"Get Smart About Your Estate Plan"
By: Peter L. Lese, Esq.

PREFACE

"Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."

Judge Learned Hand in Helvering v. Gregory, 69 F.2d 809 (2d Cir. 1934).

"Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor, and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant."

Judge Learned Hand (dissenting) in Commissioner of Internal Revenue v. Newman, 159 F.2d 848 (2d Cir. 1947).

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A.
OVERVIEW OF THE ESTATE TAX PROVISIONS OF THE AMERICAN TAXPAYER RELIEF ACT OF 2012

UNDER THE AMERICAN TAXPAYER RELIEF ACT OF 2012, THE FEDERAL ESTATE AND GIFT TAX EXEMPTION REMAINED AT $5,000,000, ADJUSTED FOR INFLATION (I.E., NO CHANGE FROM 2012, OTHER THAN THE INFLATION ADJUSTMENT).

FOR 2013, THE EXEMPTION AMOUNT IS $5,250,000 (up from $5,120,000 IN 2012).

THE PORTABILITY ELECTION BETWEEN OPPOSITE SEX SPOUSES REMAINS IN EFFECT.

AN OPPOSITE SEX COUPLE HAS A COMBINED ESTATE TAX EXEMPTION OF $10,500,000 IN 2013.

THE MAXIMUM ESTATE AND GIFT TAX RATE WAS INCREASED TO 40 PERCENT (FROM 35 PERCENT IN 2012).

THE GENERATION-SKIPPING TRANSFER TAX EXEMPTION (THE AMOUNT THAT MAY BE PASSED TAX-FREE TO GRANDCHILDREN AND MORE REMOTE DESCENDANTS) IS ALSO $5,250,000, ADJUSTED FOR INFLATION.

I.
HOW DOES THE AMERICAN TAXPAYER RELIEF ACT OF 2012 AFFECT MY ABILITY TO PASS WEALTH TO MY CHILDREN OR GRANDCHILDREN?

WITH A $5,250,000 EXEMPTION AMOUNT ($10,500,000 FOR OPPOSITE SEX COUPLES), VERY FEW PEOPLE WILL BE AFFECTED BY THE FEDERAL ESTATE TAX.

FOR RESIDENTS OF NEW YORK, NEW JERSEY OR CONNECTICUT, THE STATE ESTATE TAX EXEMPTION IS MUCH LOWER THAN THE FEDERAL EXEMPTION.

FOR A PERSON WITH AN ESTATE OF MORE THAN $5,250,000 ($10,500,000 FOR OPPOSITE SEX COUPLES), TECHNIQUES TO REDUCE THE IMPACT OF THE FEDERAL ESTATE TAX INCLUDE:

- ANNUAL EXCLUSION GIFTS
- LIFE INSURANCE TRUSTS
- GRANTOR RETAINED ANNUITY TRUSTS (GRATs)
- QUALIFIED PERSONAL RESIDENCE TRUSTS (QPRTs)
- SALES OR GIFTS TO FAMILY LIMITED PARTNERSHIPS (FLPs) AND FAMILY LIMITED LIABILITY COMPANIES (FLLCs)

II.
HOW CAN I REDUCE STATE (NEW YORK, NEW JERSEY OR CONNECTICUT) ESTATE TAXES PAYABLE AT MY DEATH?

THE NEW YORK, NEW JERSEY AND CONNECTICUT ESTATE TAX EXEMPTION AMOUNTS ARE MUCH LOWER THAN THE FEDERAL EXEMPTION AMOUNT, BUT THE TAX RATES ARE MUCH LOWER. THEY ARE:

STATE	EXEMPTION	MAXIMUM RATE
NEW YORK	$1,000,000	16 PERCENT
NEW JERSEY	$675,000	16 PERCENT
CONNECTICUT	$2,000,000	12 PERCENT

THE STATE EXEMPTION AMOUNTS ARE NOT ADJUSTED FOR INFLATION, AND THERE IS NO PORTABILITY BETWEEN SPOUSES.

WITHOUT PORTABILITY, IN MANY CASES, MARRIED COUPLES WILL NEED TO INCLUDE A TRUST, COMMONLY KNOWN AS A CREDIT SHELTER OR BY-PASS TRUST, IN THEIR WILLS TO AVOID WASTING THE UNUSED EXEMPTION AMOUNT OF THE FIRST SPOUSE TO DIE.

ALSO, MARRIED COUPLES WILL NEED TO DIVIDE THEIR ASSETS IN SUCH A WAY SO THAT EACH OF THEM HOLDS PROPERTY EQUAL TO OR GREATER THAN THE STATE EXEMPTION AMOUNT (I.E., $1,000,000 IN NEW YORK STATE) SO THAT THERE WILL BE SUFFICIENT ASSETS TO FULLY FUND THE CREDIT SHELTER TRUSTS IN THEIR WILLS.

EXAMPLE: A MARRIED COUPLE RESIDING IN NEW YORK HAS COMBINED ASSETS OF $2,000,000.

SCENARIO 1: WHEN THE FIRST SPOUSE DIES, HE OR SHE LEAVES EVERYTHING TO THE SURVIVING SPOUSE OUTRIGHT (NO TRUSTS). WHEN THE SECOND SPOUSE DIES THERE IS A TAXABLE ESTATE OF $2,000,000. THE NEW YORK ESTATE TAX IS $99,600.

SCENARIO 2: EACH SPOUSE INCLUDES A CREDIT SHELTER TRUST IN HIS OR HER WILL AND THEY EACH HOLD ASSETS WORTH $1,000,000. WHEN THE FIRST SPOUSE DIES, THE CREDIT SHELTER TRUST IS FUNDED WITH THE MAXIMUM AMOUNT THAT MAY PASS TAX-FREE TO A NON-SPOUSE BENEFICIARY ($1,000,000). WHEN THE SECOND SPOUSE DIES, THE PROPERTY IN THE TRUST PASSES OUTSIDE THE TAXABLE ESTATE OF THE SECOND TO DIE. IN THIS WAY, THE EXEMPTION OF THE FIRST SPOUSE TO DIE IS PRESERVED AND NOT WASTED. THE TAXABLE ESTATE OF THE SECOND SPOUSE TO DIE IS $1,000,000. THERE IS NO NEW YORK STATE ESTATE TAX PAYABLE. TAX SAVINGS: $99,600.

THE FOLLOWING STEPS SHOULD BE CONSIDERED IN ORDER TO REDUCE THE STATE ESTATE TAX PAYABLE AT ONE'S DEATH:

- IF YOU ARE MARRIED, YOU AND YOUR SPOUSE SHOULD EACH INCLUDE A CREDIT SHELTER TRUST PROVISION (OR DISCLAIMER TRUST PROVISION) IN YOUR WILL AND YOU SHOULD EACH HOLD ASSETS WORTH AT LEAST $1 MILLION SO THAT THE SURVIVING SPOUSE CAN FUND THE TRUST AFTER THE DEATH OF THE FIRST SPOUSE TO DIE.
- MAKE LIFETIME GIFTS TO REDUCE THE SIZE OF THE TAXABLE ESTATE, IF PRACTICAL (BUT BEWARE OF POSSIBLE INCREASED CAPITAL GAINS TAX IF THE GIFTED PROPERTY IS APPRECIATED PROPERTY SUCH AS A RESIDENCE OR SECURITIES – SEE ILLUSTRATION A).
- CONSIDER INCLUDING AN UNLIMITED GIFT-GIVING PROVISION IN YOUR POWER-OF-ATTORNEY TO ENABLE THE AGENT TO MAKE "DEATHBED" GIFTS TO REDUCE THE SIZE OF THE TAXABLE ESTATE.

III.
WHAT IS THE BEST WAY TO PLAN MY CHARITABLE GIFTS TO MAXIMIZE THE ESTATE AND INCOME TAX SAVINGS FOR ME AND MY FAMILY?

ASSETS THAT ARE PAID TO TAX-EXEMPT CHARITABLE ORGANIZATIONS QUALIFY FOR THE CHARITABLE DEDUCTION FOR FEDERAL AND STATE ESTATE TAX PURPOSES. THUS, SUCH GIFTS WILL PASS TAX-FREE TO THE CHARITABLE BENEFICIARY.

LIFETIME CHARITABLE GIFTS HAVE THE ADDED BENEFIT THAT THE DONOR RECEIVES AN IMMEDIATE INCOME TAX CHARITABLE DEDUCTION, SUBJECT TO CERTAIN LIMITATIONS.

FROM A TAX STANDPOINT, THE BEST ASSET TO GIVE TO CHARITY IS A HIGHLY TAXED ASSET SUCH AS AN INDIVIDUAL RETIREMENT ACCOUNT (OTHER THAN A ROTH IRA). BECAUSE THESE ASSETS ARE SUBJECT TO BOTH ESTATE AND INCOME TAXES, THE AFTER-TAX "COST" OF GIVING THESE ASSETS TO CHARITY IS RELATIVELY SMALL.

EXAMPLE: TAXPAYER IS A NEW YORK RESIDENT OWNING A $1,000,000 IRA. IF THE TAXPAYER LEAVES THE IRA TO HIS OR HER CHILDREN, THERE WILL BE NEW YORK ESTATE TAX TO PAY (MAXIMUM OF 16 PERCENT, OR $160,000). IN ADDITION, AS THE IRA IS PAID OUT TO THE CHILDREN, THEY WILL PAY INCOME TAX ON THE PAYMENTS. ASSUMING A COMBINED FEDERAL, STATE AND CITY INCOME TAX RATE OF 40 PERCENT, THE INCOME TAX PAYABLE IS $400,000 (40 PERCENT X $1,000,000). AFTER PAYING ESTATE AND INCOME TAXES, THE NET AMOUNT AVAILABLE FOR DISTRIBUTION TO THE CHILDREN IS $440,000 ($1,000,000 - $160,000 - $400,000). THUS, THE EFFECTIVE TAX RATE ON THE IRA FOR BOTH ESTATE AND INCOME TAXES IS 56 PERCENT ($160,000+$400,000/$1,000,000). IF THE SAME IRA IS LEFT TO A QUALIFIED TAX-

EXEMPT CHARITY, THE CHARITY WILL RECEIVE THE FULL $1,000,000 AND THE AFTER-TAX "COST" TO THE CHILDREN IS $440,000.

CHARITABLE GIFTING TECHNIQUES ARE GENERALLY DESIGNED TO ENABLE THE TAXPAYER TO OBTAIN AN IMMEDIATE INCOME TAX CHARITABLE DEDUCTION WHILE RETAINING SOME OF THE BENEFITS OF PROPERTY OWNERSHIP (EITHER CONTROLLING WHICH CHARITY WILL RECEIVE THE PROPERTY OR RECEIVING SOME MONETARY BENEFITS). THESE INCLUDE:

- CHARITABLE REMAINDER TRUSTS
- CHARITABLE LEAD TRUSTS
- CHARITABLE GIFT ANNUITIES
- PRIVATE FOUNDATIONS OR DONOR-ADVISED FUNDS

IV.
HOW CAN I PROTECT MY CHILDREN TO ENSURE THAT THEIR INHERITANCE IS NOT LOST TO AN EX-SPOUSE IN THE EVENT OF DIVORCE?

IN NEW YORK STATE, INHERITED WEALTH IS NOT CONSIDERED PART OF THE MARITAL ESTATE IN THE EVENT OF DIVORCE (I.E., IT IS NOT SUBJECT TO EQUITABLE DISTRIBUTION). NEVERTHELESS, MANY CHILDREN WILL FAIL TO KEEP THEIR INHERITED ASSETS SEPARATE FROM THE ASSETS THAT THEY EARN DURING THE MARRIAGE. THIS MAY CAUSE THE INHERITED ASSETS TO BECOME "TAINTED" SO THAT THEY ARE NO LONGER PROTECTED IN THE EVENT OF DIVORCE. FOR THIS REASON, TRUSTS ARE OFTEN CREATED FOR CHILDREN TO PROTECT THE INHERITED ASSETS.

TO PROVIDE MAXIMUM PROTECTION FOR THE CHILD, THE TRUSTEE OF THE CHILD'S TRUST SHOULD HAVE COMPLETE DISCRETION TO ACCUMULATE OR DISTRIBUTE INCOME OR PRINCIPAL.

TRUSTS CAN SERVE OTHER USEFUL PURPOSES, INCLUDING PROTECTING THE ASSETS IN THE TRUST FROM THE CHILD'S CREDITORS. ALSO, BY HAVING A TRUSTEE TO OVERSEE THE INVESTMENTS, THE TRUST PROPERTY IS PROTECTED FROM THE CHILD'S OWN LACK OF EXPERIENCE IN FINANCIAL MATTERS.

V.
WHAT DOCUMENTS SHOULD I HAVE IN PLACE TO PROVIDE FOR MY POSSIBLE INCAPACITY?

- DURABLE POWER OF ATTORNEY
- HEALTH CARE PROXY
- LIVING WILL

A DURABLE POWER OF ATTORNEY APPOINTS AN AGENT WHO IS AUTHORIZED TO MAKE FINANCIAL DECISIONS IF THE PRINCIPAL BECOMES INCAPACITATED. ALTHOUGH A POWER OF ATTORNEY IS USUALLY ADEQUATE TO COVER FINANCIAL MATTERS, SOME PEOPLE WISH TO HAVE A REVOCABLE TRUST AS WELL. A REVOCABLE TRUST CAN BE TAILORED TO THE SPECIFIC FAMILY SITUATION SO THAT IT IS A MORE COMPLETE WAY TO HANDLE INCAPACITY THAN A POWER OF ATTORNEY.

WITHOUT A POWER OF ATTORNEY OR REVOCABLE TRUST, IN THE EVENT OF INCAPACITY, IT WILL BE NECESSARY TO HAVE A GUARDIAN APPOINTED BY THE COURT TO MANAGE THE FINANCIAL AFFAIRS OF THE INCAPACITATED PERSON. THIS IS COSTLY AND TIME-CONSUMING BECAUSE THE COURT WILL BE INVOLVED IN EVERY ASPECT OF THE FINANCIAL MANAGEMENT OF THE INCAPACITATED PERSON'S ASSETS.

A HEALTH CARE PROXY APPOINTS AN AGENT TO MAKE HEALTH CARE DECISIONS IF THE PRINCIPAL BECOMES INCAPACITATED AND CANNOT COMMUNICATE HIS OR HER WISHES DIRECTLY. IN NEW YORK STATE, IF THERE IS NO HEALTH CARE PROXY, STATE LAW DETERMINES WHO CAN MAKE HEALTH CARE DECISIONS FOR THE PRINCIPAL IN THE EVENT OF INCAPACITY.

A LIVING WILL IS A STATEMENT OF THE PERSON'S PHILOSOPHY ABOUT DEATH AND DYING, AND IT USUALLY STATES THAT, UNDER CERTAIN CIRCUMSTANCES, HE OR SHE WISHES TO BE ALLOWED TO DIE NATURALLY WITHOUT THE USE OF HEROIC MEASURES TO KEEP HIM OR HER ALIVE INDEFINITELY.

VI.
WHAT IS THE BEST WAY TO HOLD MY ASSETS SO THAT THEY PASS TO THE PERSONS I INTENDED WITH MINIMAL COST AND INCONVENIENCE?

JOINT ACCOUNTS, PAYABLE ON DEATH ACCOUNTS, TRANSFER ON DEATH ACCOUNTS AND SIMILAR ARRANGEMENTS CAN BE USED TO TRANSFER ASSETS AT ONE'S DEATH WITHOUT PASSING THROUGH A WILL. THESE ARRANGEMENTS DO NOT SAVE ON ESTATE TAXES.

ALTHOUGH THESE ARRANGEMENTS ARE SIMPLE AND CONVENIENT, THEY DO NOT PROVIDE THE FLEXIBILITY OF A WILL. FOR EXAMPLE, A WILL OR TRUST AGREEMENT IS REQUIRED IF YOU WANT THE ASSETS TO PASS TO A TRUST, RATHER THAN BEING PAID OUTRIGHT TO THE BENEFICIARY.

WITHOUT HAVING THE FUNDS PASS THROUGH A WILL OR TRUST, THERE IS NO PERSON (I.E., AN EXECUTOR OR TRUSTEE) WHO CAN TAKE CONTROL OF THE ASSETS AND USE THEM TO PAY TAXES OR OTHER EXPENSES BEFORE BEING DISTRIBUTED TO THE BENEFICIARIES. THIS CAN MAKE IT DIFFICULT TO PROPERLY ADMINISTER THE ESTATE, PARTICULARLY WHEN THERE ARE MULTIPLE BENEFICIARIES FROM WHOM FUNDS MUST BE COLLECTED TO PAY THE EXPENSES.

IN NEW YORK STATE, PROPERTY THAT IS HELD JOINTLY BY SPOUSES MAY BE USED TO FUND A CREDIT SHELTER (BY-PASS) TRUST, BUT THERE ARE LIMITATIONS AND CERTAIN REQUIREMENTS MUST BE MET:

- ONLY ONE-HALF OF THE VALUE OF JOINTLY HELD PROPERTY MAY BE USED FOR THIS PURPOSE
- THE SURVIVING SPOUSE MUST FILE A QUALIFIED DISCLAIMER WITHIN NINE MONTHS AFTER THE DEATH OF THE FIRST SPOUSE TO DIE.

VII.
HOW CAN I AVOID UNNECESSARY INCOME TAX WITH RESPECT TO GIFTED PROPERTY?

LIFETIME GIFTS CAN HAVE ADVERSE INCOME TAX EFFECTS BECAUSE ASSETS GIVEN AWAY DURING LIFETIME WILL NOT RECEIVE A STEP-UP IN BASIS WHEN THE DONOR DIES. FOR THIS REASON, IF THE ASSET HAS BUILT-IN CAPITAL GAINS, IT MAY BE PREFERABLE NOT TO GIVE IT AWAY, BUT RATHER, TO HOLD ONTO IT IN ORDER TO REDUCE THE CAPITAL GAINS TAX PAYABLE WHEN THE ASSET IS SOLD. THUS, WHEN CONSIDERING WHETHER TO MAKE LIFETIME GIFTS, AND WHAT PROPERTY TO USE TO FUND THE GIFTS, ONE MUST CONSIDER THE POSSIBLE NEGATIVE INCOME TAX EFFECT ARISING DUE TO THE LOSS OF THE BASIS STEP-UP, AND, IF POSSIBLE, CHOOSE ASSETS TO GIVE AWAY THAT DO NOT HAVE BUILT-IN CAPITAL GAINS, SUCH AS CASH.

VALUE OF ESTATE	FEDERAL ESTATE TAX	NEW YORK STATE ESTATE TAX	TOTAL	EFFECTIVE TAX RATE
$1,500,000	$ -0-	$ 64,400	$64,400	4.29%
$2,000,000	$ -0-	$ 99,600	$99,600	4.98%
$2,500,000	$ -0-	$138,800	$138,800	5.55%
$3,000,000	$ -0-	$182,000	$182,000	6.07%
$3,500,000	$ -0-	$229,200	$229,200	6.55%
$4,000,000	$ -0-	$280,400	$280,400	7.01%
$4,500,000	$ -0-	$335,600	$335,600	7.46%
$5,000,000	$ -0-	$391,600	$391,600	7.83%

ILLUSTRATION A- $5 MILLION ESTATE

A MARRIED COUPLE LIVES IN NEW YORK CITY HAVING THE FOLLOWING ASSETS:

(I) APARTMENT HAVING A FAIR MARKET VALUE OF $2.5 MILLION FOR WHICH THEY PAID $1 MILLION (UNREALIZED CAPITAL GAIN EQUALS $1.5 MILLION).

(II) STOCKS WORTH $2.5 MILLION FOR WHICH THEY PAID $1.75 MILLION (UNREALIZED CAPITAL GAIN EQUALS $750,000).

SCENARIO 1: WILL BEQUEATHS EVERYTHING TO SURVIVING SPOUSE. NO LIFETIME GIFTS ARE MADE.

SCENARIO 2: WILL CREATES CREDIT SHELTER TRUST. APARTMENT IS OWNED BY ONE SPOUSE AND THE STOCK PORTFOLIO IS OWNED THE OTHER SPOUSE. NO LIFETIME GIFTS ARE MADE.

SCENARIO 3: WILL CREATES CREDIT SHELTER TRUST. EACH SPOUSE OWNS A ONE-HALF SHARE IN THE APARTMENT AND A ONE-HALF SHARE IN THE STOCK PORTFOLIO. THE COUPLE GIVES THE APARTMENT TO THE CHILDREN DURING THEIR LIFETIMES.

$5 MILLION ESTATE - SCENARIO 1

WILL BEQUEATHS EVERYTHING TO SURVIVING SPOUSE. NO LIFETIME GIFTS MADE.

WHEN THE FIRST SPOUSE DIES, HE OR SHE HAS AN ESTATE WITH A VALUE OF $2.5 MILLION (THE VALUE OF THE PROPERTY OWNED BY THE SPOUSE). THERE IS NO FEDERAL OR NEW YORK STATE TAX BECAUSE THE ENTIRE ESTATE IS BEQUEATHED OUTRIGHT TO THE SURVIVING SPOUSE, AND SO, QUALIFIES FOR THE MARITAL DEDUCTION.

WHEN THE SECOND SPOUSE DIES, HE OR SHE HAS AN ESTATE WORTH $5 MILLION (THE PROPERTY ORIGINALLY OWNED BY THAT SPOUSE AND THE PROPERTY THAT HE OR SHE INHERITED FROM THE FIRST SPOUSE TO DIE). THERE IS A NEW YORK STATE ESTATE TAX OF $391,600. HOWEVER, THERE IS NO FEDERAL ESTATE TAX TO PAY BECAUSE THE TAXABLE ESTATE IS LESS THAN THE COMBINED FEDERAL ESTATE TAX EXEMPTION IN THE AMOUNT OF $10.5 MILLION. THE ESTATE RECEIVES A "STEP-UP" IN BASIS (I.E., THE TAX BASIS IS THE DATE OF DEATH VALUE) SO THAT THERE IS NO CAPITAL GAINS TAX PAYABLE WITH RESPECT TO THE APARTMENT OR STOCKS ON CAPITAL GAIN ACCRUING PRIOR TO THE DATE OF DEATH. RESULT: NO GIFT TAX; ESTATE TAX OF $391,600; NO CAPITAL GAINS TAX.

$5 MILLION ESTATE - SCENARIO 2

WILL CREATES CREDIT SHELTER TRUST.
ASSETS ARE HELD SEPARATELY. NO LIFETIME GIFTS MADE.

WHEN THE FIRST SPOUSE DIES, HE OR SHE HAS AN ESTATE WITH A VALUE OF $2.5 MILLION (THE VALUE OF THE PROPERTY OWNED BY THE SPOUSE). THE PROPERTY IS BEQUEATHED TO A TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE, AND SO, DOES NOT QUALIFY FOR THE MARITAL DEDUCTION FOR ESTATE TAX PURPOSES. HOWEVER, THERE IS NO FEDERAL ESTATE TAX BECAUSE THE PROPERTY IS COMPLETELY SHELTERED BY THE $5.25 MILLION FEDERAL ESTATE TAX EXEMPTION. THERE IS NEW YORK STATE ESTATE TAX WITH RESPECT TO THE PROPERTY TO THE EXTENT THAT THE VALUE OF THE PROPERTY EXCEEDS THE $1 MILLION EXEMPTION. THUS, THERE IS NEW YORK STATE ESTATE TAX OF $138,800.

WHEN THE SECOND SPOUSE DIES, HE OR SHE HAS AN ESTATE WITH A VALUE OF $2.5 MILLION (THE VALUE OF THE PROPERTY OWNED BY THE SPOUSE). NOTE: THE PROPERTY HELD IN THE TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE IS NOT INCLUDED IN HIS OR HER ESTATE FOR TAX PURPOSES. THERE IS NO FEDERAL ESTATE TAX TO PAY BECAUSE THE TAXABLE ESTATE IS LESS THAN THE REMAINING FEDERAL EXEMPTION AMOUNT OF $8 MILLION ($10.5 MILLION - $2.5 MILLION). THERE IS NEW YORK STATE ESTATE TAX OF $138,800. ALSO, THE CHILDREN WHO INHERIT THE

PROPERTY RECEIVE A STEP-UP IN BASIS FOR THE APARTMENT AND STOCK SO THAT THERE IS NO CAPITAL GAINS TAX PAYABLE WITH RESPECT TO THE CAPITAL GAIN ACCRUING PRIOR TO THE DATE OF DEATH. RESULT: NO GIFT TAX; ESTATE TAX OF $277,600 (2 X $138,800); NO CAPITAL GAINS TAX.

$5 MILLION ESTATE- SCENARIO 3

WILL CREATES CREDIT SHELTER TRUST.
APARTMENT IS GIVEN TO CHILDREN WHILE PARENTS ARE LIVING.

BY GIVING THE APARTMENT AWAY DURING THEIR LIFETIMES, THE COUPLE HAS MADE A TAXABLE GIFT OF $2.5 MILLION (THE VALUE OF THE APARTMENT). THERE IS NO GIFT TAX PAYABLE BECAUSE THE AMOUNT OF THE GIFT MADE BY EACH OF THEM ($1.25 MILLION) IS LESS THAN HIS OR HER LIFETIME GIFT TAX EXEMPTION OF $5.25 MILLION. THERE IS NO STATE GIFT TAX IN NEW YORK STATE OR NEW JERSEY. CONNECTICUT DOES HAVE A STATE GIFT TAX.

WHEN THE FIRST SPOUSE DIES, HE OR SHE HAS AN ESTATE WITH A VALUE OF $1.25 MILLION (ONE-HALF OF THE VALUE OF THE STOCK PORTFOLIO). THE PROPERTY IS BEQUEATHED TO A CREDIT SHELTER TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE, AND SO, DOES NOT QUALIFY FOR THE MARITAL DEDUCTION FOR ESTATE TAX PURPOSES. HOWEVER, THERE IS NO FEDERAL ESTATE TAX TO PAY BECAUSE THE TAXABLE ESTATE IS LESS THAN REMAINING FEDERAL EXEMPTION AMOUNT OF $4 MILLION ($5.25 MILLION-$1.25 MILLION). THERE IS NEW YORK STATE ESTATE TAX WITH RESPECT TO THE PROPERTY TO THE EXTENT THAT THE VALUE OF THE PROPERTY EXCEEDS THE $1 MILLION EXEMPTION. THUS, THERE IS NEW YORK STATE ESTATE TAX OF $48,400.

WHEN THE SECOND SPOUSE DIES, HE OR SHE HAS AN ESTATE WITH A VALUE OF $1.25 MILLION (ONE-HALF OF THE VALUE OF THE STOCK PORTFOLIO). NOTE: THE PROPERTY HELD IN THE TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE IS NOT INCLUDED IN HIS OR HER ESTATE FOR TAX PURPOSES. THERE IS NO FEDERAL ESTATE TAX TO PAY BECAUSE THE TAXABLE ESTATE IS LESS THAN REMAINING FEDERAL EXEMPTION AMOUNT OF $6.75 MILLION ($10.5 MILLION-$3.75 MILLION). THERE IS NEW YORK STATE ESTATE TAX WITH RESPECT TO THE PROPERTY TO THE EXTENT THAT THE VALUE OF THE PROPERTY EXCEEDS THE $1 MILLION EXEMPTION. THUS, THERE IS NEW YORK STATE ESTATE TAX OF $48,400.

BECAUSE THE APARTMENT WAS GIVEN AWAY PRIOR TO DEATH, THERE IS NO STEP-UP IN BASIS. AS A RESULT, THERE WILL BE CAPITAL GAINS TAX TO PAY OF $495,000 WHEN THE APARTMENT IS SOLD (33% X $1.5 MILLION).RESULT: NO GIFT TAX; ESTATE TAX OF $96,800 (2 X $48,400); CAPITAL GAINS TAX OF $495,000 (TOTAL TAXES: $591,800).

$5 MILLION ESTATE - CONCLUSION

THE APARTMENT SHOULD BE RETAINED UNTIL DEATH IN ORDER TO RECEIVE THE STEP-UP IN BASIS SO THAT THERE WILL BE NO CAPITAL GAINS TAX PAYABLE WITH RESPECT TO THE GAIN ACCRUING PRIOR TO THE DATE OF DEATH. WITH A PROPERLY STRUCTURED WILL, THE $5 MILLION IN ASSETS CAN BE PASSED TO THE CHILDREN FREE OF FEDERAL ESTATE TAX AND WITH NEW YORK STATE ESTATE TAX OF $277,600.

SUMMARY
$5 MILLION ESTATE

	GIFT TAX	ESTATE TAX	CAPITAL GAINS TAX	TOTAL
SCENARIO 1	$ -0-	$391,600	$ -0-	$391,600
SCENARIO 2	$ -0-	$277,600	$ -0-	$277,600
SCENARIO 3	$ -0-	$96,800	$495,000	$591,800

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