

FICPA Gulf Coast Chapter Meeting Outline  
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## Trusts in an Era of Portability: The Not-so-Simple Analysis

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- I. Introduction
- II. Background – Recent Changes to Law
  - A. Increase in equivalent exemption over time
  - B. Reunification of gift and estate tax
  - C. Portability
- III. Traditional Planning
  - A. Funding of Credit Shelter and Marital Trusts – need assets in each spouse’s name
  - B. Estate Tax Reporting at First Death
  - C. Administration During Lifetime of Surviving Spouse
  - D. Estate Tax Reporting at Second Death
- IV. Impact on Planning Due to Recent Changes in Law
  - A. Exemption now much larger - fewer families have estate taxes as a consideration in their plans
  - B. Gifting a much larger consideration in advising clients on funding amounts as number of clients have used a large portion of exemptions on gifts
  - C. Portability means that no longer need to make certain that each spouse has assets equal to equivalent exemption in order not to waste exemption of first spouse to die
- V. Examples to Show Benefit of Credit Shelter Planning
  - A. Use of Portability – all assets in name of surviving spouse – File 706 and preserve exemption.
    - However, note that assets may increase and that amount ported to surviving spouse does not increase
    - If assets funded to Credit Shelter Trust, then entire Credit Shelter Trust is exempt, even if it grows after death of first spouse

- B. Remarriage of Surviving Spouse
  - First spouse to die controls how residuary trust is administered. Can provide for ultimate disposition upon death of surviving spouse
- C. Avoidance of Having Assets Pass to Children of Surviving Spouse After Death of First Spouse to Die
  - Remember that, absent an agreement to the contrary, surviving spouse free to change their estate planning documents thereby thwarting the plan of the first spouse to die with regard to assets passing directly to surviving spouse
- D. Creditor Protection Issues
  - Assets in a Credit Shelter Trust much more protected than assets in surviving spouse's name – in even surviving spouse gets sued