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LIFETIME QUALIFIED TERMINABLE INTEREST PROPERTY TRUST (QTIP)

You Can Teach an Old Dog New Tricks

Estate planning for blended families, especially when spouses have disparate levels of wealth can be complex. An old but seldomly used technique, the Lifetime Qualified Terminable Interest Property Trust ("Lifetime QTIP") can be a versatile tool for these families, which allows the wealthier spouse to provide for the other spouse during his or her lifetime and simultaneously ensure the assets held in the Lifetime QTIP ultimately benefit his or her own family. In addition, the Lifetime QTIP provides significant estate and gift tax benefits, as it allows the wealthier spouse to take advantage of the other spouse's federal estate and generation-skipping transfer tax ("GSTT") exemptions that otherwise might be wasted (especially the GSTT exemption, which is not portable). This allows the wealthier spouse to pass more wealth to the next generation than he or she otherwise would be able to.

Lifetime QTIP Overview

- Wealthier spouse creates a Lifetime QTIP and gifts assets to the trust.
- Provided the donor-spouse files a gift tax return and makes a proper QTIP election on the return, the gift to the Lifetime QTIP qualifies for the marital deduction, does not use the donor-spouse's gift tax exemption, and does not result in gift tax.
- The beneficiary-spouse receives all of the annual income generated by the Lifetime QTIP.
- If the donor-spouse so desires, the trust may also allow the beneficiary-spouse to receive distributions of principal and/or withdrawal the greater of $5,000 or 5% of principal annually.
- Upon the death of the beneficiary-spouse, the Lifetime QTIP assets will be included in his or her estate and allow the use of their federal estate and GSTT exemptions, which otherwise may have gone unused.
- Generally, at the death of the beneficiary-spouse, the remaining trust assets are distributed as follows:
  - If the donor-spouse survives the beneficiary-spouse, the assets fund a credit shelter trust for the donor-spouse.
  - If the donor-spouse does not survive the beneficiary-spouse, the trust assets fund trusts for the donor-spouse's descendants.
  - The above trusts are protected from creditors and grow free of federal estate tax and GSTT.

Example

- Husband has a net worth of $40 million and marries Wife who has a net worth of $500,000.
- Husband has been previously married and has three children from that marriage.
- Husband creates a lifetime QTIP for the benefit of Wife and gifts $5 million to the trust.
- Assuming the trust assets earn 3% in income each year, Wife receives an annual $150,000 income.
- At Wife's death, the Lifetime QTIP assets are included in her gross estate for federal estate tax purposes.
- Because she only has a net worth of $500,000, the balance of her unused estate and GSTT exemptions are applied to the trust.
- If the terms of the Lifetime QTIP provide for the creation of separate trusts for Husband's children at the death of the survivor of them, the trust assets are shielded from creditors and federal estate tax and GSTT so long as they remain in trust.