return or pay any Pennsylvania inheritance tax. However, if the surviving spouse elects to preserve her husband's unused exemption through portability, she can then add that ($5.34 million in 2014) to her exemption amount when she dies, and perhaps avoid having her heirs pay federal estate tax (which can be as high as 55 percent). Many people think that this concept is ridiculous, since they cannot see ever having more than $10 million. The future can bring many pleasant surprises however. This same woman might come into an inheritance, win the lottery, or sell land for more than she dreamed it was worth. Oil and gas rights might be discovered and a lease offered. It is worth considering the possibility that portability might be useful someday.

In order to take advantage of spousal portability in a federal estate tax situation, it is necessary to file a federal estate tax return (Form 706) within nine months of the date of your spouse's passing. If the completed form is filed in a timely fashion, you are considered to have elected to use your spouse's unused exemption. That means that you potentially protect over $10 million for your heirs. Failure to file within the nine month period indicates that you waive your right to preserve the unused exemption.

There are many things to think about upon the death of beloved spouse. This adds one more to the list, but it can be a valuable step to take even if it seems unnecessary at the present time. Call your attorney to be sure that you are taking <u>all</u> of the steps to protect yourself and your heirs.