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Federal Estate Tax

The **federal estate tax** is a tax imposed on the transfer of the "taxable estate" of a decedent. If an asset is left to a spouse or a charitable organization, the tax usually does not apply. In contemplating the federal estate tax, one begins with the "gross estate," from which certain deductions are allowed in arriving at the "taxable estate." There are also several credits against the tentative tax, such as the "unified credit," which essentially provides for an exemption from the federal estate tax. In 2009, the exempted amount was $3,500,000, and in 2010, there may be no federal estate tax, as Congress failed to take action prior to the beginning of the year. Given the possibility of a federal estate tax payment due upon death, as confirmed by the recent scuttle in Congress, a better understanding of the federal estate tax, starting with the concept of the "gross estate," is always advised in estate planning efforts.

The "gross estate" of a decedent is essentially the value of all property interests of the decedent at the time of death, together with other interests, such as the following:

the value of certain items of property in which the decedent had, at any time, made a transfer during the three years immediately preceding the date of death, other than certain gifts, and other than property sold for full value;
the value of certain property transferred by the decedent before death for which the decedent retained a "life estate" (the right to enjoy the benefits of ownership of property, during the lifetime of the decedent);
the value of certain property transferred by the decedent before death where the transfer was revocable;
the value of certain annuities;
the value of certain jointly owned property;
the value of certain "powers of appointment"; and
the amount of proceeds of certain life insurance policies.

Life insurance proceeds are generally included in the gross estate if the benefits are payable to the estate, or if the decedent was the owner of the life insurance policy or had any "incidents of ownership" over the life insurance policy (such as the power to change the beneficiary designation). Similarly, bank accounts or other financial instruments which are "payable on death" are usually included in the taxable estate.

Once the value of the "gross estate" is determined, certain deductions are available in arriving at the value of the "taxable estate." Deductions include things such as:

Funeral expenses, administration expenses, and claims against the estate;
Certain charitable contributions; and
Certain items of property left to the surviving spouse.

Attorney Spotlight

Joseph K. Koury, Esq., is a business lawyer who regularly drafts and reviews business agreements and documents for the personal and corporate clients whom he serves. He also maintains a commercial litigation practice for clients that require judicial action. Additionally, Mr. Koury maintains an estate planning and estate administration (probate) practice. He has a juris doctorate from Widener University School of Law and a master of laws in taxation from Villanova University. Before embarking on a commercial litigation practice with a midsize business law firm located within Wilmington, Delaware, he clerked for a trial judge sitting in the State of Delaware's Superior Court in and for New Castle County. Beginning in 2007, and coincidental with his association with OWM Law, Mr. Koury's practice became more transactional, and now his primary practice focus

Careful estate planning is something all readers should consider. Planning may allow structuring of a person's estate in a manner to reduce the possibility of imposition of the federal estate tax, as well as allow for greater use of available deductions.

Probate

Probate is the process of administering a deceased person's estate (the totality of a person's assets) by resolving claims and then distributing the deceased person's property under a qualified will. Contrary to popular thought, avoiding probate does not eliminate estate taxes. Under the federal estate tax law, included in the "taxable estate" of a decedent is property held in a living trust, life insurance, payable on death financial instruments, and other similarly-titled property. However, the use of trusts, where appropriate, can allow the possibility of reduction or elimination of the federal tax.

After probating a qualified Will, a personal representative will inventory and collect the decedent's property, then pay any debts and taxes, including the Pennsylvania Inheritance Tax (due in most circumstances), and possibly the federal estate tax, if the decedent's taxable estate exceeds the available credit. The personal representative then distributes the remaining property to beneficiaries, usually as instructed in the probated will. There are also time factors involved in filing and objecting to claims against the estate.

Some property may never enter probate because it passes to another person by contract, such as the property owned "with right of survivorship." Property held in a trust created during the grantor's lifetime also avoids probate. In these cases, no court oversight is involved, but the property is distributed subject to applicable federal estate and Pennsylvania inheritance taxes.

Beginning of Year Review Time

The beginning of the year is not only the time to start thinking about taxes, it also the time to make sure your estate plan is in order. It is a great time to review your Wills, Powers of Attorney, Life Insurance and Retirement accounts, to name a few things.

If revisions are needed you should contact your professional advisors, including your attorney, accountant and financial planner.

UPCOMING EVENTS

Read Legal Ease every other Sunday in the Pottstown Mercury.

See Legal Talk, brought to you by OWM, on PCTV, Tuesdays at 8:30 on Channel 28, and Thursdays at 9:30 p.m. on Channel 98, and also on our website at http://www.owmlaw.com/legal_talk/legal_talk.php.

David A. Megay, Esq., and James C. Kovaleski, Esq., speaking at SCORE business planning seminars on 1/10/11, 4/25/11, 9/12/11, and 11/7/11 (contact SCORE at 610-327-2673).

involves planning and drafting, although he also is available to address the dispute resolution needs of his clients. Mr. Koury is active in the communities which OWM Law serves, and he holds leadership positions on the Boards of various local nonprofit organizations. He is married and lives in northern Chester County with his wife and two daughters.

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