

SPRING '09

cover YOUR ASSETS

The Family Trust Rescue

For more than 60 years, the preferred estate plan design for married couples with estate tax concerns has called for the establishment of an irrevocable Family Trust at the first spouse's death, to be funded with the deceased spouse's share of the couple's collective assets, to ensure that the deceased spouse's estate tax exemption is fully utilized. This type of plan structure is still recommended for couples with substantial assets who want to eliminate estate tax exposure at death, but there is often an income tax downside to this type of planning.

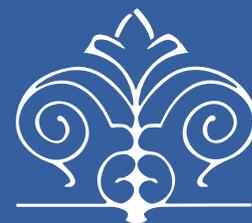
The beneficiaries of many couples who have set up such plans have historically been hit with capital gain and depreciation recapture taxes on the sale of some of the Family Trust assets after both parents have died. However, with the advent of the \$3.5 million estate tax exemption on January 1st of this year, these income taxes can almost always be avoided, without subjecting the beneficiaries to an estate tax liability.

According to government estimates, fewer than 1% of surviving spouses are likely to have an estate of \$3.5 million or more when they die. Consequently, a surviving spouse's surplus estate tax exemption, which could be harnessed to boost the basis of appreciated assets held by a deceased spouse's Family Trust, will be wasted and beneficiaries will be writing unnecessary checks to the Internal Revenue Service for income tax after Family Trust assets are sold.

Fortunately, we have now developed a solution to this potential problem. We call it the "Family Trust Rescue" and it can be implemented by (1) all married couples, while both spouses are still living, and (2) in most cases, by surviving spouses whose deceased husband or wife created a Family Trust (also commonly referred to as a "credit shelter trust," "exclusion trust," "bypass trust," "non-marital trust," or "B trust") at the decedent's death.

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Who Manages What?

Owner	Who Manages?	Controlling Document
Trust	While alive & competent: Trustee or Co-Trustee	Trust
	While alive, if incompetent: Co-Trustee or Successor Trustee	
	After death: Successor Trustee	
Individual or couple (includes annuities, IRAs and pension plan assets, even when a trust is in place)	While alive & competent: Individual Owner(s) and/or Agent (if Power of Attorney is immediately effective)	Financial Power of Attorney
	While alive, if incompetent: Agent	
	After death: Personal Representative	Will

Services for You

- Customized Estate Planning
- Trusts, Wills & Living Wills
- Personal Estate Plan Review (PEPR)
- Powers of Attorney
- Medicaid Planning & Applications
- Trust and Probate Administration
- Rescuing Defective Wills & Trusts
- Estate & Gift Tax Returns
- Business Formation
- Asset Protection Plans
- Special Needs Trusts
- Taxpayer Representation



Thinking About Gifting?

The annual gift tax exclusion is now \$13,000 for gifts made in 2009. This means that you can give \$13,000 apiece to as many individuals as you choose without any gift or estate tax consequences and without triggering any gift tax return filing requirements. ☎

Mark Your Calendars!

The Client Update and Continuing Professional Education Seminars have been scheduled for this fall:

Columbia, Missouri
Courtyard Marriott
Friday, October 2nd

West Des Moines, Iowa
West Des Moines Marriott
Thursday, November 19th



We'll update you on legal developments that may affect your estate plan. Watch for details in our upcoming newsletters.



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of Elder Law Attorneys

The Family Trust Rescue *continued from page 1*

Consider the following scenario which we are now encountering with increasing frequency, in one form or another. John died in 1997 when the federal estate tax exemption was \$600,000. He and his wife Mary owned a 600-acre farm (then valued at \$1,000 per acre) which was allocated to John's share of the couple's aggregate assets. Consequently, the farm received a new cost basis (\$600,000) at John's death and was assigned to an estate tax-exempt Family Trust.

Mary died on January 11, 2009 with an estate of \$1.5 million and the children now want to sell the 600-acre farm owned by the Family Trust (which is not part of Mary's estate). The value of the farmland has more than tripled since John's death—\$2 million today vs. \$600,000 in 1997. The children are surprised to learn that they will have to pay a federal income tax of \$210,000 on a \$1.4 million capital gain if they sell the farm for \$2 million.

Could this tax bite have been avoided? Yes. If the couple's estate plan had given the surviving spouse (Mary) certain technical powers over the Family Trust, the farm would have gotten a new cost basis of \$2 million at her death and could thereafter have been sold tax-free for that price. However, without one of the qualifying "technical powers" (which no couples presently have) in their estate plan, the assets owned by a first-to-die spouse's Family Trust will never receive a cost basis adjustment when the surviving spouse dies.

In this example, suppose that Mary had possessed a flexible, qualifying power over the Family Trust when she died. What impact would that have had on her own estate tax exposure? It would have caused the Family Trust to be treated as part of Mary's federal estate, i.e., the Family Trust value of \$2 million would be added to Mary's own estate value of \$1.5 million (\$3.5 million total). Would that be problematic? Not in Missouri or Iowa.

Remember, Mary died on January 11th of this year (10 days after the federal estate tax exemption climbed to \$3.5 million). Adding the \$2 million Family Trust to Mary's own \$1.5 million estate

would bring the total value of her federal gross estate up to \$3.5 million, an amount fully covered by today's \$3.5 estate tax exemption (which we believe Congress is going to make permanent this year). Since Mary's available estate tax exemption was large enough to cover both the Family Trust and her own estate, there is no downside to pulling all of the Family Trust into Mary's federal estate. In fact, the resulting cost basis adjustment in the Family Trust's 600-acre farm would be a financial godsend to the children when they get the farm sold.

But, what if Mary's own estate was worth more than \$1.5 million when she died, such that adding the \$2 million Family Trust could push the value of Mary's total federal estate over the \$3.5 million exemption limit? In that instance, Mary's flexible power could only draw a portion of the Family Trust into her estate, enough to bring Mary's total federal estate value up to \$3.5 million. That would still boost the farmland's cost basis, thus reducing the taxable capital gain, without triggering a federal estate tax liability.

The preceding scenario uses farmland as an example of an appreciated asset, but the planning principle also applies to residential and commercial real estate, corporate stock, other investment media, business interests, equipment, and any other asset which has a fair market value higher than its adjusted cost basis. If you have questions about whether the Family Trust Rescue could be beneficial for your family, particularly with the possibility of higher income taxes in the pipeline, give us a call or send an e-mail to info@BartonLawFirm.com. 🏠

Thank you for your time and expertise in explaining all the details to me and my son (trustee)—a special thank you to Elaine Asmus on her very straight, clear and understandable explanations.

—Illinois client

Outside the Assets Personal Notes from the Bartons

- Congratulations to staff member Kim Michel. She has transitioned from a temporary office assistant to a full-time Administrative Assistant. She has strong organizational and technological skills and is a quick learner. Welcome to the team, Kim!
- Our receptionist Debbie Penkethman left us in early March. She will return to working full-time with her husband Bill at his custom clothier business—Suit Yourself. Best wishes Debbie!

*Exemplary cooperation and professionalism
made for a very good experience.*

JG & KG, Ames, IA



Babies, babies everywhere! Pictured here are five of our granddaughters, all under two years of age. If you think they keep us busy now, just wait 15 years!

Return Service Requested

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