

Thinking Through a QTIP Trust

A common estate plan for a married couple subject to federal estate taxes is to structure each one's Will with two trusts (commonly referred to as an "A/B" plan or "credit shelter/marital deduction" plan. The first trust, commonly referred to as a credit shelter or bypass trust, holds assets to preserve the federal estate tax exclusion amount. That amount is \$5.49 million for 2017 (up from \$5.45 million for 2016). The deceased's spouse can then use the income and even some of the principal from the trust, 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 won't be assessed at the first spouse's death; instead, upon the surviving spouse's death, the value of the then remaining assets in the QTIP trust will be included in the surviving spouse's estate (along with the surviving spouse's other assets) and will be subject to estate tax, if applicable, at that time. Upon the surviving spouse's death, the remaining principal is distributed to beneficiaries 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. That way, should your spouse remarry after your death, his/her new spouse won't inherit any of your assets. Or, if you have children from a previous marriage, this trust will ensure those children receive part of your 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.
- **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.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com