



Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

Portability: Weird and Wonderful

The simplicity and complexity of portability often creates unintended consequences. Avoiding common errors is crucial to make the most of the newest features of the estate tax law, including portability of Deceased Spousal Unused Exemption (DSUE).

Wonderful

Portability is wonderful in its simplicity. It has the potential to dramatically simplify the estate planning process and the use of trusts to attempt to preserve for the average American the exemption of the first spouse to die. The vast majority of Americans will never have a net worth in excess of the current estate tax exempt amount (more than \$5 million), and for couples that can expand to \$5 million each, or more than \$10 million, indexed for inflation. However, there are unintended consequences for a few. The consequences can be significant and lead to important planning opportunities for many of those few who fall into the no-man's-land of pushing the \$5 million and up to \$10 million as a couple. Even above the exemption amount, factors need to be considered such as investments, lifestyle, spend-down, and potential for future changes in the law. So in a simple "Ward and June Cleaver" kind of world, portability should be the default planning strategy. But life is not always that simple.

With recent years' dramatic increase in estate exemption, as well as the new law allowing the surviving spouse to use the unused exemption of the first spouse to die, it is no longer necessary to create a separate trust to utilize the exemption of the first spouse to pass away as was previously the standard plan. That's to say, it isn't necessary as long as things stay the way they currently are.

Congress has the power to write new legislation, and in the past five years serious proposals have ranged from a \$1 million exemption to repealing the tax altogether. "A bird in the hand is worth two in the bush" is a cliché for a reason. If one has any concerns that the government will need more money in the future and perhaps "raise the estate tax" by lowering the exemption or raising the rates, or both, then one should consider setting up the separate trust to use the exemption. Since the funds can still be available to the surviving spouse, it is the functional equivalent but locks in the exemption in case of future changes in the law. In the same way, this technique prevents many of the "weird" scenarios discussed next. Even in cases when portability is not required due to a net worth under the \$5 million exemption at death, an estate tax return needs to be filed for the first spouse's estate. Filing the return is how one elects portability. Finally, the best way to decide is to draft a single qualified terminable interest property (QTIP) trust and make the final decision after the death of the first spouse as to whether to create a separate trust to use the exemption or rely on portability.

Continued>>

A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

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Weird

When portability goes awry, it can produce weird results. The law of unintended consequences is certainly at work here. For some it brings considerations that were not previously issues, and for others it may mean avoiding default decisions that, before, had no adverse consequences but under this new law, might.

Most families are more “Modern Family” than “Ward and June Cleaver.” This complicates the use of portability because downstream it is unclear what future marriages may occur and what children (first marriage vs. later marriages) will eventually benefit. Often the surviving spouse, when children of multiple marriages exist, redirects the estate after the first spouse dies, which creates great friction within the family. It is nice to imagine that everyone is married only once, that all their children are of the same marriage, and that both spouses agree completely on what should happen to the estate assets and never waiver from that commitment, but that is just not the reality in more than half of cases. Another weird result is that portability disincentivizes remarriage because the death of a second spouse may reduce the overall exemption of the surviving spouse. This could cost more than \$2 million in additional taxes out of the estate for the children. Also, the death of a spouse will reduce the exemption of the surviving spouse, which may incent some to divorce their spouse on their deathbed in order to preserve the first spouse’s exemption, again potentially saving more than \$2 million in estate tax. Regardless, an individual can never build up more than two exemptions, their own plus the unused exemption of their most recently predeceased spouse – or can they? While the average American cannot afford to give away much and maintain their accustomed manner of living, a wealthy widow could gift the unused DSUE of her most recently deceased spouse, marry again and do it all over. This gives those with substantial money a greater ability to legally game the system by utilizing many different spouses’ DSUE.

Generation-skipping transfer trusts can provide both asset protection and asset protection for future generations, yet the generation skipping transfer tax exemption is NOT portable. This means the surviving spouse could end up with \$10 million of estate tax exemption, but only \$5 million of generation-skipping transfer tax exemption. Again, the QTIP trust can help with many of these issues, from controlling the ultimate beneficiaries, to providing asset protection and creditor protection. The proper design of this kind of trust enables one to make the decision after the death of the first spouse, which is just as complex as drafting a credit shelter and marital trust, and thus does not simplify planning from the traditional method.

Any way you slice it, portability has a lot of unintended consequences that enable simplifying, and at the very least empowering, one’s executor to file the estate tax return and thus claim one’s rightful carry-over of the exemption to the surviving spouse. Remember to seek competent, professional representation for tax, legal, and investment matters, because the government’s “simplification” has once again made things more complicated.

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