

Estate Planning Update For New Jersey Residents 2009



GOOD NEWS/BAD NEWS

GOOD NEWS:

Federal estate tax exemption has now increased from \$675,000 in 2001 to \$3,500,000 for each individual and is expected to remain at that level indefinitely.

Interest rates for borrowers are at a historically low level.

BAD NEWS:

The stock market has fallen along with real estate values decimating investments portfolios and retirement funds.

The hoped for permanent repeal of the federal estate tax in 2010 will not happen in this political environment.

The federal estate tax rate begins at 45% on estates over \$3,500,000.

The New Jersey estate tax exemption has been 'frozen' at the 2001 level of \$675,000 and is likely to remain there because of the budget crisis.

WHAT YOU SHOULD DO NOW

If your will and trust arrangements have not been revised in the last two years, you should consider the following:

- 1 Married couples with combined wealth of less than \$3,500,000 may simply be out of the Federal Estate Tax system, even if the entire estate of the first spouse to die is left outright to the surviving spouse. Couples with combined wealth of more than \$3,500,000 may still incur Federal Estate Tax at 45% of that excess if the entire estate of the first to die passes outright to the survivor. Proper planning can easily and conveniently eliminate Federal Estate Tax for married couples with combined assets of \$7,000,000 or less.
- 2 Couples with combined wealth of less than \$675,000 will be out of the New Jersey Estate Tax system, even if the entire estate of the first spouse to die is left outright to the surviving spouse. Couples with combined wealth of more than \$675,000 will still incur New Jersey Estate Tax of \$33,200 on the excess up to \$1,000,000 and 8% or more above that level, if the entire estate of the first to die passes outright to the survivor. The major problem here is that planning that is intended to reduce or eliminate Federal Estate Tax may involve a trade-off of paying the New Jersey Estate Tax at the death of the first spouse in order to reduce or eliminate the Federal Estate Tax at the death of the second.

- 3 Couples who in the last few years have signed “disclaimer wills” (meaning wills where placing assets from the estate of the first to die in a trust for the surviving spouse is an option available to the surviving spouse) may find that their arrangements are adequate under the present tax laws, especially if their combined assets are less than \$7,000,000 and their assets are equally divided between them.
- 4 Couples who have signed wills with trust arrangements referred to as “credit shelter”, “bypass” or “family trust” determined by a formula should review and in many cases revise their arrangements for two major reasons: 1) A trust provision intended to prevent waste of the Federal Estate Tax exemption when it was smaller, say \$1,000,000, may result in having up to \$3,500,000 of the estate of the first to die unnecessarily ‘tied up’ in a trust for the surviving spouse when he or she could have been left that amount outright without any tax cost at his or her subsequent death. 2) The same arrangement can result in the payment of a large New Jersey Estate tax at the death of the first to die when that tax could have been deferred until the death of the second spouse, if not eliminated altogether.
- 5 You can determine whether your family or financial circumstances have changed significantly since you last reviewed your plan. The death or incapacity of a relative or of a designated executor, trustee or guardian, the birth of a child or grandchild, or the receipt of an inheritance all warrant a review of your estate planning, which may be all the more important because of the tax law matters described herein.
- 6 IRAs, 401(k) plans, life insurance and other arrangements are governed by beneficiary designations and may make up a significant part of your estate. They are not controlled by your will, but those beneficiary designations should be reviewed so that they are consistent with your estate plan. Life insurance can easily be placed in a trust that will escape Federal and New Jersey Estate Taxes.
- 7 Estate planning for IRAs, 401(k) plans, and other employment benefits involve both income and estate tax considerations. Usually having those benefits pass outright to the surviving spouse who can rollover the benefits and defer income tax, is the best choice. However, this must be often considered as part of an overall plan designed to reduce or eliminate estate taxes at the death of the surviving spouse.
- 8 Lifetime wealth transfer techniques involving the \$1,000,000 gift tax exemption benefit from the current low interest rate environment. We can discuss with you the advantages and techniques such as gifts to a grantor retained annuity trust, sales to intentionally defective grantor trusts, and gifts of interests in family limited partnerships and limited liability companies at discounted values. These could be of great benefit to you and your family.

We invite you to call and ask to speak with any of our Trust, Estate & Tax Group Attorneys.

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