

How do the recent major changes to the Federal estate tax laws affect estate tax planning for moderately wealthy and affluent married persons?

Because of the significant increase in estate and gift tax lifetime exemption amount (now \$5.34 million per person) and the making permanent of the "Portability" rule, persons of moderate or high net worth, particularly those who have in place separate husband and wife complex revocable trusts containing so-called "A/B Trust" provisions should review those existing trust agreements to determine whether to continue with A/B Trusts (and the inherent mandatory creation of an irrevocable Credit Shelter Trust ("CST") on the death of the first spouse to die) or to switch to a basic joint revocable trust.

Factors to consider:

Factors Favoring Joint Trust

Arguable obtainment of full "step up" in tax basis of all trust assets on first death through use of General Power of Appointment; if husband and wife are residents of MO the joint trust provides tenancy-by-the-entirety asset protection as a Qualified Spousal Trust; all assets are in one trust, simpler plan, etc.; if no CST then no:

- irrevocable trust at death of first spouse to die
- fiduciary duties to children owed by surviving spouse as trustee of CST
- limits on spousal access to trust corpus, as are otherwise required by CST
- separate tax returns for CST and high rate of tax on CST trust income;

if the CST is named as beneficiary of retirement plan accounts, lose ability to "stretch" out (i.e., further defer income taxes on) retirement plan accounts into beneficiary IRAs for children.

Factors Favoring Husband & Wife A/B Trusts

Congress may legislate portability away in the future; Congress may reduce lifetime exemption amount in the future; lose ability to exclude appreciation and income on CST from estate tax; lose creditor protection which is available through CST; lose assurance that remainder of CST flows to children of marriage; potentially subject CST amount to state estate taxes if MO/KS change laws; must timely file complete estate tax return on death of first spouse to die in order to elect and preserve portability; portability does not make Generation Skipping Tax ("GST") exemption portable; substantial expense and hassle associated with retitling assets from separate assets to joint trust (if assets titled in existing separate husband and wife trusts).



MARTIN | PRINGLE
ATTORNEYS AT LAW

Michael E. Griffin

Attorney

(913) 491-5500

megriffin@martinpringle.com