

## ESTATE PLANNING TIPS

### Current Estate Tax Rates

The current Federal Estate Tax law, with the exemptions stated below will expire at the end of 2010. In the absence of new legislation, in 2011 we will revert to the prior Estate Tax law. It appears unlikely that there will be any change in the law prior to the presidential election in November, 2008. Any changes that occur thereafter will depend on who is elected and whether the Republicans or Democrats control Congress.

#### Federal Estate Tax

YEAR	EXEMPTION	TAX RATE
2007	\$2,000,000.	45%
2008	\$2,000,000.	45%
2009	\$3,500,000.	45%
2010	No estate tax	N/A
2011 & after	\$1,000,000.	55% Max

#### New Jersey Estate Tax

AMOUNTS	EFFECTIVE TAX RATE
\$0 - \$675,000.	0%
\$675,000. - \$727,175.	37.0%
\$727,175. - \$900,000.	4.8%
\$900,000. - \$1,100,000.	5.6%
\$1,100,000. - \$1,600,000.	6.4%
\$1,600,000. - \$2,100,000.	7.2%
\$2,100,000. - \$2,600,000.	8.0%
\$2,600,000. - \$3,100,000.	8.8%
\$3,100,000. - \$3,600,000.	9.6%
\$3,600,000. - \$4,100,000.	10.4%
\$4,100,000. - \$5,100,000.	11.2%
\$5,100,000. - \$6,100,000.	12.0%
\$6,100,000. - \$7,100,000.	12.8%
\$7,100,000. - \$8,100,000.	13.6%
\$8,100,000. - \$9,100,000.	14.4%
\$9,100,000. - \$10,100,000.	15.2%
\$10,100,000. - And Above	16.0%

**A Married couple has Two Estate Tax Exemptions.** It is important that the available estate tax exemptions of *both* spouses be utilized. If a husband leaves his entire estate to his spouse, then the children would receive the benefit of only the wife's exemption. Proper planning is needed for your children to receive the benefit of *both* exemptions.

This is usually accomplished by using a "By-Pass Trust". The husband would leave part of his estate to a trust *for the benefit of* the surviving spouse, so that those assets will not be taxed in her estate. Using a "disclaimer" type of By-Pass Trust often provides maximum flexibility.

In order for this type of plan to be implemented, it is appropriate for each spouse to own half of the assets. As a general rule, having assets in joint names will result in the children's paying more Estate Taxes. Also, beneficiary designations on life insurance and retirement plans must be coordinated with the overall plan involving a By-Pass Trust. For example, even if a By-Pass Trust is provided in your will, if the surviving spouse is the beneficiary of the life insurance and retirement plans then possibly no assets would pass to the By-Pass Trust. The result could be unnecessarily high Estate Taxes being paid by the children.

**OTIP Trust.** In the case of a second marriage situation, you may wish to provide that your spouse have the use and benefit of assets for lifetime, but further provide that any remaining assets should pass to your children from your first marriage at the time of the death of your surviving spouse. A Marital QTIP Trust is frequently utilized for this purpose. It can be very broad or very restrictive, depending on your wishes.

**Medicaid Planning.** When drafting your Will, it is important to consider whether your beneficiary is qualifying for any Medicaid benefits. If you bequeath assets to your child, then he or she may lose qualification for such benefits. On the other hand, if assets are bequeathed to a properly drafted Trust for that child, then your child would still qualify for Medicaid.

**Review of Estate Plan Documents.** There are various reasons for having your estate plan documents reviewed periodically to ensure that they satisfy your current intentions.

**Change in Circumstances.** If your family circumstances have changed, such as by a divorce, death of a beneficiary, birth of a child, or substantial increase in the size of your estate, then your estate plan should be reviewed.

**Change in Law.** Federal and state estate tax laws change from time to time. These changes could have a significant affect on your estate plan. The New Jersey Estate Tax laws were changed in 2001. If your will was drafted prior to that time, then your estate could be subject to more estate tax than is necessary. It is especially important to review your Wills if they were drafted before 2001.

**Beneficiary Designations.** It is important that you review the beneficiary designations of your retirement plans and of your life insurance, so as to make sure that the designations are properly

coordinated with your overall estate plan. Beneficiary designations on any retirement accounts opened after your estate planning documents have been prepared are not always consistent with your plan. This is also true of beneficiary designations on new life insurance policies.

**Titling of Assets.** It is important that the titling of your assets be reviewed. Generally, spouses should not have all of your assets in joint names. It is usually better for each of the husband and wife to have separate individual accounts, in order to better effect the desired estate planning. As new assets are acquired, the titling should be coordinated with your estate plan.

**Periodic Review.** It is prudent in any event to review your estate plan approximately every three years.

**Power of Attorney.** It is important to have in place a Power of Attorney, which grants to another individual the power to handle your financial affairs in the event that you were incapacitated. There have been a few changes in the laws regarding Powers of Attorney in the last few years, and, even if you have a Power of Attorney, this should be periodically reviewed and updated.

**Gifting.** The annual gift tax exclusion is \$12,000. per person per year. If you are married, then this exemption is effectively doubled to \$24,000. per person per year. For example, if you have three children, and if each has a spouse and three children, then the total number of potential beneficiaries is 15. If you were to fully utilize the \$24,000. exclusion for each of those 15 beneficiaries, then the amount which can be gifted in each calendar year without any gift or estate tax consequences is \$360,000.

**Section 529 College Savings Plans.** You can make a contribution to a Section 529 Plan, and all future withdrawals would be exempt from income tax so long as the distributions are used for "qualified higher education expenses". You can use five years' worth of annual gift tax exclusion when gifts are made to a Section 529 Plan in a single year. The Section 529 account is flexible, in that you can change the beneficiary in the future.

**Converting a Traditional IRA to a Roth IRA.** A Roth IRA is an IRA which will never be subject to federal income taxes when it is withdrawn. There is no deduction for contributions to the Roth IRA, but the potential benefit of long-term tax-free growth and for ultimate tax-free withdrawal is extremely significant.

Generally you can convert your traditional IRA to a Roth IRA by paying the income tax on your IRA now. Although this may initially sound like a bad idea, an analysis shows that the long-term benefits can far outweigh the initial costs. After the conversion, all growth within the IRA would be tax-free. Under current law, a conversion is only permissible if your annual income is less than \$100,000; however, effective 2010, this limitation will not apply. A Roth conversion is an especially appealing technique if you are over age 70 and you do not use your IRA for day-to-day expenses.

**Spousal IRA Rollovers.** If a surviving spouse is the beneficiary of an IRA:

1. This is “good” for income tax purposes, because the surviving spouse can rollover the benefit into a “rollover IRA” and obtain maximum income tax deferral.
2. But, this is “bad” for estate tax purposes, because the IRA would then be taxed as part of the surviving spouse’s estate.

On the other hand, if a trust is the beneficiary of an IRA:

1. This is “bad” for income tax purposes, because trusts will usually pay a higher income tax than an individual would.
2. But, this is “good” for estate tax purposes, because all of those funds in the Trust would be excluded from the spouse’s taxable estate.

This is a subject which requires specific analysis in your individual circumstances; what is best for one person may not be best for another. Implementing the proper beneficiary designation for your retirement account is an extremely significant aspect of estate planning, especially if your retirement account constitutes a large percentage of your total assets.