

2020 VISION – ESTATE PLANNING IN A NEW ENVIRONMENT

Estate planning documents, including Wills and Revocable Living Trusts, need to be updated from time to time given changes in a client's personal life, asset acquisition, and changes in tax laws. Although it would be nice if the documents we draft could withstand the tests of time, changes in the tax laws sometimes require us to re-evaluate the appropriateness of our client's documents and, where necessary, make changes.

In the last ten years, we have seen a change in the estate tax exemption amounts, both federally and statewide, as well as income tax implications of the distribution of certain assets. As a result of these new laws, it is especially important that our married clients review their Wills and Trusts and, depending on how they were previously designed, make appropriate changes. Many married couples will be happy to learn that they can make their documents simpler and more straightforward.

There are three recent major changes in the tax laws that affect many of our clients:

1. The Federal Estate Tax Exemption is now over \$11 million and the Maryland Estate Tax Exemption is now \$5 million.
2. The "portability" of a spouse's exemption under federal law, which allows surviving spouses to "port" a deceased spouse's unused estate tax exemption to be used in conjunction with their own estate tax exemption at death, is now a permanent law in Maryland as well; and
3. The SECURE Act was passed last year, causing all inherited IRAs or other retirement accounts to be paid out within ten years for a majority of beneficiaries.

First, with the Federal and Maryland Estate Tax Exemptions being as high as they are, the estate tax is not a threat to most people. Many married couples have old wills and trusts that contain outdated tax provisions that are not merely unnecessary but may actually be detrimental to the beneficiaries from a tax perspective. This detriment will be caused by most, if not all, of the assets being funneled to a trust that is created to avoid estate taxes upon the second spouse's death. As a result, the assets would not receive a step-up in basis. A step-up in basis eliminates all capital gains tax caused by a growth in the value of an asset. Normally, the assets in a person's taxable estate will receive a step-up in basis when they die, saving the beneficiary unnecessary taxes.

Second, the extension of the concept of portability to the Maryland estate tax has further limited the need for the more complicated provisions often included in older wills and trusts. As explained above, when one spouse dies, their unused estate tax exemption amount may be "ported" to be used in addition to the estate tax exemption amount that the surviving spouse has at the time of his or her death. This is simply done by filing an Estate Tax Return to preserve the deceased spouse's portability amount. Due to tax law changes, the Estate Tax Exemption amount may increase or decrease, but preserving a deceased spouse's Estate Tax Exemption while the Federal and Maryland Exemption amounts are as high as they currently are will ensure that upon the second spouse's death, an estate tax can be avoided.

Third, the passage of the SECURE Act significantly changed the rules that apply to inherited IRAs or other tax deferred retirement accounts. With limited exceptions, such accounts now must be paid out in their entirety within ten years of the participant's death, rather than allowing for tax-deferred withdrawals over the beneficiary's life expectancy. Consequently, proper planning must now include new approaches to providing for the income tax ramifications of large retirement accounts. Many older wills and trusts were drafted with so-called "conduit" provisions designed to spread withdrawals out over the beneficiary's life expectancy. With the limitations imposed under the SECURE Act, these provisions may cause unintended and undesired consequences.

As described above, changes in the tax laws present both dangers and opportunities. This is another reason why proper estate planning is so important. And for those prudent enough to have created an estate plan, it is critical that those documents be periodically reviewed and updated or modified as necessary.



© 2020 The Law Office of James A. Hyatt
13220 Executive Park Terrace, Germantown, MD 20874
(301) 540-3300
www.estateplanningmatters.com