



WHAT IS THE FLORIDA BACK-END SLAT?

One of the primary drawbacks of a traditional Spousal Estate Reduction Trust or SLAT is that in most states the Grantor Spouse cannot directly benefit from the SLAT. This traditional design requirement can present a problem for the Grantor Spouse if the Grantor Spouse survives the Beneficiary Spouse. Fortunately, the Florida Statutes were modified as of July 1, 2022 to permit the inclusion of the Grantor Spouse as a beneficiary of the SLAT after the death of the Beneficiary Spouse (referred to as a “Back-End SLAT”).

While the Back-End SLAT is an interesting option for clients who wish to retain access to the trust property after the death of the Beneficiary Spouse, it is not without risks. The primary issue is whether the IRS would treat the Grantor Spouse as having retained an indirect interest in the trust, thereby causing federal estate tax inclusion. The IRS has issued several rulings addressing this issue that essentially boil down to whether there is a preexisting arrangement with the Grantor Spouse on how trust assets will be distributed after the death of the Beneficiary Spouse. Therefore, it is imperative that no such prearrangement exist between the Grantor Spouse and the Beneficiary Spouse and/or a third party that the Beneficiary Spouse or such third party will add the Grantor Spouse as a beneficiary or that a Trustee will make distributions to the Grantor Spouse should the Grantor Spouse become a beneficiary.

In addition to possible estate tax inclusion, because the Back-End SLAT lacks specific support under the Treasury Regulations, the IRS could decide to subject these trusts to the IRS’s anti-abuse regulations which would have severe adverse tax consequences. Despite these issues, for some it may be worth the risk to permit the Grantor Spouse to be a future, potential beneficiary of the SLAT.