

Leimberg Information Services, Inc.

Steve Leimberg's Estate Planning
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Date: 29-Jul-19

Subject: Jamie M. Delman, David G. Shaftel & Jonathan G. Blattmachr on *Phillips v. Bremner-Phillips*, An Important Development Relating to Alaska Community Property Trusts - Will Intent and Purpose Prevail Over Drafting Ambiguity?

"The first Alaska Supreme Court case involving Alaska's Optional Community Property Act will not involve taxes. Rather, it is a property division issue in a divorce proceeding. This commentary discusses this pending divorce case and its misunderstanding of the tax purpose behind the enactment of Alaska's community property system."

EXECUTIVE SUMMARY:

Alaska community property trusts provide an important tax benefit for married couples residing both inside of Alaska and outside of Alaska. As with other forms of community property, Alaska Community Property will enjoy the "double step up in basis" at the death of the spouse first to die. Pending before the Alaska Supreme Court is a case in which the trial court held that, unless appreciation and income are expressly declared in a community property trust to be community property, they will remain individual property and therefore not be subject to division at divorce. If the trial court holding is upheld and if it applies for tax purposes, then the basis adjustment will not apply to appreciation and income held by trusts which are silent with respect to this subject. Pending the interpretation of the statute by the Alaska Supreme Court, or a future legislative cure, planners should recommend amendments to Alaska community property trusts which expressly cure this issue.