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HAS CHANGE COME TO YOUR ESTATE PLAN?

By Randy Spiro

January 1, 2009 marks an unprecedented increase in the amount a person can die with and pay no estate taxes (the exemption) from \$2,000,000 to \$3,500,000. But if you have an A/B Trust or a QTIP Trust, you need to re-evaluate it in light of this historic change.

In A/B or QTIP Trusts, all or a portion of the first spouse to die's assets pass to an irrevocable trust and the Trustee (typically the surviving spouse) must segregate and re-title the assets among the trusts, must file annual tax returns for any irrevocable trust and will wind up owing a duty to the people who inherit when the spouse dies (typically the children) not to waste the assets of the irrevocable trust.

One reason the A/B or QTIP Trust was originally chosen was to protect the first spouse to die's exemption. That exemption may have been as low as \$600,000 when the Trust was first signed. Now that the exemption is reaching \$3,500,000, you may want to amend or re-state your Trust to a Disclaimer Trust.

In a Disclaimer Trust, the spouse who survives receives the first spouse to die's share of the assets with no restrictions, but has nine months within which to decide whether or not to exercise an option called disclaiming. If the option is exercised, the disclaimed assets pass to an irrevocable trust for the use (subject to restrictions) of the surviving spouse and the exemption of the first spouse to die is protected. If the option is not exercised, the surviving spouse owns all the assets and the first spouse to die's exemption is lost, but this may be fine with the surviving spouse if he or she believes his or her own exemption is big enough to shelter the entire estate from estate taxes.

You may not wish to switch to a plan which contains this option if your estate is in excess of \$3,500,000, if you have children by prior marriage, or if you have concerns about the surviving spouse re-marrying. But it is good to understand the Disclaimer Trust because it is too late to opt for one once one spouse has died or has become incapacitated.