

The New Estate Planning Dilemma – Using Portability or A Credit Shelter Trust

The estate planning landscape radically changed when the Tax Relief Act of 2010 drastically raised the exclusion amount to \$5,000,000 and authorized estates of decedents dying after 2010 to elect to transfer any unused exclusion to the surviving spouse. .

In the past, with lower estate exclusion amounts, a common estate plan had the decedent's assets going to a credit shelter or bypass trust, thereby maximizing the use of the decedent's estate exclusion.

In 2014, with portability, higher income tax rates and the Net Investment Income Tax (NIIT), there are additional reasons to leave assets to the surviving spouse and elect portability instead of doing traditional planning using a credit shelter trust.

In doing estate planning, each person's situation is unique and many important considerations are not related to taxes. Using the chart below is one way to discuss these two options with our clients.

<u>Portability vs</u>	<u>Credit Trust</u>
Step-up in basis at both deaths	Lack of basis step-up at second death
Cost of filing 706 estate tax return	May save cost of filing 706 estate tax return
Save cost of "B" Trust Administration: <ul style="list-style-type: none"> • No annual trust income tax (1041/141) returns • No annual accounting requirements • No trust level taxation 	Cost of "B" Trust Administration: <ul style="list-style-type: none"> • Annual trust income tax (1041/141) returns • Annual accounting requirements • Compressed tax brackets and potential high tax rates
Lacks family and remarriage protection	Family and remarriage protection
Lacks surviving spouse asset protection	Surviving spouse asset protection

Both ported assets and their appreciation are subject to estate tax at second death	"B" Trust assets and their appreciation are estate tax free at second death
Lacks blended family and child protection	Blended family and child protection
Revocability of Trust	Irrevocability of Trust

As laws change and our clients' needs evolve, taking a second look at old estate plans may lead to an opportunity to help them using new solutions.

Melinda Nelson, CPA
Senior Tax Manager
Henry & Horne, LLP
2055 E Warner Road Suite 101
Tempe, Arizona 85284
480-839-4900
melindan@hhcpa.com