

Estate Plans May No Longer Need Credit Shelter Trusts

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The **2012 Tax Relief Act** provides an exemption from federal estate tax of \$5,250,000 inflation indexed per spouse that is portable between spouses. If the first spouse to die does not use in whole or in part her or his exemption, the filing of a timely federal estate tax return in the estate of the first spouse to die allows the second spouse to tack on to her or his exemption the unused amount of the exemption of the first spouse to die. The second spouse to die could have an exemption from federal estate tax of as much as \$10,500,000 or greater as indexed for inflation.

A great number of estate plans drawn prior to the 2012 Tax Relief Act provide for the establishment of a credit shelter trust (CST) on the death of the first spouse to utilize in whole or in part the exemption of the first spouse to die. The portability of the exemption allowed under the 2012 Tax Relief Act may eliminate the need to establish a CST in the estate of the first spouse to die. However if the estate plan of the first spouse to die provides for a CST even if a CST is not necessary to save federal estate tax, the CST will still be established. To then eliminate the unnecessary CST, requires additional legal proceedings and costs.

For example, the combined gross estates of both spouses is \$6,000,000. If it is anticipated that upon the death of the second spouse that the value of the combined estates will be less than \$10,500,000, it is not necessary to establish a CST on the death of the first spouse. The respective estate plans of the spouses could provide that all of the assets pass outright to the surviving spouse on the death of the first spouse. The personal representative would timely file a federal estate tax return in the estate of the first spouse to die and no estate taxes would be owed. This allows the surviving spouse to tack on to her or his exemption the unused exemption of the first spouse to die so that the surviving spouse would have an exemption from federal estate tax of at least \$10,500,000.

In summary, we recommend that spouses have their estate plans updated to determine if it is necessary to establish a CST on the death of the first spouse. If a CST is not necessary, the estate plans of the spouses should be redrawn to eliminate the CST that will save the cost and expense of the CST.

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