

# THE “QTIP”

Jack Davidson



This acronym has an emotional history for me. As a youth, when my mother would come into my room with a QTIP, I felt fear. Then in January of 1982, I felt fear followed by a surge

of appreciation that has lasted to this day.

It was late January. I was handed a trust of a well-known business man in his community, who died on January 8, 1982. I panicked.

The marital trust did not qualify for the marital deduction.



In 1982, the federal exemption was \$225,000 and the maximum tax rate was 65%. In those days, estate planning lawyers used AB trusts. The A Trust was a marital trust that would not be taxed, and the B Trust, also known as the “Bypass” Trust or the “Credit Shelter” Trust, was to shelter the exemption. No tax on the first death (the husband in this case) and no tax on the B Trust when the wife died.

In those days the federal law allowed the marital deduction for outright distribution to the spouse, as well as a marital trust for the spouse so long as trust income was paid annually to the spouse, and no one other than the spouse had rights to the principal. In addition, the spouse had to have the right to appoint the property to anyone upon death. The spousal interest did not terminate..... it was just delayed.

The B Trust was designed so it would not be taxed in the surviving spouse's estate. Often the

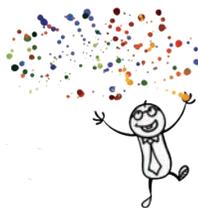


only reason to control the assets was simply to save estate taxes when the spouse died. The surviving spouse's interest would terminate

on death and the assets could be used for others, such as the children, while the spouse was living.

This anxiety-provoking marital trust A had been signed in the late 70s. Upon the death of the business owner's wife, the wife had the sole right to the income, and the property went to their children upon her death, but she had no control. It was probably a scrivener's error and I felt the pain.....the impact on the wife, and the children, and the scrivener.

I was looking at an "accidental" QTIP. At first painful, it saved the patient.



Fortunately, Congress had just passed a change in the law, effective January 1, 1982, that allowed a certain type of marital trust to terminate the wife's interest, upon her death, and still be entitled to the marital deduction. The change allowed me to take the deduction. The new law stated that

income must be paid to the wife annually, no one else could have an interest in the trust while she was alive, and I had to qualify the trust on the tax return. That is why they call this a "Qualified Terminable Interest Trust". It met the definition of "terminable" and I qualified the trust when I filed the estate tax return.

This may have been one of the first QTIP trusts in the country, and I can wax endlessly about the wisdom of our legislators who envisioned the benefits outlined in Angela Bowman's article.

Angela's article discussed the fractional QTIP, which is just another way to create AB trusts with more flexibility. I did not tell her about this story in her presence because I wanted to avoid her response: "I was not born then".

P.S. She just corrected me.....she was 9 months and 30 days old.



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