



WASTE NOT, WANT NOT



Some cause happiness wherever they go; others, whenever they go.

— Oscar Wilde

Almost since the days of Adam and Eve married couples have often failed to use all of each spouse's estate tax exemption. The current estate tax exemption amount is \$2 million and will increase to \$3.5 million in 2009. Of course, the exemption amount is the figure each of us can pass estate tax-free to others

Regardless of the amount of the exemption, it is a shame (and expensive!) to waste any of it. But couples often do unintentionally waste their exemption by holding assets in joint tenancy or by having insufficient assets in each spouse's revocable trust. It can be difficult to allocate assets between spouses and their separate trusts - which spouse's trust should own what asset?

The following example about Adam and Eve may be helpful. Adam has a \$2 million IRA, and Eve has a total of \$2 million in savings and in the couple's home equity. If Adam predeceases Eve, she will inherit his IRA.

Admittedly, depending on their ages, that is probably a good income tax result because Eve may be able to defer paying income taxes on the IRA until after her 70 1/2 birthday. However, because the IRA did not pass to Adam's revocable living trust, his \$2 million estate tax exemption is wasted. (If the IRA did go to Adam's trust, Eve would probably end up paying more income taxes sooner than she would like.)

So when Eve eventually passes, she will pay estate tax on her \$2 million in assets plus the remaining amount of the \$2 million IRA she took from Adam. The estate tax paid on \$4 million is about \$920,000. The estate tax that would have been paid if Adam had used his exemption would have been zero.

One possible solution to this situation is to have Eve grant Adam a "general power of appointment" over her assets. The effect of this would be that at

the instant of Adam's passing his IRA would still go to Eve, but her \$2 million in assets would pass to Adam's trust.

Adam would then have Eve's assets to finally use his \$2 million estate tax exemption. On Eve's subsequent death, she only has the IRA assets in her name, which are covered by her exemption. This saves \$920,000 in estate taxes and still protects Eve.

Other couples that could use this new technique might include those that have spouses that cannot have assets in their own name for whatever reason (business ownership, spendthrift, personal liability, second marriages, etc.).

Married couples should investigate this new idea if each spouse does not have assets in excess of the estate tax exemption amount. This issue becomes ever more important as the exemption amount rises and may be a powerful solution to the expensive problem of wasted estate tax exemption.



James Napier, now a beefy 55 pounds, completes the Kids Chicago Triathlon.