Disclaiming an Inheritance

By Cindy J. Ackerman and Richard J. Kelber

From time to time, we receive calls from clients who are inheriting property from their parents, either directly or from trusts their parents have created for them. Some of these clients may not need the inherited property and wish it could go to their children. A disclaimer sometimes can be used to accomplish that and can save gift and estate taxes while doing so, if done promptly and properly. This article describes that estate planning technique and a new law, the Uniform Disclaimer of Property Interests Act, which becomes effective on January 1, 2010.

What is a disclaimer?

A disclaimer is a refusal to accept property. When a beneficiary "disclaims" property, it passes as if the beneficiary predeceased the transferor. Depending on the wording of the will or trust agreement, the disclaimed assets may pass to the children of the beneficiary or a trust for their benefit.

How can disclaimers save gift and estate taxes?

If the beneficiary disclaims an inheritance **within nine months** after the transferor's death and all of the legal requirements are met, the beneficiary will be treated as if he or she had never received the disclaimed property. Depending on the wording of the will or trust, ownership of the disclaimed property may shift to the next generation without gift or estate tax consequences to the beneficiary, although generation-skipping transfer taxes may apply.

What are the requirements for a disclaimer?

Under federal law, a disclaimer is a "qualified disclaimer" and does not result in a gift if the beneficiary makes an irrevocable and unqualified refusal to accept an interest within nine months after the death of the transferor. The beneficiary should not accept the property or any income from the property prior to making the disclaimer. The beneficiary may not direct how the disclaimed property is distributed.

To be valid, disclaimers must also comply with state law. Minnesota law requires that the beneficiary be solvent. For example, a beneficiary receiving Medical Assistance may not disclaim assets.

Minnesota's recently enacted Uniform Disclaimer of Property Interests Act removes the current requirement that disclaimers be filed with the court. Under the new law, disclaimers must be delivered to the appropriate person depending on the interest disclaimed. For example, a disclaimer of an interest created by a will must be delivered to the personal representative of the decedent's estate. If the disclaimed property is real property, the disclaimer must also be recorded in the office of the county recorder in the county where the real property is situated.

Conclusion

Disclaimers can be an effective and cost-efficient tool to shift wealth to the next generation. To be valid, disclaimers of inherited property must comply with both federal and state law and be made within nine months after the death of the transferor. To determine whether a disclaimer would give the desired effect, the will or trust agreement should be reviewed. If you would like to learn more about disclaimers and how they may benefit your family, please contact your attorney at Moss & Barnett.

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