

TAX PLANNING FOR COUPLES

Spouses, who are US citizens, may transfer unlimited amounts of wealth to each other free of all gift and estate taxes. [For the rules regarding transfers to spouses who are not US citizens, see the tutorial *Planning for the Non-Citizen Spouse*.] In addition, each person may transfer up to \$2 million free of all federal estate taxes to non-spousal beneficiaries. This is called the “applicable exclusion amount.” [See the tutorial *Federal Estate, Gift and Generation Skipping Transfer Taxes*.]

Therefore, one of the most important aspects of planning for a couple is taking full advantage of the applicable exclusion amount available to both spouses. By doing so, the couple may transfer up to \$4 million free of all federal estate taxes.

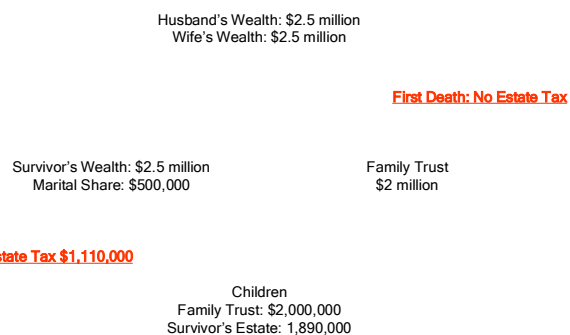


This is generally accomplished by first making sure that each spouse owns sufficient assets. It may be necessary for the wealthier spouse to give some of his or her wealth to the other spouse unless there are compelling non-tax reasons not to do so. This can be accomplished with either outright gifts or with what is called a QTIP Trust. More on that later.

Then, the plan should provide that on the death of the first spouse, the decedent’s estate (up to the decedent’s applicable exemption amount) is distributed to a trust for the lifetime benefit of the surviving spouse or for the joint benefit of the surviving spouse and children, often called a Family Trust. Assets in excess of the applicable exemption amount are either distributed outright to the surviving spouse as a marital share or to a QTIP Trust for the benefit of the surviving spouse. On the death of the second spouse, all remaining assets are distributed to the children.

A QTIP Trust is a trust which qualifies as a tax-free transfer to a spouse and is included in the spouse’s estate for estate tax purposes. The spouse receives all of the income from the trust and may also be entitled to receive principal for additional support, but the spouse has no control over the ultimate distribution of the trust assets when he or she dies. This type of trust is most often used in second marriage situations where, for example, one spouse may wish to provide support to his or her surviving spouse during lifetime but also wants to make sure that on the second spouse’s death, the remaining assets are distributed to children of a prior marriage.

Although there are variations on the theme, a plan which takes advantage of the applicable exemption amount of both spouses might look something like this diagram.



Because of the unique circumstances of each family, the final plan is likely to have many nuances but the basic structure for taking advantage of the applicable exemption amount available to both spouses will have this basic foundation.