

TRUSTS & ESTATES ALERT

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2009 Higher Federal Estate Tax Exemption Impacts Connecticut Estate Taxes

If you are married and have accumulated some level of wealth, this Alert will be very relevant to you.

Beginning in 2009, under current law the federal estate tax exemption will be \$3,500,000, which means that if your taxable estate is \$3,500,000 or less, there will not be any federal estate tax. However, the Connecticut estate tax exemption, currently \$2,000,000, does not track the federal estate tax exemption; it will remain at \$2,000,000 even when the federal estate tax exemption is higher.

If your taxable estate exceeds the Connecticut estate tax exemption of \$2,000,000, even by \$1.00, then you lose the benefit of the entire Connecticut estate tax exemption, and Connecticut taxes your estate from dollar one. Exceeding this exemption by \$1.00 will cost your estate \$101,700 in Connecticut estate tax.

Thus, if you are married your estate planning documents probably provide, as most do, that a family trust for the benefit of your spouse and issue (also known as a credit shelter trust) up to the federal estate tax exemption amount be established, and that any assets in the trust over and above the federal exemption amount be allocated outright to the spouse or to a marital deduction trust at the time of your death if you predecease your spouse. Then, even though no federal estate tax will be payable upon your demise, a hefty Connecticut estate tax may be owing. This is causing “creeping palm disease” (moving to Florida).

This result can be avoided if your estate planning documents provide for a “Connecticut-only QTIP marital deduction trust,” which does not qualify for the federal marital deduction.

Thus, for example, if your taxable estate is over \$2,000,000, but not in excess of \$3,500,000, then your credit shelter trust can be \$2,000,000 (the amount of the Connecticut estate tax exemption), and a Connecticut marital deduction trust can be established for the excess over \$2,000,000 but not over \$3,500,000, resulting in no Connecticut estate tax payable. What remains of the Connecticut marital deduction trust at the time of the surviving spouse’s death will be includable in the surviving spouse’s death for Connecticut estate tax purposes.

If, in this example, the estate of the first spouse to die exceeded \$3,500,000, then there would be three trusts established; i.e., the credit shelter trust for \$2,000,000, the Connecticut QTIP marital deduction trust for \$1,500,000 and the federal marital deduction trust for the excess over \$3,500,000. This would result in no federal or Connecticut estate tax being payable. If, on the surviving spouse’s death, the spouse’s taxable estate (inclusive of the marital trusts) exceeds \$2,000,000, it will be subject to the Connecticut estate tax, and if it exceeds \$3,500,000, it will be subject to the federal estate tax.

In light of this, we would suggest that, if you are married and if your estate may likely exceed \$2,000,000, you contact one of the attorneys in our Trusts & Estates Department to discuss whether, and how, your estate planning documents should be changed to provide for this Connecticut QTIP marital deduction trust.