Financial Planning Association of Sarasota Manatee

March 14, 2014

Estate Planning in 2014: A Good Time to Review Your Old Documents

Jeffrey T. Troiano

WILLIAMS PARKER

HARRISON DIETZ & GETZEN

200 South Orange Avenue | Sarasota FL 34236 | 941.329.6638 | jtroiano@williamsparker.com

Recent Changes to Law Impacting Estate Planning

1. Increase in equivalent exemption
2. Reunification of gift and estate tax
3. Portability
4. Increase in income tax rates

Increase in Equivalent Exemption Over Time

	Estate Tax Exemption Amount	Gift Tax Exemption Amount
2001	$675,000	$675,000
2002	$1,000,000	$1,000,000
2003	$1,000,000	$1,000,000
2004	$1,500,000	$1,000,000
2005	$1,500,000	$1,000,000
2006	$2,000,000	$1,000,000
2007	$2,000,000	$1,000,000
2008	$2,000,000	$1,000,000
2009	$3,500,000	$1,000,000
2010	Repealed	$1,000,000
2011	$5,000,000	$5,000,000
2012	$5,120,000	$5,120,000
2013	$5,250,000	$5,250,000
2014	$5,340,000	$5,340,000
2015 – beyond	?	?

Portability

1. First allowed in 2011.
2. Essentially involves the ability to transfer unused exemption from one spouse to another.
3. Only available if we file a 706 for the deceased spouse, even if not otherwise required (IRS permits simplified filing method).
4. Exemption amount can be utilized by surviving spouse through gifting.
5. Only available for unused exemption of last deceased spouse.

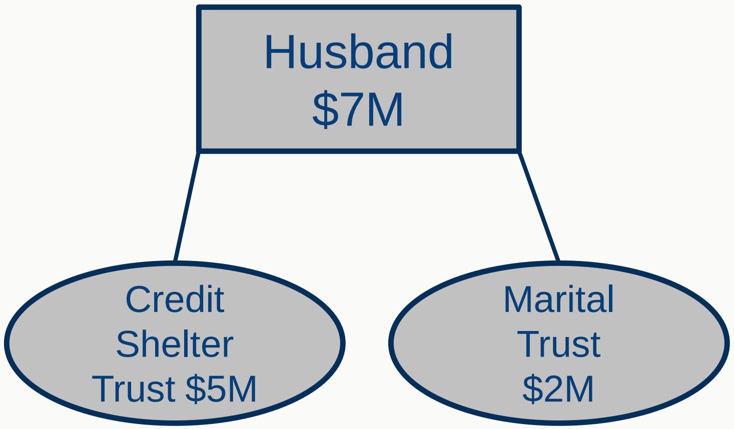
Estate Planning Factors to Analyze

1. Who are intended beneficiaries?
2. Was existing plan altered because of increase in exemption?
3. Is there a preference to lock up assets during surviving spouse's lifetime?
4. Does the preference to lock up assets override preference for increase in cost basis?
5. What is amount of net worth and is there possibility of large increase during remaining lifetime?

Traditional Credit Shelter Plan

Assumptions:

1. $7M in each spouse’s name
   (done because of estate planning advice)
2. $5M estate tax exemption
3. No lifetime gifting
4. Estate tax rate equals 40%
5. Husband predeceases wife



- No limitations on trust provisions – anyone can be a beneficiary

- All Income to spouse
- No distributions to anyone other than spouse during spouse’s lifetime
- Spouse has ability to make assets productive

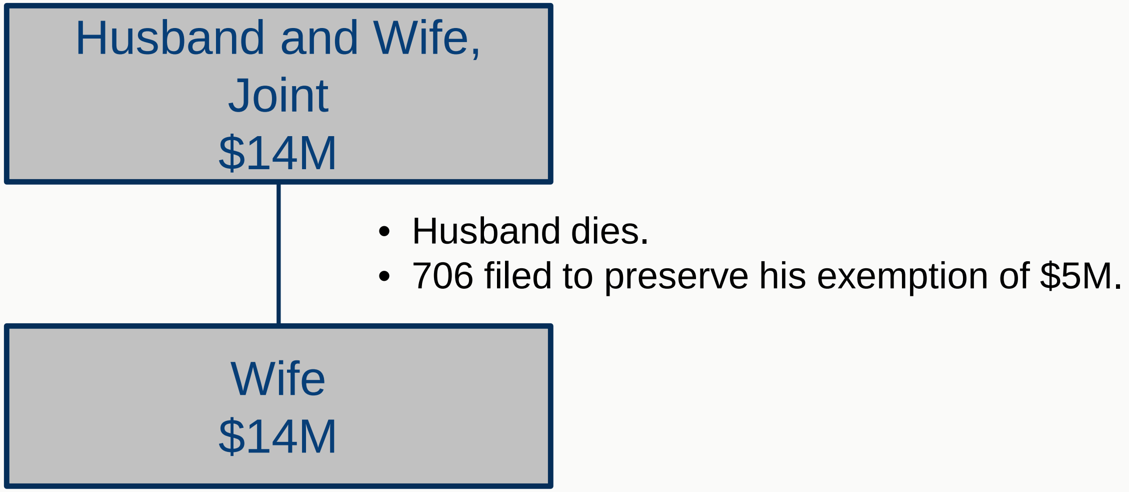
Traditional Plan (cont'd)

- At husband's death, marital deduction of $2M means no tax due.
- At wife's death, her assets ($7M + growth) and Marital Trust ($2M + growth) subject to estate tax.
- However, all of Credit Shelter Trust is exempt no matter how large it grows.
- Assuming assets double during surviving spouse's lifetime, then subject to tax of $5,200,000.

Wife's Assets	$14M
Marital Trust	$ 4M
Wife's Exemption	($5M)
Taxable Estate	$13M
Tax Rate	40%
Estate Tax	$5.2M

- However, $10M Credit Shelter Trust passes estate tax-free.
- Note that Credit Shelter Trust get no step-up in basis at wife's death.

Use of Portability in Plan



- At husband's death, marital deduction of $7M means no tax due and none of exemption was used.
- Under new law, wife can carry over husband's $5M exemption for use on her return.
- Assume assets double during lifetime of surviving spouse, subject to tax of $7,200,000.

Wife's Assets	$28M
Wife's Exemption	($5M)
Husband's Exemption	($5M)
Taxable Estate	$18M
Tax Rate	40%
Estate Tax	$7.2M

Use of Portability in Plan (cont'd)

- Increased tax of $2M arises solely from the growth of the Credit Shelter Trust during the surviving spouse's lifetime.

  $5M growth x 40% rate - $2M tax

  – Difference is because portability amount is locked in – no growth over time.

- Although we pay more estate tax, note that all assets received a step-up in basis at death of second spouse.
  – Trade Off

Use of Portability in Plan (cont'd)

- Client should also consider:
  1. Remarriage of surviving spouse
  2. Revision of surviving spouse's estate plan
  3. Creditor protection issues
  4. Basis issues

Smaller Clients

1. Do not make decisions based on estate tax considerations – focus on other factors.
2. Does client want to protect what the surviving spouse will do with the money? If so, trust may be the best option, but make this a trust that will be included in surviving spouse's estate to get basis increase.
3. Plan to make portability election only if it may be necessary at death of first spouse.

Middle Clients

1. Need to decide between use of Credit Shelter plan and "I Love You" (all to spouse) plan.
2. "I Love You" plan likely makes sense if:
   - Surviving spouse not expected to live long.
   - Surviving spouse expected to consume assets.
   - Family is nuclear.
   - Assets do not lend themselves to being in a trust.
   - Want basis step-up at second death.

Large Clients

1. Credit Shelter Trust plans likely make sense.
   - However, need to have discussion with client about loss of basis adjustment at second death.
2. Candidates for traditional estate tax savings techniques, such as GRATs, QPRTs, and ILITs.