



## **WAITING TO SEE WHAT HAPPENS WITH THE ESTATE TAX - THE PERILS OF PROCRASTINATION**

It has almost been a year since Congress placed a two-year band aid on the estate tax and nothing further has been done to deal with the uncertainty over what law will be in effect at the end of 2012. To add to the uncertainty, we are well into another presidential election campaign and we are now seeing some candidates unveil their visions for alternative tax policies – from the “9-9-9 plan” to the flat tax, both of which would eliminate the estate tax.

Suppose you know that you need to do your estate planning, or update an old plan you already have, but you are frozen into inaction because of the uncertainty over the future of the federal estate tax. If you are waiting to see what happens in Congress over tax policy before tending to your estate planning, here are a few things you may want to bear in mind:

***For most people, estate taxes have very little, if any, impact on what they need to do with their estate plan.*** The primary objectives of estate planning are (1) making sure someone you trust will be able to manage and control your assets for the benefit of you and your family in the event that you become incapacitated; and (2) making sure that if you die, your property will pass to those you want to get it, in a way that will best benefit them. These are goals that everyone has, regardless of the tax consequences. So, if you fail to plan because you are waiting for Congress to resolve the uncertainty over the estate tax, you run the risk that your fundamental goals will not be achieved.

Here are the documents that are important to every estate plan, and the consequences of not having them in place if needed:

***Durable Power of Attorney:*** A power of attorney can designate and appoint someone you trust to act as your agent and manage your assets – bank accounts, investments, real estate, etc.- in the event that you are incapacitated. Without such a document (or, alternatively, a Revocable Living Trust, which is even better) your loved ones will be forced to institute guardianship proceedings – essentially a lawsuit in the Circuit Court, which will require two attorneys (one that they will have to hire and one the Court will appoint to represent you and make an independent investigation). This will take considerable time and involve considerable expense and aggravation.

***Last Will and Testament:*** If you die without a valid will, your estate will pass under the state laws of intestacy – the laws on the books that say who gets your property if you die without a will. The chances are very good that these laws do not correspond to your own wishes. Thus, your property may very well pass to unintended beneficiaries. The probate process will also be made more cumbersome in the absence of a will, and may result in increased costs, such as bond premiums and attorney’s fees.

***Trusts:*** Perhaps the primary task of an estate planning attorney is to design and establish the blueprints for proper trusts that will accomplish your goals. By failing to plan, you are missing the opportunity to fulfill your objectives in protecting your loved ones. Some examples of trusts that may be suitable for a given client are as follows:

***Trusts for minor children.*** These trusts form a set of instructions to a trusted person (the Trustee) to manage an inheritance that will pass to a minor child, so that the estate will be used to ensure the health, education, maintenance and support of the child until he or she completes college or reaches sufficient maturity.

***Trusts for “spendthrift” children.*** Just because children may have reached the age of majority doesn’t mean that they are responsible enough to own and control an inheritance. A properly structured trust can protect such a beneficiary from himself and make sure that the resources are properly applied for his benefit.

***Trusts to protect beneficiaries from failed marriages, lawsuits, creditors and bankruptcy.*** A big advantage to being pro-active in establishing an estate plan is the tremendous value that can be added to an inheritance by establishing a trust that forms a protective “wrapper” around the inheritance. Simply put, “money in a trust is more valuable than money in your pocket.”

***Marital Trusts,*** especially useful in “blended families” or second marriages, that ensure that, if one spouse dies, the surviving spouse will not disinherit the deceased spouse’s children. A properly structured trust can make sure that a spouse gets the support that he or she needs during lifetime, yet ensures that what is left goes to intended beneficiaries and not to strangers.

***Special Needs Trusts.*** For clients who have children with disabilities, the difference between planning and failing to plan can be devastating. Without a proper Special Needs Trust in place for such a beneficiary, the entire inheritance of such child could be exhausted in paying medical and support costs. With a proper trust in place, the inheritance can be used to supplement, not supplant, the public benefits that could cover those costs, and provide a much more enhanced standard of living for the beneficiary.

Note that ***none of the aforementioned trusts have anything to do with estate taxes,*** and all have purposes that are at the heart of what estate planning is all about.

So, the lesson is clear; there is no good reason why anyone should put off doing the important job of getting their estate planning in order just because the tax laws may (or may not) change. Don't let the stalemate in Congress over taxes keep you from taking the necessary estate planning steps to ensure your family's protection.

If you would like additional information about your particular situation, please feel free to contact us to arrange a Complimentary Initial Consultation by calling our office at (301) 428-3911 or contacting us via e-mail at [jhyatt@estateplanningmatters.com](mailto:jhyatt@estateplanningmatters.com).

Also, please visit our website at [www.estateplanningmatters.com](http://www.estateplanningmatters.com).



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