

Wills, Trusts,  
and Estates

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Class 5

# Estate Tax – The Marital Deduction

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- Between spouses who are U.S. citizens, there is an unlimited marital deduction for estate tax purposes
- Problems:
  1. The second spouse is going to die too eventually and then the marital deduction won't help.
  2. What if your spouse is not a U.S. citizen?
  3. What if you don't want your spouse to get all the money outright?

## Estate Tax – The Marital Deduction (cont.)

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- 1) **Portability** allows each spouse to take advantage of his or her unified credit
- 2) Giving the money into a “**Qualified Domestic Trust**” (QDOT) qualifies for the marital deduction
- 3) A **Qualified Terminable Interest Property trust** (QTIP) qualifies for the marital deduction even though it's not going directly to the spouse

# Portability

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- Only relevant for couples with more money than the unified credit amount.
- Surviving spouse must file an estate tax return (Form 706) within 9 months of death.
- The first spouse's estate tax exemption gets added to that of the second spouse.

# Qualifies Domestic Trust (QDOT)

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- Problem: Government does not want people giving big fortunes to foreign spouses who won't be subject to U.S. tax jurisdiction.
- Solution: **I.R.C. § 2056(d):**
  - No marital deduction for foreign spouse unless it's put into a trust that will be subject to U.S. tax law jurisdiction or unless the spouse becomes a U.S. citizen.

# Qualified Terminable Interest Property (QTIP)

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- Qualifies for the marital deduction even though it's not going to the spouse outright
- Goes into trust for the benefit of the children, BUT:
  1. Spouse must get an interest in all the income from the trust for life
  2. No one other than the spouse can have an income interest and no one can appoint (give) to any other person anything from the trust
  3. The spouse must have the power to demand that the trust be used in a manner so as to be income producing
  4. The trustee may have the power to give the spouse any amount for any reason
- Important: The QTIP is part of the second spouse's estate. So, when she dies, that money will be taxed.

# Quiz Time!

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# Other Issues

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- Deductions
  - Charitable
  - State Death Tax Deduction
  - Estate expenses
- Generation Skipping Transfer Tax (GSTT)

# Credit Shelter Trust

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- Not as relevant now due to portability, but still used sometimes.
- “A” goes into trust for the children (or whomever). The surviving spouse can get the income and a right to withdraw up to 5% annually and enough to support her if she needs it. That way, it’s not part of the second spouse’s estate. So, when she dies, it won’t be taxed. (It’s not hers.)
  - *Note: It could also go straight to the children, but people usually don’t want that*
- “B” goes to the spouse (or to a QTIP for the spouse). It’s not taxed because of the marital deduction.
- When the second spouse dies, the “A” money goes straight to the kids (no tax) and the “B” money is taxed because it’s the second spouse’s money.

# CS Diagram

How to pass \$2,000,000 tax free even when the unified credit is \$1,000,000!

