# Estate Tax Planning

**By Ken Bloom, J.D., LLM**

Although you can leave everything you own to your spouse free of estate tax, doing so can actually increase estate tax costs at your spouse's death. The reason for this is that each person can leave up to $3.5 million of assets in 2009 to anyone without any estate tax liability. By leaving everything to your spouse, however, you waste your $3.5 million estate tax exemption. Coordinating the tax breaks and both spouses' estates is a cornerstone of successful estate planning.

As an example, in 2009 say H has $4 million and W has $500,000. H could leave everything to W without owing any estate tax. However, W's estate would owe tax on $1 million of the $4.5 million (ignoring any growth in value) upon her death in 2009 because W's estate includes all of the assets of H's estate. Although W could leave $3.5 million to the children (or anyone else) without estate tax, H's $3.5 million exemption would be lost forever. That could cost the family $450,000. This tax could be avoided if a Revocable Trust had been established. In order for this strategy to work the first $3.5 million of H's assets (the exemption amount in 2009) is retained in the Revocable Trust to be used for the support of W. Since these assets are not distributed outright to W these assets are not included in W's estate and therefore are not subject to tax. All the income and principal of the Trust will be used for the support, maintenance, and health of W. The remaining assets owned by H are transferred to W. Using this strategy no tax is due on the death of H. And W's estate also would owe no estate tax on her remaining share.

As we said, Trusts make a lot of sense for some people and none at all for others. You have to consider all of the pluses and minuses as they relate to your particular situation to make an informed choice about a Trust. We would be happy to assist you in making the decision that's right for you. Please call if we can be of assistance.