

Joint Accounts

Further Clarification ...

Our article entitled “Joint Accounts: What You Need to Know” implied that there would be a deemed disposition for tax purposes upon putting assets in to a JWROS (Joint with Right of Survivorship) account with an adult child.

The purpose of this article is to clarify some points involved when establishing a joint account with an adult child.

This article should therefore be read in conjunction with our previous article.

Point of Clarification - Legal Ownership vs. Beneficial Ownership

The confusion seems to lie in the distinction between legal ownership and beneficial ownership of the assets in a joint account. While legal ownership implies ownership or title over certain assets, beneficial ownership differs in that it suggests that certain owners will derive some type of benefit (e.g. income) from the assets.

Clarification is needed because the legal ownership of the assets in a joint account currently has no bearing on the beneficial ownership of those same assets.

It was once the law that where A established a joint account with his or her spouse or his or her child, there was a presumption that A intended to make a gift of some part of the beneficial interest to the spouse or the child. This was in legal terms the “presumption of advancement”.

However, *parents and adult children* often operate joint accounts simply so that the adult child may assist in managing the account.

The assumption in these situations is that there was never an intention to make a gift of a beneficial interest in the account. As a result, it is no longer necessarily assumed that there has been a change in the beneficial ownership of those assets.

No Change in Beneficial Ownership Means No Immediate Tax Consequences

As there is no change in beneficial ownership, there would not be a deemed disposition of any portion of assets put in to a JWROS account for tax purposes.

A parent under these circumstances then could *put his or her assets in to joint name with an adult child*, avoid probate fees on death (because the adult child would share legal ownership), and avoid any immediate tax consequence (because no change in beneficial ownership would have taken place).

Income Reporting Remains Unchanged

In this situation, the tax on income from the jointly held assets must continue to be paid by the contributor parent.

If the contributor wants to pass income reporting over to an adult child, presumably in a lower marginal tax bracket, a deemed disposition of a portion of the assets would have to be reported.

In this situation, there would be a clear indication that a gift or sale of the assets was intended. Due to the resultant change in beneficial ownership then, a deemed disposition would occur and any future taxable income could be reported in the adult child's name.

Joint Accounts - No Probate Fees and No Immediate Tax Consequence?

The planning point here would be that probate fees could be avoided in the case of a change in legal ownership. As well, as we have just explained, there may be an argument to support that a change in legal ownership does not necessarily imply a change in beneficial ownership *in a situation where an adult child has been listed as a joint owner of assets in a parent's account*. As a result, there would not necessarily need to be an immediate deemed disposition of a portion of those assets for tax purposes.

In Conclusion

As you can see, establishing a joint account can be a very technical and confusing issue. In all cases, clients should seek advice from their accountant or lawyer as to whether or not there has been a change in beneficial ownership of the assets in the account.