

FICPA Gulf Coast Chapter Annual Meeting  
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**Trusts in an Era of Portability:  
The Not-so-Simple Analysis**

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# Increase in Equivalent Exemption Over Time

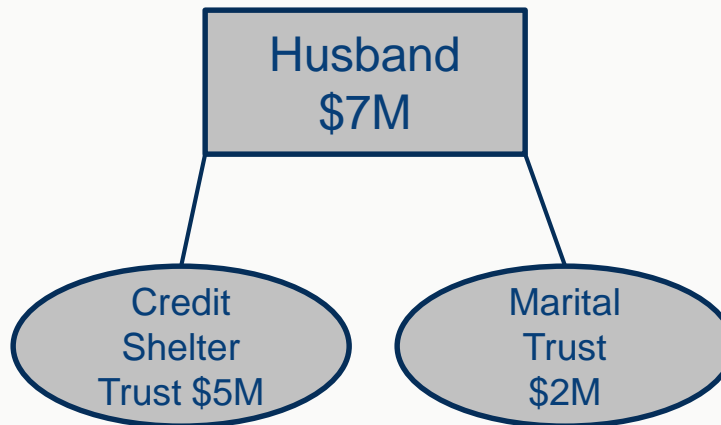
	Estate Tax Exemption Amount	Gift Tax Exemption Amount
2001	\$675,000	\$675,000
2002	\$1,000,000	\$1,000,000
2003	\$1,000,000	\$1,000,000
2004	\$1,500,000	\$1,000,000
2005	\$1,500,000	\$1,000,000
2006	\$2,000,000	\$1,000,000
2007	\$2,000,000	\$1,000,000
2008	\$2,000,000	\$1,000,000
2009	\$3,500,000	\$1,000,000
2010	Repealed	\$1,000,000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	?	?

# Traditional 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

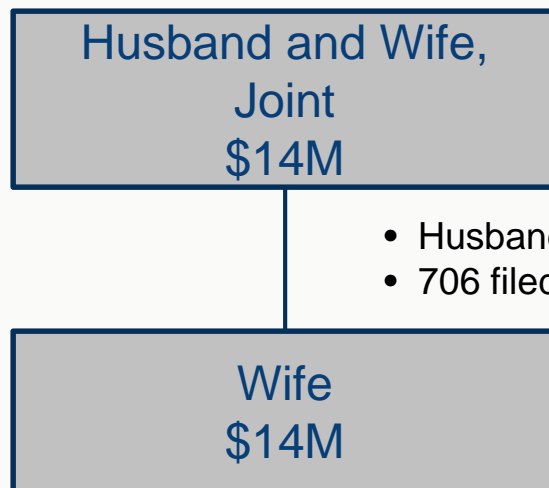
# Traditional Plan (cont'd)

- 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	<u>(\$5M)</u>
Taxable Estate	\$13M
Tax Rate	<u>40%</u>
Estate Tax	\$5.2M

- However, \$10M Credit Shelter Trust passes tax-free.

# Use of Portability in Plan



- Husband dies.
- 706 filed to preserve his exemption of \$5M.

- 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	<u>(\$5M)</u>
Taxable Estate	\$18M
Tax Rate	<u>40%</u>
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.

$\$5\text{M growth} \times 40\% \text{ rate} - \$2\text{M tax}$

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

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