LEGAL EASE

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Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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New tax laws are a reason to review your estate plan

Everyone should review their estate plan periodically, especially when there are major life changes or changes in the law. The new tax laws are a good reason to review your estate plan. ElderLawAnswers discusses some reasons why changes in the tax laws affect older estate plans. (https://www.elderlawanswers.com/the-new-tax-law-means-its-time-review-your-estate-plan-16842).

In December, 2017, the federal estate tax exemption (as well as the gift tax exemption and the generation skipping tax exemption) was increased to $11.18 million for individuals and $22.36 million for couples, indexed for inflation. In 2019, the exemption amounts are $11.4 million for individuals and $22.8 million for couples. There are very few estates that will be subject to the federal estate tax but if they are, the tax rate is 40 percent. However, as recently as 2001, the federal estate tax exemption was $675,000. At that point, many parents who had an estate that may have been subject to the federal estate tax rate developed an estate plan with their attorney that would have served to prevent their children from paying federal estate tax. However, some of those older estate plans could have unintended consequences today, such as potentially bypassing the spouse and giving the entire estate to the children at the death of the first spouse. At best, it might limit the amount of money that the spouse has for his or her own use. This is a good time to review your estate plan with your attorney to be sure that there are not unintended consequences from your old estate plan.

Despite the fact that few estates are large enough to be concerned with federal estate tax, the surviving spouse should consider filing a federal estate tax form with the IRS (Form 706) to preserve portability of the unused federal estate tax exemption. A surviving spouse can elect to preserve the unused portion of the federal estate in the event that the federal estate tax exemption changes in the future or if the surviving spouse wins the lottery, or receives some other monetary benefit that increases the size of his or her estate. The Form 706 must be filed within 9 months of the date of death of the first spouse to die. OWM Law can assist you with this important filing.

Another consideration is related to retirement plans, such as IRAs and 401ks and beneficiaries. It is very important, no matter how large your estate might be, to have beneficiaries on such accounts and to review those beneficiaries periodically. There should be a primary beneficiary, usually a spouse, and contingent beneficiaries. Your Wills does not control the distribution of retirement accounts. Furthermore, divorce does not automatically change a spousal beneficiary once the marriage is ended. This must be done with a new beneficiary designation form. Finally, if you are one of the people with an estate that exceeds the current federal estate tax exemption, you might want to consider a trust for your retirement plans. (https://www.elderlawanswers.com/make-sure-your-plan-beneficiary-choices-are-up-to-date-5942).

Call the attorneys at OWM Law (610-323-2800) if you need assistance with updating your estate plan.