MAI Capital Management Insights

Qualified Disclaimers

Thanks, but, No Thanks

By Mike Ivan, JD, LL.M.

For many people, the thought of turning down an inheritance never crosses their mind. However, under certain circumstances, the costs of receiving a gift can outweigh the benefits. The use of a qualified disclaimer can help avoid unanticipated consequences and add flexibility to your estate plan.

What is a Qualified Disclaimer?

- A qualified disclaimer occurs when a beneficiary refuses to accept a gift, bequest, devise or beneficiary designation, done in a manner that meets the requirements of the Internal Revenue Code.
- To be valid, the disclaimer must meet three requirements: (1) the disclaimant must not accept the property being disclaimed or any of its benefits and cannot direct where the property will go; (2) the disclaimer must be in writing; and (3) the disclaimer must be made within nine months after the date of the transfer creating the interest (in many cases, nine months from the death of the donor).
- Once a qualified disclaimer has been made, it is irrevocable and the disclaimant will be treated as if they never received the gift in the first place. The property will simply pass to the next beneficiary without being considered a gift or transfer by the disclaimant. In certain cases, the next beneficiary will be the disclaimant via their interest as the beneficiary of a trust.

Use in Estate Planning

Qualified disclaimers can be beneficial to your estate plan in a few ways, including:

- **Estate Tax Reduction:** There are several instances where the use of a qualified disclaimer can result in the reduction or elimination of estate tax. For those with large estates, the use of a disclaimer can help control the size of their estate. For married couples, a disclaimer can be used by the survivor to direct an inheritance to their children instead of being included in their estate. This may be more important than ever due to potential changes in estate and tax law.
- **Flexibility:** Changes in the law, or to your personal situation, make it difficult to create the perfect estate plan. The use of a qualified disclaimer can add the flexibility needed to adjust your plan to account for these changes. For instance, if you planned to give to your children, but the size of your estate decreases substantially, they can disclaim assets so they will go to your spouse and preserve the intent of your plan. A married couple can also name a credit-shelter trust as a contingent beneficiary on a retirement plan to give the surviving spouse the option to disclaim. This strategy gives them the opportunity to take advantage of any unused portion of the deceased spouse's estate tax credit while still providing for the survivor Disclaimers can also be used to adjust a wealthy child's share, give more to a beneficiary in need, or terminate a trust.

As always, please do not hesitate to contact your advisor with any questions or concerns. We appreciate the confidence you have placed in our team at MAI to help you navigate your unique situation.

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