QTIP trust

A marital-deduction trust in which the surviving spouse receives income from the trust's assets for life but the trust's principal is left to someone else, usually children. A QTIP trust controls the eventual beneficiaries while at the same time taking advantage of the marital deduction and providing an income for the surviving spouse. A QTIP trust allows you to provide for your spouse during life, while controlling where the remaining assets go upon your spouse's death, usually to your children.

Should my spouse and I consider setting up a QTIP trust? Why?

A QTIP trust is a marital deduction trust that limits the surviving spouse's access to and control of the trust property. QTIP, or Qualified Terminable Interest Property, is property "qualified" by your executor to take advantage of the federal and state estate tax marital deduction(s).

A QTIP trust may be appropriate if you or your spouse has serious concerns about the following:

1. A surviving spouse remarrying and then benefiting the new spouse.
2. A surviving spouse benefiting someone other than your children.
3. A surviving spouse's creditors attaching the trust property.
4. A surviving spouse who is unsophisticated or vulnerable.

A QTIP trust addresses these concerns, but the "cost" for such control is that the trust requires the services of a professional or highly sophisticated executor who will make the QTIP election on time and in consideration of all the tax and estate planning circumstances existing at the time of the death. **A mistake or missed deadline could cost the estate thousands of dollars and lose the marital deduction for the estate.**

Thinking through a QTIP Trust

A common estate plan for married couples is to set up two different trusts:

- The first trust, commonly referred to as a credit shelter or bypass trust, holds assets to preserve the estate tax exclusion amount. That amount is currently $2,000,000, but is scheduled to increase to $3,500,000 in 2009.[1] The decedent's spouse can then use the income and even some of the principal from the trust (as allowed in by the trust terms), with the remaining assets distributed to heirs after the spouse's death.
- If the spouse wants to control the remainder of his/her estate not placed in the bypass trust, a qualified terminable interest property trust (commonly referred to as a QTIP trust) is typically used. Any assets not placed in the bypass trust are placed in the QTIP trust, with income distributed to the spouse during his/her lifetime. This qualifies for the unlimited marital deduction, so estate taxes will not be assessed at the first spouse's death. After the surviving spouse's death, the principal is distributed to heirs designated by the first spouse.

The main objective of the QTIP trust is to allow use of assets by your spouse while you still determine the distribution of those assets after your spouse's death (by leaving instructions to the trustee). That way, should your spouse remarry after your death, his/her new spouse will not inherit any of your assets. Or, if you have children from a previous marriage, this trust will ensure those children receive part of your

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[1] In 2010, unless Congress acts to change the law, the estate tax is replaced for one year with the old carry over basis rules. The estate tax will apply again, starting in 2011, and the estate tax exclusion amount is set at $1,000,000 from that point on. Conventional wisdom assumes that Congress will amend the law before the year 2010, but myriad attempts at changes have been tried and failed up to this point, and time is running short.

estate. But if you do decide to use a QTIP trust, think through all provisions so you don't impose unnecessary hardship on your spouse. Some items to consider include:

- **Decide how much discretion to give your spouse in making withdrawals.**
  A spouse can become resentful if an outside trustee places too many restrictions on withdrawals or requires extensive documentation for withdrawals. You may want to discuss these items beforehand and give your spouse broad discretion in this area. You may also speak to the professional trustee that you will name or the personnel in the trust department (if a corporate trustee) about the instructions you will leave and how they will be interpreted and implemented.

- **Consider allowing your spouse to change trustees.**
  If your spouse has difficulty dealing with the trustee, you may want to give him/her the ability to change trustees or select investment managers.

- **Review the trust's ultimate beneficiaries with your spouse.**
  Make sure your spouse understands the trust's purpose and why you have chosen its ultimate beneficiaries. No matter what happens to his/her personal or financial situation after your death, your spouse won't be able to change the trust's beneficiaries.