TKD LEGAL ALERT

New Tax Law Impacts Estate Planning For Married Couples

The Tax Relief Act of 2010 introduced the concept of "portability" to estate tax planning. Portability allows a surviving spouse to use their predeceased spouse's unused federal estate tax exclusion amount.

Each U.S. citizen is allowed an estate and gift tax exemption. In 2011, it was $5 million. In 2012 it is $5,120,000. Prior to 2011, without some estate planning, the unused amount for the first spouse to die would have been wasted. This new provision allows a deceased spouse's unused exemption amount (or "DSUEA") to pass to the surviving spouse to be used in addition to his or her own exemption.

There is one important catch—in order to preserve the unused exemption amount for the surviving spouse (who could lose it if he or she remarries), estates must file a timely federal estate tax return. This return is due nine months after death, or fifteen months if you request an extension.

Even if the first spouse to die has little or no wealth and it is not expected that the surviving spouse will ever have assets in excess of the federal exemption, in many cases, we recommend the filing of a federal estate tax return to preserve the DSUEA. In the event of significant financial changes, this prevents you from having to pay unnecessary estate taxes that could have been minimized or avoided.

To give some relief, the IRS issued a notice on **February 17, 2012** that allows certain estates of married individuals who died during the first six months of 2011 and which did not file for extension during the nine month period, an extension to make the portability election. To qualify, estates must be of a decedent (1) whose date of death is after December 31, 2010 but before July 1, 2011 (2) who is survived by a spouse and (3) whose gross estate does not exceed the $5,000,000 exclusion amount for 2011. The executor must file Form 4768 to request the extension no later than 15 months after the decedent's date of death.

Of course, we don't currently know:

- What the exemption amount will be in 2013, or
- If Congress will allow the "preserved" unused exemption (based on 2011's $5,000,000 and 2012's $5,120,000) to remain with the surviving spouse if exemption reverts to a lesser amount in 2013.

TKD's Trust and Estates Group will continue to follow these and other developments and keep you up-to-date and informed. If you have missed a filing deadline or would like to know more please contact:

Joann T. Palumbo
Phone: 212.216.8015
Email: jpalumbo@tarterkrinsky.com

Stephen L. Ferszt
Phone: 212.216.1101
Email: sferszt@tarterkrinsky.com

Frank H. Klein
Phone: 212.216.1105
Email: fklein@tarterkrinsky.com

For more information on the Trust and Estate Group click here.

TARTER KRINSKY & DROGIN LLP
ATTORNEYS AT LAW

New York Office: 1350 Broadway, New York, NY 10018 • Tel: 212. 216. 8000 • Fax: 212. 216. 8001
New Jersey Office: 475 Wall Street, Princeton, NJ 08540 • Tel: 609. 683. 9494 • Fax: 609. 683. 7490
www.tarterkrinsky.com