Marital Deduction Planning

July 24, 2014

The Educational Series
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Marital Deduction Planning
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I. The Exclusions from Transfer Taxes (Estate, Gift, and GST)

A. Exclusion equivalent - $5,340,000 (2014)

B. Annual exclusion - $14,000
   - Gifts of present interest
   - Outright
   - 2503(c) trust – minor’s trust
   - Crummey

C. Unlimited marital deduction
   - To U.S. citizen spouse

D. Unlimited Charitable deduction

II. Transfers Between U.S. Citizen Spouses

A. During lifetime – IRC 2523

B. At death – IRC 2056

C. Terminable Interest Rule

III. Non-Citizen Spouse Rules

A. No marital deduction

B. Annual exclusion - $145,000 (2014)

C. Qualified Domestic Trust (QDOT)

IV. Same Sex Couple Rules

A. If legally married under state (or foreign) law they are married for federal tax purposes

B. Legally married couple that moves to a state that does not recognize same sex marriage is still legally married

C. IRS does not recognize civil unions or domestic partnerships

V. Basis in Property Transferred Between Spouses

A. Lifetime transfers pass donor spouse’s basis to donee spouse.
B. Property included in the deceased spouse’s estate is stepped up (or down) based on value at DOD.

C. Jointly owned property generally receives a one half step up

D. Property transferred to the deceased spouse less than one year prior to death does not receive a step up if surviving spouse inherits

VI. Portability

A. Deceased spouse’s unused exemption can be “ported” to surviving spouse

B. Timely filed 706 is required – even if filing is not required (may create a conflict)

C. If surviving spouse remares two potential outcomes:
   o Second spouse dies – DSUE from the first spouse is lost
   o Surviving spouse predeceases second spouse - DSUE can be ported to second spouse

D. A B Trust planning no longer necessary – but probably still advisable

E. No portability for GST exemption

VII. Marital Deduction Disposition

A. Outright

B. General Power of Appointment (GPA) Marital Trust
   • Lifetime
   • Testamentary

C. Qualified Terminable Interest Property (QTIP) Trust
   • Exempt from the Terminable Interest rule
   • All income annually
   • No GPA
   • Surviving spouse is only beneficiary
   • May (not required) provide lifetime or testamentary LPA
   • May (not required) provide a 5x5 power
   • Deceased spouse names remainderman
   • PR qualifies some, none, or all of the QTIP for the marital deduction
   • The residue of that part qualified for the marital deduction must be included in the surviving spouse’s estate

VIII. Funding Formulas

A. Pecunary
   • Marital (Pre-Residuary)
Sample Language: “If my spouse survives me, the residue of my estate shall be divided into two shares, referred to as the “Marital Trust” and the “Exemption Trust.” The Marital Trust shall consist of the smallest pecuniary amount of my estate needed to qualify for the federal estate tax marital deduction to result in the least possible federal estate tax payable in respect of my estate less the sum of other items passing to or for the benefit of my Spouse other than by the terms of this paragraph that also qualify for the federal estate tax marital deduction. The Exemption Trust shall consist of the value of my residuary estate.

Calculation:

\[
\begin{align*}
\text{Value of (residual) estate} & \quad \text{\$14,500,000} \\
\text{Exemption equivalent} & \quad \text{5,340,000} \\
\text{Pecuniary Marital funding amount} & \quad \text{9,160,000}
\end{align*}
\]

Date of Funding Values

- Credit Shelter (Reverse Marital, Residual Marital)

Sample Language: “If my spouse survives me, the balance of my estate shall be divided into two parts, referred to as the “Marital Trust” and the “Exemption Trust.” The Exemption Trust shall consist of the largest pecuniary amount of my estate needed to result in the least possible federal estate tax payable in respect of my estate. My Trustee shall take into account all assets that are includible in my gross estate passing under this Will or otherwise and that do not qualify for the marital or charitable deduction. The Marital Trust shall consist of the value of my residuary estate.”

Calculation: Exemption Equivalent \(-\) 5,340,000

Date of Funding Values

B. Fractional

- Pro Rate

- Pick and Chose

Sample Language: “If my spouse survives me, my Trustee shall divide the balance of my estate into two parts, referred to as the “Marital Trust” and the “Exemption Trust.” The Marital Trust shall consist of the fractional share of my estate needed to qualify for the federal estate tax marital deduction to result in the least possible federal estate tax payable in respect of my estate (“The
Fraction”) calculated as follows: The numerator of the Fraction shall be the smallest amount that, if allowed as a federal estate tax marital deduction, would eliminate or reduce to the lowest possible amount the federal estate tax liability of my estate. This amount shall be calculated by taking into account my applicable exclusion amount (as defined in the Code), all amounts passing to or for the benefit to my Spouse other than by the terms of this paragraph that also qualify for the federal estate tax marital deduction, and all other credits or deductions, but only to the extent that state death taxes are not thereby increased. The denominator of the Fraction shall be the value of my residuary estate. The Exemption Trust shall consist of that portion of my estate not included in the Marital Trust.

• Calculation:
  
  Value of (residual) estate – $14,500,000
  Exemption equivalent – 5,340,000
  Marital funding amount – 9,160,000

  \[
  \frac{9,160,000}{14,500,000} = 63.17\% \\
  \frac{100.00}{100.00} - 63.17 = 36.83\% - Exemption Trust Percentage
  \]

• Date of Funding Values

C. Disclaimer

IX. Generation Skipping Transfer (GST) Tax Exemption Allocation

A. Credit Shelter Allocation
  • GST follows remaining Estate tax exemption

B. QTIP Allocation
  • QTIP is split
    o Exempt
    o Non-exempt
  • Language of the Exempt QTIP is focused on two or more generations below the transferor
  • Reverse QTIP Election
Curriculum Vitae

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Education

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Professional Experience

Recent
Pople Financial Consulting, Inc.
July 2012 - Present
Chief Operating Officer, Consulting and Training

Capital City Trust Company
November 1990 - June 30, 2012
President

Previous
Cannon Financial Institute
Partner
Consultant and Trainer to the Trust Industry

Wachovia Bank and Trust
Trust Officer

First Tennessee Bank
Trust Officer

Certifications

Certified Financial Planner
Accredited Estate Planner

Civic Organizations

Elder Care Services
Board Member and Past President

Gadsden Arts Center
Board Member

Tallahassee Regional Estate Planning Council
Member and Past President

Florida Bankers Association Trust Division
FBA Trust Banking Hall of Fame 2013
FBA Trust Banker of the Year 2005
FBA Trust School: Instructor 1990-present
Past Member of Executive Council and Past President

Tallahassee Community College Foundation
Past Board Member, Past Chair of the Investment Committee
I attended the Webinar on July 24, 2014 provided by Insurance Trust Monitor, entitled *Marital Deduction Planning*, and wish to receive Continuing Education Credit.

Designation(s) that I have: (please check all that apply)

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- CTFA – Certified Trust Financial Advisor

Name: __________________________________________

Email Address: ___________________________________

___________________________________

Signature  Date

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THANKS

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