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“Tip of the Month”

The QTIP Trust for Blended Families and Millionaires

Estate planning for couples with children by earlier marriages can be a delicate business. Spouses generally want to leave their estates to each other and then to their own children, but neither spouse knows which spouse might die first. People do not want their estates to be re-directed to other children later. The tool to address these important issues is the QTIP Trust.

Qualified Terminable Interest Property (QTIP) is a property concept allowed by the Internal Revenue Code. “Terminable interest” applies to the idea of property left to a spouse for a lifetime but not beyond. It means spouses can provide for each other in their estate plans and still preserve the estate for their children. This takes away any concern that the surviving spouse might change things later.

The QTIP trust must provide that the income of the trust is paid to the surviving spouse for life, but with the following restrictions:

- No one, including the surviving spouse, can distribute any of the trust principal to anyone other than the spouse;
- The trust income cannot be terminated, even if the surviving spouse remarries;
- The trust income must be paid to the surviving spouse at least once a year and not be accumulated, even if the spouse becomes incompetent or disabled;
- The surviving spouse has the power to require that the trust produce a reasonable income, for example, by selling poor investments and reinvesting, or through use of a “total return unitrust” for the best long-term yield.

The QTIP trust can provide the surviving spouse with some flexibility:

- The Trustee can have discretion to distribute principal to the surviving spouse for health, maintenance and support in accordance with the spouse’s “accustomed standard of living;”
- The surviving spouse can be given the power to withdraw the greater of \$5,000 or 5% of trust principal;
- The surviving spouse can have a “special power of appointment” to appoint parts of the trust principal among certain beneficiaries of the first spouse.

For those with the problem of too much money in the estate (more than \$5.34 million or \$10.68 million per couple in 2014), the QTIP trust can provide added tax benefits and planning options. These options are related to the “portability” of each spouse’s unified federal gift and estate tax exemption to the surviving spouse’s future gift or estate taxes.

Whether your estate planning questions are simple or challenging, please do not hesitate to call and ask. We are happy to help. Please call us at 603-668-1971 or contact us by sending an email to mailbox @ biz-patlaw.com.

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