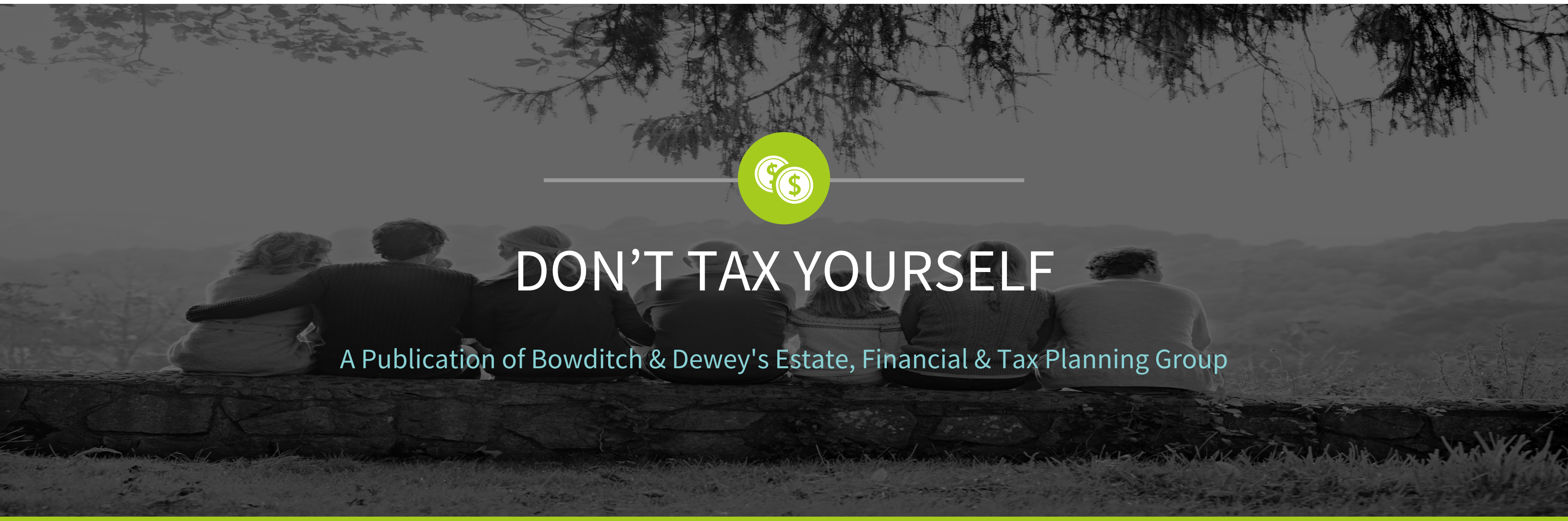

Husband's Trust Ordered to Distribute Over One Million to Ex-Wife

BY REBECCA FLEWELLING • MAY 18, 2016

Ascertainable standards have been included in trusts for many years. Ascertainable standards typically limit a Trustee's discretion to distribute trust principal for the beneficiary's health, education, support and maintenance.

There are many advantages to including these standards in a trust, such as preventing a trustee from depleting the trust assets, controlling when and why a trustee can make a distribution and for tax planning purposes as this language ensures that if the surviving spouse is the sole trustee of the deceased spouse's estate, the deceased spouse's trust will not be included in the surviving spouse's estate for tax purposes.

One of the big reasons why ascertainable standards are included in trusts is to protect the trust beneficiaries from their own creditors – including an ex-spouse.

Recently, a case was decided that has many estate planners on edge about including ascertainable standards. In the Pfannenstiehl case in Massachusetts, a husband's father had created a multi-million dollar corporation and put it into trust for the benefit of his children and their spouses. It contained ascertainable standards as well as a spendthrift provision, which is also designed to protect the trust assets from any of the beneficiaries' creditors.

When the husband and wife divorced, the question arose as to whether this trust set up by the husband's father, was considered a part of the marital estate in the divorce proceedings.

The court concluded that because of the ascertainable standard and the Trustee's pattern of exercising its discretion thereunder, the husband's share of the trust was indeed considered a part of the marital estate and the trust was ordered to pay $48,699.77 monthly to the wife for twenty-four months as part of the division of assets in the divorce.

Could this be the end of ascertainable standards?