

## Comparison of SLAT v. IV QTIP v. DING v. SLANT Intervivos Irrevocable Trust Designs

Companion chart to "The Optimal Basis Increase Trust" (<https://ssrn.com/abstract=2436964>) and LISI article *Spousal Lifetime Access Non-Grantor Trusts*  
 "ING"=Incomplete gift, non-grantor trust (can be Delaware, Nevada, Ohio, South Dakota, Alaska, probably most of the 17 or so DAPT states)  
 "SLAT"=Spousal Lifetime Access Trust (Intervivos Bypass Trust); "IV QTIP"= intervivos qualified terminable interest property trust under IRC § 2523  
 "SLANT"=Spousal Lifetime Access Non-Grantor Trust (may be 100% non-grantor, or for QTIP, grantor trust as to acct income, non-grantor as to principal)  
 "LLPOA" = lifetime limited power of appointment; TGPOA=testamentary general power of appointment; TLPOA=testamentary limited power of appointment

Key Features	SLAT (grantor)	IV QTIP (grantor)	ING (non-grantor)	SLANT (IV QTIP) part grantor	SLANT (non-QTIP) non-grantor
<b>State Income Tax Features</b>					
1 <b>Can avoid state income tax on interest, dividends, rent (acct. inc)</b> (assuming settlor lives in state w/income tax)	no	no	yes*	no	yes*
			(*depends on state, see 50 state chart)		
2 <b>Can avoid state income tax on capital gains and other taxable income allocated to principal</b>	no	no	yes*	yes*	yes*
			(*depends on state, see 50 state chart)		
3 <b>NY/NYC residents can avoid NY/NYC income tax on capital gains and other taxable income allocated to principal</b>	no	no	no	yes	yes
4 <b>Likely to have Constitutional nexus in settlor's state</b> (assuming trustee, fiduciaries and administration out of state)	yes	yes	yes	no*	no*
				(may depend on beneficiaries)	
5 <b>Indirect 199A deduction if states base on federal "taxable income"</b>	no	no	probably	probably not	probably
<b>Federal Income Tax Issues</b>					
6 <b>Tax free "swaps" (settlor substitution of assets of equal FMV)</b>	yes	maybe* (*§2519?)	no	no	no
7 <b>Can seize installment sale treatment even if sold &gt; 2 years</b>	no	no	yes	probably	yes
8 <b>Can shift tax w LLPOA to other beneficiaries to extent distributions</b>	yes	no	yes	no	yes
9 <b>Files Form 1041 (grantor trusts have optional reporting §1.671-4)</b>	optional	optional	yes	yes	yes
10 <b>Can use Section 642(c) for better charitable tax deductions</b> (note, however, new tax reform rules for ESBTs now using §170)	no	no	yes	no	yes
11 <b>Estate inclusion/step up in basis at settlor's death</b>	no	no	yes	no	yes, to AEA* (by formula)
12 <b>Estate inclusion/step up in basis at spouse's death</b>	no	yes	no	yes	yes, to AEA by formula
13 <b>Forced step down in basis at settlor's death for basis &gt; FMV asset</b>	no	no	yes	no	no
14 <b>Forced step down in basis at spouse's death for basis &gt; FMV asset</b>	no	yes	no	yes	no
15 <b>May be able to remain community property for §1014(b)(6) step up</b>	no	no	yes* (PLRs)	no	no
16 <b>Additional §1202 \$10 million exclusion, §453A \$5 million exclusion</b>	no	no	yes	yes/no	yes

	SLAT (grantor)	IV QTIP (grantor)	ING (non-grantor)	SLANT (IV QTIP) part grantor	SLANT (non-QTIP) non-grantor
<b>Key Features (page 2 of 2)</b>					
<b>Asset Protection Considerations</b>					
17 <b>Absent UVTA/UFTA transfer, corpus protected from creditors</b> (*Huber/conflict of laws may apply settlor/debtor's state law)	yes	yes	probably*	yes	yes
18 <b>Must use DAPT state during life of spouse</b>	no	no	yes	no	no
19 <b>Must use DAPT or state w/statute if reversion after spouse's death</b> (* if spouse exercises testamentary GPoA, this changes settlor in all states)	probably*	yes	n/a	yes	probably*
20 <b>Jeopardizes income, and no cessor clause can apply to stop it</b>	no	yes	no	yes	no
21 <b>Spouse can be removed upon divorce ("floating spouse")</b>	yes	no	yes	no	yes
22 <b>Potential Medicaid/govt benefits advantage after 5 years</b>	yes	no*	no	no*	yes
<b>Federal Estate/Gift/GST Tax Features</b>					
23 <b>Requires use of lifetime and/or annual gift tax exclusion to fund</b> (*non-grantor trusts must be careful to avoid §678(a)(2) for <i>Crummeys</i> )	yes	no	no	no	yes*
24 <b>Can exploit additional gift tax exclusion that may disappear in 2026</b>	yes	no	no	no	yes
25 <b>Can add older "upstream" beneficiary w/TGPOA for basis increase</b> (or w/TLPOA if exercised so as to trigger the Delaware Tax Trap)	yes	no	no*	no	yes
			*would cause add'l gift, 1014(e) issue		
26 <b>Can use Rev. Rul. 2004-64 power to reimburse settlor income tax</b>	yes	probably not	n/a	probably not	n/a
		(Rev. Rul. does not mention effect on IV QTIPs)			
27 <b>Can enable 15 month window to decide if gift, no gift (Clayton)</b>	no	probably	no	probably	no
28 <b>Must beware of reciprocal trust doctrine if x trusts (<i>Est. of Grace</i>)</b>	yes	no	no	no	yes
29 <b>Can have broad trust protector, decanting power</b>	yes	no	*limited	no	*limited
			*(non-adverse party power may cause grantor)		
<b>New Federal Income Tax Reform Impact Features</b>					
30 <b>May enjoy an add'l \$157,500-\$207,500 cap §199A 20% QBI deduction</b>	no	no	yes	maybe*	yes
				(if to principal)	
31 <b>May enjoy an add'l \$10,000 Section 164 SALT deduction</b>	no	no	yes	maybe*	yes
				(if to principal)	
32 <b>May deduct Form 1041 tax prep, portion of trustee fee per §67(e)</b>	no	no	yes	portioned	yes
33 <b>May enjoy add'l \$750,000 cap residential mortgage interest §163(h)</b>	no	no	yes	maybe*	yes
				(if to principal)	