

The QTIP Marital Trust

Many clients wish to ensure that, during the life of their surviving spouse, he or she will receive income from various properties, but that, at his or her death, the property will be held in trust (or distributed) for the benefit of children from the first marriage. The QTIP Marital Trust is often the best estate planning vehicle by which to accomplish these several goals.

One objective of the use of the “QTIP” (or, Qualified Terminable Interest Property) Trust is to enable the estate tax marital deduction to be available to your estate. This deduction enables one to postpone the payment of federal estate tax until the spouse’s death. One reason that this postponement is permitted is that the property transferred to the spouse is now in a form (the QTIP Marital Trust) that will result in the inclusion of the property in the spouse’s gross estate when he or she subsequently dies. Although the property in the Trust would be subsequently included in the estate of the surviving spouse, the tax liability attributable to this property will be taken from the QTIP Trust, which is created and funded under the revocable trust or the will of the decedent.

A QTIP Trust must provide that the spouse receives all the trust income for his or her life, but can provide that, at her death, the property goes to children (or grandchildren) as remaindermen. The spouse must be entitled to receive the current income. However, he or she need not have the right to dispose of the property at the time of death (and therefore the first to die can control the disposition of the Trust and be assured that the property will go to his or her children at the second death).

The QTIP Marital Trust is nearly always drafted into the now very popular Revocable (“living”) Trust, and including these kinds of trust provision in cases of estates near or in excess of the estate tax exemption amount. Although this technique may seem complex, if the trust provisions are prepared carefully, the QTIP Marital Trust can provide tax deferral and asset protection designed to accomplish multiple objectives.

Designation of QTIP Marital Trust as a Beneficiary. One may designate the spouse outright or a QTIP Trust as the beneficiary of an individual retirement account (IRA) or rollover IRA (containing the distribution from a qualified retirement plan), which may also postpone the estate tax liability on your IRAs until the spouse’s death. In the event of highly valuable IRAs, this technique can generate substantial estate tax advantages. Whether a QTIP Marital Trust is to be used for this purpose will depend upon whether there is a goal to ensure that one’s

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own chosen beneficiaries become the owners of the remaining assets at the second spouse's death rather than leaving that decision to the spouse. Under this type of arrangement, the spouse will receive the greater of: (1) the minimum distribution from one's IRAs required by the laws governing IRAs or (2) all of the income earned in the IRA that year. This distribution arrangement will allow the family to continue to take advantage of income tax deferral under the laws governing IRAs without sacrificing estate tax deferral under the laws governing QTIP trusts. At the same time, one can be assured that, after the spouse's death, the children from one's prior marriage will benefit from the remaining value in the IRAs.

Due to the complexity of the technical requirements of the income and estate tax laws, which must be met in order to achieve both income and estate tax deferral, careful attention must be paid to drafting the IRA beneficiary designations, as well as the QTIP Marital Trust.

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