

A Different Set of Tax Rules for Non-U.S. Citizen Spouses



If you or your spouse is not a U.S. citizen then you need to be aware of the fact that you have a completely different set of estate tax rules to contend with. And if you don't then you may end up sending a lot of your hard-earned dollars to the government unnecessarily.

When you have two spouses who are both U.S. citizens, then upon the death of the first spouse there is never any tax regardless of how large your estate is. It's upon the death of the second spouse when estate tax can become an issue if the surviving spouse dies with an estate that exceeds the federal exemption amount (currently \$2 million).

But...if one spouse is a U.S. citizen and one is not, and the U.S. citizen spouse dies first, then estate tax could become due *at that point* and the government is not going to wait until the death of the second spouse before collecting a tax. Why not? Because the government is worried about that foreign spouse high-tailing it back to his or her home country and dying there, in which case the U.S. government can't collect a single penny of estate tax. So the government has decided to tax while the taxing is good...while that non U.S. citizen spouse is still here in the country.

So...if one of the spouses is not a U.S. citizen, then there is a unique estate planning issue that must be addressed. In the next post I will go over the most common approach to this situation; a QDOT trust (yes, another one of those Q-acronyms that come up a lot in estate planning).

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