The "family meeting" is more than a gathering of your children for Sunday pasta at Mom's and Dad's. It is a series of well-planned times together. A professional facilitator can organize and assist your family in the education and communication of the family vision. Your time together may include the creation of a "family mission" statement, expression of your perspective and goals for the legacy. It can also include review of specific desires with a family business, farmland or special asset. The family mission statement serves as a beacon that guides the rest of the plan, in the same way a business uses a mission statement. The goal is to create a "new" business, the business of your family. The goal is to communicate when your children still have you to lean on for clarification and direction, concentrating on the "business of family."

The best way to ensure a strong family foundation is "communication." The family meeting process encourages and strengthens family communication before, during and after. The family meeting process gives everyone an opportunity to identify what is important to the family and its individual members so that they may participate in clarifying the goals and objectives for the legacy. This time together and the knowledge shared remains with the family over time.

Your adviser joins the professional facilitator in shaping your program based on a number of possible outcomes. The objectives may include articulating your family vision and mission, having fun together, bridging knowledge and introducing your plan. You might identify methods to leverage family wealth, create a family legacy of sharing values and expectations, cultivate a family environment that develops self-esteem among children and grandchildren, communicate hopes, aspirations and desires for personal and family well-being, and create a forum for the encouragement of family unity.

Preparation leading up to the actual family meeting is critical in order to ensure success. It is about clarity, unity, honesty, understanding and providing guidelines. These are the tools for success in passing on your tangible or intangible legacy. A family mission statement can provide the solid foundation on which the four pillars of estate planning can remain in place for your children, grandchildren, and great grandchildren.

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*Estate Planning*

# Portability...Simplification or Obfuscation

*By Joseph D. Zaks, Esq.*

**The news (including this Estate Planning Council supplement) is rife with reports about the new estate tax laws, particularly the increase in the Applicable Exclusion Amount ("AEA") to $5 million and the fact that this estate tax exemption can pass to the surviving spouse if not used at the first death ("portability").**

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Another article in this supplement describes the portability election and some of its drawbacks (i.e., it is set to expire in December 31, 2012; it can be lost in the event of a subsequent marriage, it may extend the time period in which the IRS can review the first spouse's estate tax return).

But even with its limitations, the concept of portability introduces a whole new playing field for planning. Therefore, it is important to ask: Is portability the death knell of estate planning for tax reduction, or is it a trap for the unwary? I propose the answer is the latter.

Portability simply may not be the best option for a married couple who wish to minimize their family's exposure to the estate tax. If the couple are sure that their combined AEAs would be sufficient to cover their combined estates, then portability would minimize their estate tax because the estate tax would be zero. But if a couple knows that their combined AEAs would not be enough, or if a couple is not sure (understandable, given all of the uncertainty surrounding the estate tax), then the first spouse's AEA should be used to shelter property in the first spouse's estate before it has a chance to appreciate, rather than used to shelter property in the surviving spouse's estate after it has appreciated.

Also, it is important to keep in mind that portability does not apply to the Generation-Skipping Transfer Tax ("GST Tax"). This $5 million exemption from GST Tax must be allocated, in some manner, at the time of the first spouse's death. Under current law, failure to allocate GST Exemption could cost as much as $1,750,000 in GST Tax upon the second spouse's death.

It would appear that the use of at least one trust, referred to here as the "Family Trust," would (continue to) be prudent in most estate plans. On the first death, that spouse's AEA, up to $5 million, could pass to the Family Trust for the benefit of the surviving spouse. The $5 million GST Tax exemption could also be allocated to this trust. The trust (including any appreciation) would be free from estate tax on the death of the surviving spouse and could pass to future generations of descendants outside of the transfer tax system entirely. Also, while the assets are in the trust they would be free from creditor claims, and, if properly drafted, would not be available to any future partners of the surviving spouse.

Even this simple planning needs to be properly drafted by a qualified estate planning lawyer. Suppose, for example, the property in the Family Trust greatly appreciated by the time of the second spouse's death. And suppose further that the second spouse's estate was not large enough to generate an estate tax. It would be wise to draft the Family Trust in a way which would cause some or all of the assets held in that trust to be included in the second spouse's estate so they would receive a step up in basis and avoid the capital gains tax.

It would behoove any reader with an estate in excess of $2 million to schedule an appointment with an estate planning lawyer in the near future to see what, if any, changes should be made to your estate planning documents to address portability.

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