

**The Death Tax  
Law Changed**

**DO I NEED TO  
CHANGE MY TRUST?**

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Law Attorney by the National Elder  
Law Foundation which has been  
approved as the Sole Certifying  
Organization for Elder Law Attorneys  
by The American Bar Association**

This pamphlet is issued to inform, not to advise. This pamphlet is not intended to render specific legal advice. For specific legal advice, see Attorney Timothy P. Crawford.

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I have prepared this explanation to introduce you to the Tax Law changes which President Obama signed into Law on December 17, 2010. The item in the Death Tax Law changes that will affect many person's is the increase in the exemption from Death Taxes that is available to each individual at the time of the person's death. You can currently, (in the year 2015), pass to your loved ones \$5,430,000 (2015 adjusted annually for inflation) in assets. This will have a serious impact on planning for many people. Many people will now be able to use an "I Love You" Trust. That is a plan where they set up a Trust to avoid the probate process but then at death, can have all the assets go to the surviving spouse, without death tax, and then from the surviving spouse to the children, without death tax. I call this an "I Love You" Trust. This "I Love You" Trust is used if the husband's and wife's combined net worth is less than the exemption amount of \$5,430,000 (2015).

A tax orientated estate plan uses an A/B Trust and it works somewhat differently than an "I Love You" Trust. With an A/B Trust, at the time of the husband's death, the husband's assets continue in his Trust for the use of his wife. She does not own them. She simply has the right to use them. Then at her subsequent death, there is no death tax to be paid on the assets held in the husband's Trust. The assets go out to the children, as provided for in the husband's Trust. At the same time, the wife's assets held in the wife's Trust go to the children as provided for in the wife's Trust. The wife will own  $\frac{1}{2}$  the property in her Trust. The advantage to this is that we don't put all of the assets into the wife's name where they will all be includable in the wife's death taxable estate.

Using the A/B Trust is very important when the husband's and wife's combined assets are above \$10,860,000 (2015). The "I Love You" Trust causes bunching. Husband's assets are added to the wife's assets and the combined assets are subject to death taxes at the wife's subsequent death. I call this bunching. With the A/B Trust, bunching is avoided. The husband's assets are not added to the wife's assets at the wife's subsequent death.

Because of the increase in the exemption amount, if you have a tax orientated estate plan (an A/B Trust), you may want to consider changing it so that it has the option of becoming an "I Love You" Trust. This can be done with a simple Amendment. However, before signing this Amendment, you may want to consider other reasons why it

may be advantageous to keep your A/B Trust. Many families will want to have A/B Trust features in their estate plan if there are step-children involved. This happens in second marriage situations where the husband or the wife have children of their own and they want to make certain that their children will eventually receive their property.

Another reason for having an A/B Trust that does not relate to taxes, is the fact that after the husband's death, the assets that are held in the husband's trust for the use by the wife are not available to be taken by the wife's creditors. Only you can decide whether or not this is an important consideration to you for keeping your A/B Trust in place.

I have provided this explanation to you so that you can decide whether or not you want to keep your A/B Trust. If you and your spouse have assets currently over \$10,860,000 (2015), you probably want to keep an A/B Trust in place for tax reasons.

Many people don't know what they own. It is very important that annually you add up everything that you own. Include your house, your car, the contents of your home, the total in your checking accounts, savings accounts, stocks, bonds, CD's, mutual funds, and the value of your death benefits from work and from your life insurance. Do this now. If your total assets are under \$5,430,000 (2015), then you are a candidate for eliminating your A/B Trust.

In summary, you should give consideration to amending your A/B Trust to an "I Love You" Trust or a "Wait and See". The advantage to the "I Love You" Trust is that there will be no need after your death for your wife to either prepare an accounting or file an income tax return for your Trust. Your wife will not be required to have a financial planner prepare a written financial plan on how to invest the assets inside the Trust. These items would cost \$2,000 or more each year. So, if there will be no tax or other advantage to keeping the A/B Trust, it may be better to have the "I Love You" Trust instead. With an "I Love You" Trust at your death, the husband's Trust will be terminated and there will be no need to file a tax return for the husband's Trust.

## **What Is A Certified Elder Law Attorney?**

Less than 20 attorneys from the State of Wisconsin have passed the national exam out of over 800 Elder Law Attorneys that we have in the State of Wisconsin.

Attorney Timothy P. Crawford was the first Attorney to have passed the exam to become **Board Certified**. He has been **Nationally Board Certified** as an **Elder Law Attorney** by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

## **What Is Your Next Step?**

To get more information concerning the above, call for your free conference. Please call Attorney Timothy P. Crawford at 262-634-6659. We have offices located in Brookfield, Glendale, Milwaukee, Oak Creek and Racine.

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