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The Impact of ATRA on Your Estate Plan

Considerations After 2013 Tax Law Changes

The American Taxpayer Relief Act ("ATRA") was signed into law on January 2, 2013 (please see the Farr Law Firm Newsletter Issue 1, January 2013). You may want to review your estate plan to see if you wish to make changes based on ATRA. First, ATRA reunified the estate tax exemption for lifetime giving and for assets passing at death. It provides a current exemption of $5,340,000, which is adjusted annually for inflation. ATRA also made permanent the concept of portability. In essence, portability allows a surviving spouse to receive the deceased spouse's unused exemption. In order to claim portability, an estate tax return (IRS Form 706) must be filed, upon the passing of the first spouse.

With any estate plan, one must first look to the intended goals for the distribution of the estate. The plan may be to distribute assets outright and free of trust to the individual's beneficiaries, a charity, or other organization. In an estate that has a complicated family dynamic, one may want to hold assets in trust for the named beneficiaries. Holding assets in trust would allow a person to have more control over when and how assets are distributed from the trust. After the initial goals are addressed, one must look to ATRA and the current estate plan to make sure goals are being met in the best and most efficient way.

Based on the traditionally low exemption amount, prior estate plans for a married couple typically revolved around a two-trust system. Prior to the option of portability, the two-trust system was the main way to ensure that each spouse's exemption amount was used. Generally, at the first spouse's passing, a credit shelter trust would be funded up to the amount of the estate tax exemption, and the remainder would pass either outright to the spouse or to a marital trust.

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Brett practices in the areas of estate planning, trust administration, wills, tax planning, elder law and real estate.

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One major downside to the two-trust system is that after the first spouse passes, the trust becomes irrevocable and must be administered under the Florida Trust Code. Under the Code, the trustee must notify contingent beneficiaries of the trust, provide them with a copy of the trust (if requested), furnish an annual accounting, and file annual income tax returns for the trust. Additionally, the surviving spouse's distributions from the trust are usually restricted to provide for their health, education, maintenance, and support.

One solution may be a joint family trust. In a family trust, the trust remains revocable and amendable until the passing of the second spouse. Additionally, after the first spouse passes, there is no need for a trust administration, and the surviving spouse does not have restrictions on the trust assets. If the total estate is greater than or could become greater than the surviving spouse's estate tax exemption, an estate tax return can be filed for the deceased spouse to claim portability for the deceased spouse's exemption amount.

Although estate planning is not a one-size fits all approach, if you have a two-trust estate plan this may be a good time to have your plan reviewed. If you have questions about your two-trust estate plan or any questions related to estate planning, you should speak with your estate planning attorney.

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