

THE C & D NEWSLETTER



CITRON & DEUTSCH
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Published by:
RICHARD K. CITRON
DAVID R. DEUTSCH
MICHELLE LeCOLST-JOHNSTON
Attorneys

ESTATE PLANNING FOR FOREIGNERS

Since the Technical and Miscellaneous Revenue Act of 1988, as modified by the Revenue Reconciliation Act of 1989, estate planning for nonresident aliens, and resident aliens or US citizens with noncitizen spouses, has been substantially changed. This Newsletter will discuss estate planning for foreigners under the new law.

Estate Tax. The estate of a nonresident alien is subject to estate tax on only those assets located in the US. Since the passage of the new laws, the estate tax rate is the same for US citizens, resident aliens and nonresident aliens. The estate tax rate presently ranges from 18% for taxable estates of under \$10,000 to 55% for taxable estates of \$3,000,000 or more. Taxes actually paid will vary depending upon qualification for exemptions and deductions.

Exemptions. A US citizen or resident alien is allowed an exemption of the first \$600,000 of the estate from federal estate tax. Nonresident aliens are permitted to exempt the first \$60,000 of the estate from federal estate tax, unless there is a treaty between the nonresident alien's country of residence and the US, in which case up to the first \$600,000 would be exempt (but only in proportion to the amount of the estate situated in the US).

Marital Deduction. The marital deduction allows a surviving spouse to receive assets from the deceased spouse without paying estate taxes.

Prior to the new law, no marital deduction was allowed for property passing from a nonresident alien to his spouse, regardless of the spouse's citizenship. Under the new law, a full marital deduction is allowed for any property passing to a US citizen spouse; but no marital deduction is allowed for property passing to a surviving spouse who is not a US citizen (even if the decedent was a US citizen), unless a Qualified Domestic Trust is established. A Qualified Domestic Trust permits the surviving spouse to receive tax free income from the trust, and taxes the assets of the trust on the death of the surviving spouse. This assures the US government that estate taxes will be paid on the death of the surviving spouse. A Qualified Domestic Trust must have a US trustee and meet other specified requirements.

Lifetime Transfers. A nonresident alien may reduce his taxable estate by making lifetime transfers of property. A nonresident alien may transfer to each of his friends and relatives up to \$10,000 of his US assets per year without tax.

In addition, if a nonresident alien's children are attending school in the US, he can also use the gift tax exclusion for tuition expenses in addition to the \$10,000 annual gift tax exclusion. There is also a \$100,000 annual exclusion for gifts to a noncitizen spouse.

Tax Planning. The new laws provide significant opportunities for estate planning for foreigners. For example, a nonresident alien should carefully consider the following:

1. Establishing a revocable trust to hold title to all US assets, in order to avoid probate and allow for a simplified transfer of assets upon the death of either spouse;
2. Setting up a testamentary Qualified Domestic Trust (to take place at the first death) for noncitizen spouse, to avoid paying estate tax on the death of the first spouse;
3. Making lifetime transfers of assets, to reduce the size of the taxable estate;
4. Whether it is advisable to become a resident alien or US citizen to obtain the benefits of the full \$600,000 exemption and marital deduction, or to remain a nonresident alien so as to be taxed only on US assets.

Summary. The new laws require nonresident aliens, and US citizens or resident aliens with noncitizen spouses, to carefully prepare their estate plan. Existing estate plans, if prepared prior to the new law, should be promptly reviewed to determine if the new laws necessitate a change in your estate plan.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.