

ASK THE EXPERT

Non-Citizen Estate Planning

The Question: My husband and I want to start making decisions about our estate planning. He is not a U.S. citizen, and owns some foreign assets. How will his status affect us?

The expert: Fred J. Cohen, trusts and estates attorney, Manhasset.

The Rules: Just like U.S. citizens, permanent legal residents are taxed on assets they own anywhere in the world. As of 2006, they get an estate tax exemption on the first \$2 million left after they die. Unlike citizen spouses, however, non-citizen spouses cannot qualify for the “unlimited marital deduction.” This means if you die first, you won’t be able to leave an unlimited amount of assets to your husband without the imposition of estate taxes.

The Strategy: Two strategies might be useful for you, depending on the value of your assets. The first strategy involves gifting. Another strategy involves the use of a “qualified domestic trust,” or QDOT.

How It Works: A citizen spouse can make annual gifts to her non-citizen

spouse of up to \$120,000 in 2006, until both spouses have less than the \$2 million exemption. In your case, if you owned more than \$2 million and you made gifts to your husband each year until your estate were reduced to under \$2 million, the full value of your estate would pass tax-free to your husband and any other heirs.

The QDOT aims to grant the unlimited marital deduction for bequests to a non-citizen spouse, with some restrictions. The QDOT results in a deferral of estate taxes until the

death of the surviving spouse. The mechanics of the QDOT and the options available to couples like you are complex and dependent upon a number of factors, including the size of the estate and the country of citizenship of the non-resident spouse.

The Results: If you have a significant estate, you can save thousands on estate taxes by proper gifting and defer their payment until after the death of your husband by establishing a QDOT. Your husband could also opt to become a U.S. citizen within nine months after your death in order to take advantage of the unlimited marital deduction.

-KAREN E. KLEIN



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