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SLATs - Solving the problem of surviving spouse losing access to SLAT assets for predeceasing spouse

The Federal Estate Tax Exemption of 13.61 million is scheduled to be reduced to 5 million beginning on January 1, 2026. With an inflation adjustment, the Exemption may end up being about 7 million. Between now and the end of 2025, the current Exemption is a "use it or lose it" proposition. The appeal of establishing Spousal Limited Access Trusts ("SLATs") and funding them with the Federal Estate Tax Exemption (currently 13.61 million) is that a married couple can have access to the collective amounts transferred to the SLATs established for each other. At the same time, the couple will have used their currently available exemption amounts before the scheduled decrease on January 1, 2026. Finally, the use of the exemptions prior to January 1, 2026 will not result in a "claw back" of the assets transferred (for Federal Estate Tax purposes) – thus locking in the tax benefit of making the transfers.

Inaction could result in missed opportunity

Some married couples who wish to take advantage of current tax laws by funding SLATs for each other have not done so because they are concerned about losing access to the assets (e.g. 13 million) owned by the SLAT that he/she is considering

Federal Estate Tax Scenarios - 32.5 Million Estate

SLAT for 1 spouse	SLAT for each spouse	SLATs for each spouse and life insurance on each spouse*
Death of surviving spouse on or after January 1, 2026	Death of surviving spouse on or after January 1, 2026	Death of surviving spouse on or after January 1, 2026
Federal Estate Tax Savings = $3,000,000	Federal Estate Tax Savings = $6,000,000	Federal Estate Tax Savings = $6,000,000
• Access to all **$32,500,000**, including 13 million in SLAT, provided both spouses are living • Upon death of spouse who is the beneficiary of the SLAT, surviving spouse has access to only **$19,500,000**	• Access to all **$32,500,000**, including 26 million in SLATs, provided both spouses are living • Upon death of a spouse, the surviving spouse has access to only **$19,500,000**	• Access to all **$32,500,000**, including 26 million in SLATs provided both spouses are living • Upon death of a spouse, the surviving spouse **continues** to have access to all **$32,500,000** • ***Upon the later death of surviving spouse, children receive the balance of surviving spouse's SLAT and 26 million from the two ILITs (which creates liquidity to pay (i) any Federal Estate Tax on non-SLAT assets of the surviving spouse and (ii) capital gains on SLAT assets continuing in trust for the children***

**Assumes life insurance with a death benefit of 13 million is obtained on each spouse and owned by an irrevocable life insurance trust ("ILIT")*

establishing for the other spouse. Their thought might be that the surviving spouse's eventual loss of access to the SLAT assets of the predeceasing spouse (and possibly earlier than originally anticipated) outweighs the potential to save nearly 6 million in Federal Estate Taxes. As a result, the married couple might not establish the SLATs and a planning opportunity would be missed.

The Problem - death of a spouse

Upon the death of a spouse, the assets remaining in the SLAT established for the now deceased spouse often pass to or for the benefit of the married couple's children (they cannot flow back to the surviving spouse who had originally established the SLAT). As a result, the surviving spouse would lose access to potentially 13 million (plus appreciation) from the deceased spouse's SLAT assets. This could make the spouses uneasy about the possibility that one spouse might pass away at a time when the surviving spouse has a significant life expectancy remaining or if the couple's assets, which were not transferred to the SLATs, are not substantial (relative to client's total estate).

For example, if the total estate was 32.5 million immediately prior to the SLATs being funded, the assets, post funding, would be divided into three buckets:

- **13 million in SLAT #1**
- **13 million in SLAT #2**
- **6.5 million remaining in spouse's joint names**

Upon the predeceasing spouse's death, the surviving spouse would be left with 19.5 million of the 32.5 million estate, which is 60% of the total prior to establishing the SLATs, which is a 40% decrease in assets available to the surviving spouse had the SLATs never been established. It's understandable that couples might reject the SLAT Planning strategy given this reality.

The Solution

The problem of losing access to the predeceasing spouse's SLAT assets can be solved (or substantially mitigated). The couple may feel comfortable proceeding with the SLATs if life insurance on one or both spouses (for up to 13 million) is obtained and owned by an irrevocable life insurance trust ("ILIT"), to replace the assets in the SLAT for the predeceasing spouse. The result is the surviving spouse retains up to 100% of the spouse's collective estate, while the children (or likely trusts for their benefit) receive the 13 million in assets from the SLAT previously for the benefit of the predeceasing spouse. The surviving spouse could actually be in a better position (financially) than when both spouses were living (and both SLATs were accessible) as the surviving spouse's interest in the ILIT is to assets that essentially receive a step-up in basis upon the predeceasing spouse's death. Plus, the interest in the ILIT would be for the surviving spouse's lifetime, eliminating any concern that the surviving spouse would ever lose access to such assets.

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