

DEATH TAXES

I. Federal (U.S.) Taxes

A. Estate Tax

The federal estate tax applies to all assets owned by a decedent. It includes probate and non-probate property of all kinds. Most decedents' estates do not have to file a federal estate tax return because there is a "unified credit" available to every U.S. citizen. Sometimes it is referred to as a credit shelter amount or an exemption equivalent. Only if a decedent's estate is up to the threshold amount must a return be filed. If a return is due, it is due nine months from the date of death, if there is a tax, it is also due at that time.

Right now the tax law is nonsensical. The rest of this year the exempted amount is \$5,000,000. Next year it is slated to down to \$1,000,000. Most of us think the law will be changed, should be changed. But no one knows what the change will be. Most likely it will be well publicized when changed.

B. Generation Skipping Transfer Tax

There is a generation skipping transfer tax which provides a flat tax at the top rate of U.S. estate taxation on all non-exempt transfers which skip a generation.

A gift directly to a grandchild skips tax at the child's generation. A gift to a husband or wife for life, then to a child for life and then to the grandchildren, or to the child for life and then to the grandchild is a generation skipping transfer which can trigger the tax upon the death of the child.

Each U.S. citizen has an exemption which is nonsensical also. This year it is \$5,000,000 and next year is lowered to \$1,000,000. Let's wait and see what the new year brings.

The purpose of a trust for a child's life can be:

1. Management of investments if the child needs someone else to do the managing.
2. Save estate taxes, as just described.
3. Protect assets against a potential creditor of the child.
4. Make sure grandchildren receive the funds after the child's death.

C. IRA Taxation

Everything that comes out of a retirement plan or a traditional (nonRoth) IRA is taxable income. For income tax purposes, if a husband or wife or child survives and is the beneficiary of the spouse's/parent's IRA, the beneficiary can "roll over" the IRA into his or her own IRA and defer the income taxation on the asset until and as payments are made to her. This has the benefit of deferring income tax and also permitting further investment within the IRA on a tax deferred basis. Tax deferred because so long as the income and/or capital gains are received within the IRA, there is no income tax to be paid. The income tax must be paid as ordinary income when the IRA pays out to the beneficiary.

As with all other assets owned by a decedent, the interest in the retirement plan is an asset which is eligible to be taxed for federal estate tax purposes. It is also eligible to qualify for the marital deduction. But if a marital deduction trust is to be used, there are more requirements than for other "regular" kinds of assets.

D. Cost Basis

There is now a modified carryover basis rule relating to property received from decedents who die this year. this may be changed along with other parts of the law.

II. Ohio Estate Tax

Ohio has abolished the estate tax beginning in 2013. That is a strange way to handle a state deficit, but that is the way it is – for now.