

ESTATE PLANNING FOR FLEXIBILITY: IMPORTANCE OF QUALIFIED DISCLAIMERS 2024

It is often said that the only things that are certain are death and taxes. However, we do not actually know when death will occur and we certainly cannot predict the impact of taxes as laws and regulations constantly are amended and changed. The federal estate tax exemption for individuals is 13,610,000 and a married couple could potentially double this exemption to 27,220,000. The Maryland estate tax exemption for individuals is only 5,000,000 and a married couple could potentially double this exemption 10,000,000. President Biden and Congress has proposed to significantly reduce the federal estate exemption. Also, by 2026, the federal estate tax exemption is scheduled to be reduced to pre-2018 amounts which will only be 5,500,000 per individual or 11,000,000 per married couple (with inflation adjustments). Therefore, the prospect of change and difference in exemptions gives rise to an important technique that is available to assist taxpayers plan for rising or potentially falling estate tax exemptions is the qualified disclaimer. Disclaimers are also useful to help plan for other general changes that may occur after the estate plan is implemented and death occurs.

Pursuant to the Internal Revenue Code, a qualified disclaimer is an irrevocable refusal to accept an interest in property. There are technical requirements that also must be followed to effectuate the qualified disclaimer which should be accomplished with the assistance of your advisor.

In particular, married couples may incorporate qualified disclaimers within their estate planning documents to achieve greater flexibility for the transfer of assets upon the first to die of the couple. Typically, to provide flexible estate tax planning, Wills or Trusts can be drafted providing that each spouse shall actually leave their entire estate to the other. After the death of the first spouse, the surviving spouse can disclaim all or a portion of the assets received as a result of the first spouse to die and these disclaimed assets could pass to a bypass/credit shelter trust that is designed to be held for the surviving spouse. The assets held in this bypass/credit shelter trust would not be included in the surviving spouse's taxable estate upon their death. By incorporating the qualified disclaimer with a bypass/credit shelter trust within the estate planning documents, the surviving spouse, with the assistance of their advisors, can analyze the estate tax situation that is applicable to their estate and determine whether or not, and by how much, to fund the bypass/credit shelter trust. See another Hot Topic on this website for more discussion of the importance of bypass/credit shelter trusts within estate plans.

Disclaimers may also be used to provide flexibility in estate planning for issues that are not related to estate taxation. Disclaimers may be used at the death of a decedent when the beneficiary cannot, or has no use, for the asset being transferred. Disclaimers can be used to disclaim assets away from beneficiaries who may have spendthrift type of issues relating to problems of managing their financial affairs properly. Sometimes disclaimers may be used for providing flexibility with the distribution of retirement assets upon death.