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BASIC ESTATE PLANNING FOR MARRIED COUPLES TO REDUCE ESTATE TAXES

In general, there are no estate or "inheritance" taxes if your total "estate" is less than the "estate tax exemption amount" that is in effect the year of death. This federal estate tax exemption amount is roughly $5.3 million, the Illinois estate tax exemption amount is $4 million, for those who passed away in 2014.

The estate tax starts at about 40% of all assets over the exemption amount, and increases to a maximum rate of 50%, so the estate tax can be severe. All of your life insurance benefits, pension benefits, and any other property that passes at death are included in your "estate" in determining whether your assets exceed the estate tax exemption amount. Although common sense might tell you that a husband and wife can each leave the full estate tax exemption amount tax-free to their children, that is not true because the estate tax exemption of the first spouse to die will be wasted unless proper estate planning has been done. Therefore, even younger couples who have sizeable life insurance or other large assets can have a serious estate tax problem. However, that tax can be minimized or entirely avoided with proper estate planning.

A husband and wife who are U.S. citizens can completely avoid or minimize federal estate taxes, and save hundreds of thousands of dollars in estate taxes, by doing some relatively basic estate planning. This involves two steps, which are explained below:

1. Credit-Shelter Wills or Living Trusts: This first step is for both the husband and wife to have what are known as "Credit-Shelter" Wills (or "Credit-Shelter" Living Trusts). Instead of leaving property outright to the surviving spouse, a Credit-Shelter Will "shelters" the estate tax exemption amount of the first spouse to die, so that those assets are not taxed in the estate of the surviving spouse. Under a Credit-Shelter Will, the surviving spouse has the right to use the "sheltered" trust funds for his or her support, maintenance, education and health care. Any property over the "sheltered" trust funds can be given outright to the surviving spouse. However, by limiting the surviving spouse's right to use the trust funds for his or her "support, maintenance, education and health care," the trust funds are not taxed in the estate of the surviving spouse.

2. <u>Take Property Out of Joint Tenancy</u>: The Credit-Shelter Wills can only shelter property from estate taxes to the extent that the first spouse to die owns property individually, not in joint tenancy. When an owner of joint tenancy property dies, the surviving joint tenant automatically owns the property, no matter what the Will of the deceased spouse says. Therefore, if husband and wife own all of their property as joint tenants, that property will automatically be owned by the surviving spouse, and the Will of the first spouse to die will have no effect. This problem is easily resolved by making sure that both husband and wife own assets as "tenants in common" (instead of in joint tenancy), or if husband and wife each own individual assets in their own name.

Of course, this is only a general explanation of the basic steps a married couple can take to reduce estate taxes. There are other more complex steps that can also be taken to reduce estate taxes. For example, some kinds of life insurance can be transferred to an Irrevocable Life Insurance Trust, so that the death benefits are not included in your estates for tax purposes. If you are financially secure, you can also reduce the size of your estate by making "Annual Exclusion" gifts to your children, grandchildren, and other loved ones. Although there are certain rules that must be followed, an annual giving program can be very effective in reducing estate taxes.

This is just a general informational guide to current federal estate tax law. You should consult with professionals about your specific needs, and should not rely on this general summary for specific legal advice.