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Excess Exemption QTIP Trust & How It Works

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The advantages of estate planning far outweigh the disadvantages provided by multiple levels of benefits extended to beneficiaries, immediate and ultimate. For anyone that has a hefty amount of assets under management, as it were, it is hard to find a good reason not to engage in the establishment of some form of a credit shelter trust, such as a Qualified Terminable Interest Property (QTIP). The properly executed QTIP trust (referred to as the "Excess Exemption QTIP Trust") can furnish a significant chance for wealthy spouses to relieve their tax burden(s) and provide for the financial wellbeing of their spouses and heirs in the immediate and distant future.

An issue with estate planning for many clients to comprehend is the intricacies of the tax code vis-a-vis the trust itself and the implications of those taxes in regard to exemptions. For instance, more and more couples are taking advantage of estate plans in their marriage that employ QTIP trusts upon the passing of one of the spouses by utilizing a kind of two-trust plan. When one of the spouses passes away, one of the trusts is given a dollar amount up to that of the federal estate tax exemption while into the other is deposited the excess of the assets.

Within this trust plan, the second trust is technically the QTIP, and therefore it is entitled to take full advantage of the "unlimited marital deduction", writes Wealth Counsel, "meaning that property passing into the trust will not be subject to estate taxes until the surviving spouse dies." This extends the benefits of the QTIP trust and mitigates an otherwise potentially devastating tax burden.

How the Excess Exemption QTIP Trust Works

Taxes are indeed complicated, so it is up to attorneys to command the facts and properly manage the negotiating of such difficult subject matter for clients as they attempt to prepare and protect their assets for the future. One particularly complex matter is that of exemptions, as mentioned above, such as the use of a trust for the excess assets over and above the allowed exemption to best benefit a couple with regard to their tax burden.

The Excess Exemption QTIP trust is just one such complicated animal. Diana S.C. Zeydel (member of three state bars: Florida, New York, and Alaska) provides the following example, which helps to elucidate what this particular sort of trust is and how it functions:

For example, if the first decedent was domiciled in New York and directed that the amount by which his or her federal estate tax exemption exceeded the New York exemption (limited to $2,062,500 through March 31, 2015) should pass into a separate QTIP trust and the first decedent's executors elected for it to qualify for the federal estate tax marital deduction, the Excess Exemption QTIP Trust would also qualify for the New York marital deduction. At the survivor's death, his or her executors could then apply to "undo" the QTIP election, which would effectively remove the Excess Exemption QTIP Trust from the survivor's gross estate for both federal and New

York estate tax purposes.

As you can see, this is no easy thing to untangle, but it essentially means that this particular kind of trust is a savior for tax purposes. Zeydel goes on to discuss the nature of portability, which is when a benefactor chooses to shift any portion of his or her unused estate tax exclusion onto their surviving partner. She writes, “If a couple relies on portability, the property inherited by the surviving spouse, including the Excess Exemption QTIP Trust, will receive an automatic change in income tax basis when the surviving spouse dies. If the revenue procedure is invoked, by contrast, the basis of the Excess Exemption QTIP Trust will not be adjusted at the survivor’s death.”

Conclusion

In other words, attorneys must advise clients on the tax implications of their choice to establish a QTIP trust vis-a-vis any excess that is applied to an exemption in their state of residence and how much of that will be transferred to surviving spouses and ultimate beneficiaries. Because Excess Exemption Qualified Terminable Interest Properties can maintain separate trusts and the assets are utilized and managed differently by distinct parties, the complications of dealing with the IRS in regards to the taxing of both the principal and the income of each one in this regard must be discussed before a decision is made. The complications can be legion, but they are easily managed and discussed with one’s clients as they arise.