
Estate Tax Uncertainty

On January 1, 2010, the federal estate tax vanished. Congress has considered numerous legislative bills to reinstate it. Despite wealthy billionaires like George Steinbrenner passing away, Congress continues to do nothing about reinstating the federal estate tax. The lack of a federal estate tax means that estate tax formulas in Wills and Revocable Trusts do not clearly define how much the Executor or Trustee must allocate to the tax-saving credit shelter trust and how much the Executor or Trustee must allocate to the marital gift or marital trust.

This problem with the federal estate tax formula only occurs if a person dies in 2010 when there is no federal estate tax. In 2011, the federal estate tax returns and the federal estate tax exemption becomes \$1 million.

Possible solutions include the following:

- (1) Fixing the formula to state that if you die during the year 2010, then for purposes of the estate tax formula, the federal estate tax in effect on December 31, 2009, is in effect at the time of your death. In that instance, the 2009 federal estate tax exemption of \$3.5 million would apply and up to that amount would pass to the tax-saving credit shelter trust. Any excess would go to the marital gift or marital trust.
- 2) Changing the formula to state that if you die during 2010, then a fixed amount will go to the tax-saving credit shelter trust (say \$2 million) and any excess will go to the marital gift or marital trust.
- (3) Switching to a Disclaimer Trust estate plan that allows your spouse to decide within 9 months after your death how much will go into the tax-saving Residuary Trust and how much the spouse will receive outright.

Please give us a call to set an appointment if your Will or Revocable Trust contains an estate tax formula.

Joseph A. Cipparone, Esq. CFP, wrote this article. This information is for general purposes only and does not constitute legal advice. No taxpayer can avoid tax penalties based on the advice given in this newsletter. For specific questions related to your situation, you should consult a qualified attorney.

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