Western Mass Estate Planning

Deirdre Gleason, Esq. **Kate Downes. Esq.**
Of Counsel

112A State Street
Shelburne Falls, Massachusetts 01370

(413) 625-2482 telephone
(413) 826-7700 facsimile
www.WesternMassEP.com

Kate@WesternMassEP.com
Deirdre@WesternMassEP.com

Elizabeth M. Smith, *Legal Assistant*
Emily B. Arsenault*, Office Manager*
Kathy Wagner*, MassHealth Specialist*

CREDIT SHELTER TRUSTS SUMMARY
FOR ESTATES SUBJECT TO MASSACHUSETTS ESTATE TAX ONLY
(last revised 1/15/24; not intended to be comprehensive of or specific to any particular situation)

Who Should Consider a Credit Shelter Trust?
If you are married and your combined taxable estate, after all expenses and debts, is more than $2,000,000 or is expected to grow beyond this amount in the future, Credit Shelter Trusts may assist you in reducing or even eliminating Massachusetts estate taxes upon the death of the second spouse. Note that there is no federal estate tax assessed against estates of married couples whose assets are less than $27.22 million - $13.61 million per spouse (2024) - although the federal exemption is scheduled to "sunset," or expire, at the end of 2025. Absent new tax legislation before then, the exemption will revert back to 2017 levels, declining to approximately $7.5 million per individual and $14.5 million for a married couple.

A taxable estate includes all assets in which the decedent had an ownership interest at the time of his or her death, *including* life insurance, retirement accounts, and any assets owned with a non-spouse.

How Much are Massachusetts Estate Taxes?

If an individual, including a surviving spouse, dies with a taxable estate of

- $2.2 million – Massachusetts estate tax would be approximately $15,000
- $2.5 million – Massachusetts estate tax would be approximately $39,000
- $2.7 million – Massachusetts estate tax would be approximately $56,000
- $3.0 million – Massachusetts estate tax would be approximately $82,000
- $3.5 million – Massachusetts estate tax would be approximately $129,000

Please note the following:
(A) When the first spouse dies, there is no estate tax paid, so these tax amounts are following the death of the second spouse only; and
(B) If one spouse is not a U.S. citizen, other special rules apply which would need to be discussed further.
(C) The portion of an estate payable to a qualifying charitable organization is not subject to estate tax.

How Do Credit Shelter Trusts Work to Save Taxes?
Credit Shelter Trusts allow married couples to, effectively, double the amount of assets they can leave tax-free to their heirs. Without effective pre-planning, the Massachusetts Department of Revenue bases estate taxes on a couple's total assets at the death of the *second* spouse, who benefits from only *one* exemption amount. Credit Shelter Trusts allow a couple to segregate $2 million of their assets upon the first spouse's death, so that those assets (plus any future appreciation) will not be counted for estate tax purposes on the second spouse's death. This is

accomplished by creating two separate trusts: one for spouse #1 (of which that spouse is the Trustee and spouse #2 is the successor Trustee) and one for spouse #2 (of which that spouse is the Trustee and spouse #1 is the successor Trustee). Both trusts are completely amendable and revocable.

Upon creation, these trusts are funded with the couple's assets, in accordance with detailed instructions provided at the time of execution of the documents. Real estate, bank and investment accounts, and life insurance are divided as equally as possible and the trusts are used as owners or beneficiaries of each. Upon the death of the first spouse, up to $2 million in that spouse's assets is segregated and will not be included in the second spouse's taxable estate. If the first spouse's estate *exceeds* $2 million, a Massachusetts estate tax return must be filed, but no tax will be due. The surviving spouse continues to manage both trusts separately. When the surviving spouse dies, all of the assets in that spouse's trust, plus any which exceeded $2 million from the first spouse's trust, are considered. If they total more than $2 million, a tax return must be filed and taxes paid on the excess, before the entire estate is distributed to the designated beneficiaries of the respective trusts.

<u>Example</u>: Fred and Norma have combined assets of $3,000,000. If Fred dies in 2024 with a standard Will leaving all of his assets directly to Norma, she will inherit them tax-free as the surviving spouse (called the Martial Deduction). However, upon Norma's death in 2025, if she still holds assets with the same approximate value, her estate will incur Massachusetts estate taxes. Because Norma's estate will exceed the $2 million exemption, the $1 million excess will be subject to a tax of approximately $82,000. Distribution of the balance to Fred and Norma's heirs will occur only after this tax is paid in full. <u>If, however</u>, Fred and Norma had executed Credit Shelter Trusts during their lives, this tax could be significantly reduced or eliminated. If the trusts are properly drafted and funded, and Fred's trust held at least $1 million at his death, this sum would not be included in Norma's estate at her death, leaving her taxable estate at $2 million. As a result, her estate would pay estate tax only on any amount exceeding $2 million. If Norma is able to reduce the value of her estate to under $2 million before her death, the estate tax will be eliminated in its entirety.

<u>Other Benefits of a Credit Shelter Trust</u>

- They provide an alternative to gifting assets to others (generally, children) during life to reduce the taxable estate.
- Many assets may remain titled as they are, with the trusts as designated beneficiaries.
- All assets properly in the name of the trusts avoid the delay and expense of the probate court process at the death of each spouse.
- Designating a trust as beneficiary of an asset ensures that, if a beneficiary predeceases the owner, contingency provisions will be in place (as they are detailed in the trust)
- The provisions are confidential (whereas a Will becomes a matter of public record).
- The trust cannot easily be challenged by disgruntled beneficiaries.
- Because Credit Shelter Trusts are revocable and you serve as Trustees of your own trusts, all income and capital gains can be reported on your federal and Massachusetts income tax returns as you now report them. For your accountant's purposes, these are deemed "grantor trusts." During life, you use your own Social Security numbers as the trusts' tax identification numbers.

<u>What Are Some of the Downsides of a Credit Shelter Trust?</u>

- Some individuals find the process of re-titling assets into trust and completing change of beneficiary forms to be cumbersome. Once an asset is titled into trust, however, there is no further need to change titles or beneficiaries until after the individual dies.
- Credit Shelter Trusts, and the necessary accompanying documentation, are more expensive for an attorney to prepare than standard Wills.