Using Trusts to Reduce Massachusetts Estate Taxes for Married Couples



In Massachusetts, if you pass away owning assets worth more than $2,000,000, your estate will likely owe Massachusetts estate tax. Fortunately, given a relatively recent change in the law, Massachusetts estate tax would only be paid on the amount over $2,000,000, as opposed to on the entire estate. Many people think that their estate is not valued at more than $2,000,000; however, it is very easy to reach this level of value when you consider that every asset you own is valued for estate tax purposes. The focus of this article will be on how married couples can use trusts to minimize, or possibly eliminate, the Massachusetts estate tax that would be due without this planning.

Under Massachusetts law, for deaths in 2024, there is no estate tax due so long as the decedent's estate is not valued at over $2,000,000. Moreover, there is no estate tax due when all assets are left to a surviving spouse, as there is an unlimited marital deduction that applies regardless of how much money one spouse leaves to another. The potential trap is that, upon the second death, when the surviving spouse is holding the entire estate, their estate will likely be taxed at a larger percentage. This is because the $2,000,000 Massachusetts estate tax exemption is not portable between spouses. When the second of the two spouses dies, their exemption is still only $2,000,000. A common estate planning technique to minimize, or possibly eliminate Massachusetts estate tax, is creating Credit Shelter Trusts, which would allow both spouses to pass up to $2,000,000 without paying estate tax.

As assets left outright to the surviving spouse would qualify for the marital deduction instead of using the estate tax exemption, it is necessary to use a system of trusts to cordon off the $2,000,000 exempt from tax in Massachusetts from the surviving spouse's direct and unfettered access. Thus, the surviving spouse is foregoing control of the assets held in their deceased spouse's trust in order to realize the goal of paying less or no estate tax when both spouses have passed away. Although the surviving spouse does not have unfettered access to the trust funds, they would have access according to the trust's rules.

Upon the passing of the first spouse to die, a sub-trust will hold the $2,000,000 exemption amount for Massachusetts purposes. With respect to the assets held in this trust, the income (money earned on trust assets) would automatically be distributed to the surviving spouse. The surviving spouse may also be given an annual "5 and 5" power that allows them to demand a distribution of 5% of the principal or $5,000, whichever is greater. In addition, should the surviving spouse require more monies to live in the manner they were accustomed to living when their spouse was alive, principal (trust assets) may be distributed at the trustee's discretion. A second sub-trust, for Massachusetts purposes, will include the remainder of the estate, meaning

any assets over and above $2,000,000. This trust will also provide the surviving spouse with all income and with principal distributed at the trustee's discretion, and again, the surviving spouse may be given the option to exercise a “5 and 5” power as described above. When the second spouse passes away, any monies in the first sub-trust ($2,000,000), as well as any growth, will not be taxed in their estate. Thus, the trust has made these monies available to the surviving spouse for their needs without giving that spouse the direct ownership that would cause inclusion in their estate for estate tax purposes when they pass away.

As the surviving spouse will interact extensively with the trustee of the trust following the death of the first spouse, it is very important to choose a successor trustee that will get along with the surviving spouse. The successor trustee may be the surviving spouse, but it is highly recommended that there be a co-trustee serving along with them, such that the surviving spouse can be insulated from participating in making discretionary distributions of principal. Very often, married couples choose to name their children as successor trustees to serve with or without the surviving spouse. When both spouses have died, the balance of the trust property would be distributed as set forth in the trust, usually outright to the married couple’s children or held in a continuing trust for their benefit.

A Credit Shelter Trust can also help to reduce or eliminate federal estate tax; however, for 2024 deaths, federal estate tax only impacts estates greater than $13,610,000. Couples with assets valued at $13,610,000 would also want to explore additional planning opportunities that are beyond the scope of this article. Any married couple wishing to take advantage of estate tax planning is encouraged to schedule an appointment with an attorney who works primarily in the area of estate planning. It is imperative that you plan now to avoid estate taxes later.

Gina M. Barry is a Partner with the law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Academy of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of Estate and Asset Protection Planning, Probate Administration, Guardianships, Conservatorships, and Residential Real Estate. Gina may be reached at (413) 781-0560 or GBarry@baconwilson.com.