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TWO THINGS CERTAIN®

November, 2013

IS MY TRUST PLAN ANTIQUATED?

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It seems as if Congress has become increasingly polarized on every issue that makes it to Capitol Hill. Their ferocious debates and apparent inability to come to any consensus makes it hard to believe our bicameral legislature is capable of passing laws at all. With that said, in recent years Congress has actually become quite adept at changing federal estate tax laws. The federal estate tax credit has changed 11 times over the last 17 years, with the lowest credit being \$600,000 in 1997. On January 1 of this year, Congress made another adjustment to our estate tax laws with the passage of the American Taxpayer Relief Act (ATRA) of 2012. The ATRA changed the individual estate tax credit to \$5,250,000 and is indexed for inflation for future years. Without ATRA, the resulting federal estate tax credit would have reverted back to \$1,000,000 per person.

Given the numerous changes to the laws in recent years, estate taxation should always be adequately discussed, just as all estate plans should address how to leave assets to the right beneficiaries in the right manner. Many older estate plans have provisions that create both an "A" sub-trust and a "B" sub-trust (also known as a Bypass trust) at the first spouse's death. At the first spouse's death sophisticated formulas were used to divide the estate into two sub-trusts to claim both spouses' estate tax credit. In some blended-family estate plans, the "B" sub-trust is not available for the surviving spouse, but rather distributes directly down to the children. The use of formulas to divide assets into two sub-trusts may be appropriate when the estate size is over an individual's estate tax credit amount, but is quite inefficient when a single spouse's credit will shield the entire estate from estate taxes. Unfortunately many people have failed to review and update their estate plans, thus leaving them out of date and inefficient.

Even with today's high estate tax credit numbers, most estate plans should still address estate taxes, should the credit amounts change in the future. In lieu of utilizing formulas to create both "A" and "B" sub-trusts at the first death, many current estate plans rely on the surviving spouse to take a "wait-and-see" approach. The "wait-and-see" approach is more technically known as a "disclaimer" trust provision. This plan allows the surviving spouse the flexibility to choose whether to fund the "B" sub-trust based on the estate size and tax laws at the time of the first spouses' death. The disclaimer approach is very efficient because it provides tax protection, if needed, but does not add unnecessary complexity at the first spouse's death. It should be noted

that disclaimer provisions are not always appropriate in blended families where the interests of second spouses may conflict with the stepchildren's interests at the first spouse's death.

Every estate plan should be periodically reviewed for its effectiveness with the current estate tax laws, as well as how the plan works with the current family dynamics. Simple updates and changes can be made to existing plans that benefit everyone by minimizing administrative hassles and expenses. Next Month, our trust clients should keep an eye out for an invitation to our TrustGuard client protection program. The TrustGuard program protects clients' plans by having an annual review meeting and adjustment for changes in the law or changes in family dynamics.



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About the Author:

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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