



Estate Tax Trusts - Don't Disinherit a Surviving Spouse!

Special Alert - Estate Planning

The federal government imposes estate taxes on property held by an individual upon death. Fortunately, the government currently provides an exemption for the first \$5 million of an estate's assets. Properly drafted and funded estate tax planning trusts for married persons can double the effective exemption.

However, many marital deduction tax planning trusts are drafted such that upon the death of the first spouse, the credit shelter trust is first funded up to the maximum estate tax exemption (currently \$5 million), with the remainder passing to the surviving spouse via the "marital deduction" trust. This is especially common for tax planning trusts drafted prior to the estate tax act of 2001, which significantly increased the estate tax exemption.

The problem with this formulation is that it potentially disinherits the surviving spouse, which is probably not the grantor's intent. This is because the surviving spouse's access to the principal funds contained in a credit shelter trust are strictly limited. The principal funds of a credit shelter trust are held primarily for the benefit of the deceased's heirs or other identified beneficiaries (including the surviving spouse).

Consider a person who has an estate of \$1.5 million. He previously set up a trust which placed assets equal to the maximum amount that could pass free from federal estate tax in trust for his children's benefit with the balance of the trust assets passing to his wife tax free. Under the current exemption, 100% of assets would pass to the credit shelter trust, and the surviving spouse would receive nothing outright. This may produce a consequence unintended by the grantor, and may pose a financial problem for the surviving spouse.

Persons with existing A-B trusts should review their trust funding formulations, and perhaps consider a marital deduction disclaimer trust, which permits the surviving spouse to retain control over the funding of the credit shelter trust at the time of the first spouse's death.

Please feel free to contact any of our estate planning attorneys to review the funding of A-B trusts if this may be a concern to you.

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