

Estate Planning in Uncertain Times

By Peter Hur

Are you confused about how to conduct estate planning when future tax rules are uncertain? As you may know, there is talk in Congress of either making the federal estate tax repeal permanent, or reforming our estate tax system so most people of modest means could pay no estate tax.

Whatever the eventual outcome, you should not wait to see what Congress eventually does before you put a plan in place to protect your family and assets. That being said, let's explore a simple solution that is also flexible enough to work under whatever final rules we get from Congress.

One way to provide nearly complete flexibility is by using what's called a disclaimer will. You leave all your assets to your spouse in your will, and he or she "disclaims," or turns their back on, an appropriate amount of assets after you die, depending upon the estate tax regime in force at that time. The disclaimed assets automatically pass to a family trust set up either during lifetime or in your will. These assets are then held for the benefit of your spouse and family.

Let's take a look at a few examples. Were I to die in 2005 with such a plan in place, my wife would disclaim up to \$1.5 million, the amount sheltered from federal estate taxes under current law. The balance of the assets that I leave to her are sheltered from current federal estate tax by the unlimited marital deduction, so no estate tax would be due at my death.

Were I to die in 2007, she would disclaim up to \$2 million, the amount sheltered from estate taxes in that year. If I die in 2010, under the current estate tax regime, she might disclaim all or nothing, since the estate tax goes away in 2010. However, under current law a \$1 million exemption is reinstated in 2011, so were I to die then, she would disclaim up to \$1 million.

No, the current estate tax arrangement is not simple, but a disclaimer will allow you to build some flexibility into your estate plan until Congress gets around to simplifying current law.

Contact your financial adviser for more information regarding this, and other, techniques you can use to preserve assets for your family. They'll be glad you did!

Note: Specific tax or legal questions should be answered by your own tax adviser or legal counsel. You should consult an attorney to assist in preparing a will.

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Peter Hur is a licensed agent with Lincoln Financial Group. He is an associate of Renaissance Financial Services located at 5214 68th St., Suite 100 Lubbock, TX 79424 806.798.0045. Renaissance Financial Services is not a subsidiary or affiliate of the Jefferson Pilot Financial family of companies.



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Peter Hur, Associate
Call (806) 798-0045