

Comparison of Various Basic Trust Design Options for Married Couples

Companion chart to article, "The Optimal Basis Increase and Income Tax Efficiency Trust" - please consult for explanation of variations
 (For simplicity, this chart does not compare intervivos SLATs, QTIPs, or other lifetime gifting options, though SLATs may also be adapted)
 (Some "traditional" bypass or marital trusts may have more features than indicated, this chart compares the "ordinary" common trust for spouse)
 (Some benefits may be limited/constrained by available applicable exclusion amounts. Assumes beneficiaries are not in top income tax bracket)

Key Features	Outright Will or Trust (w/portability)	Traditional Bypass	Traditional QTIP	Traditional GPOA marital	Optimal Basis and Income Tax Efficiency Trust
Basis Treatment at Death of Surviving Spouse					
1 "Step up" in basis at 2nd death (QTIP has potential for Rev. Proc. 2001-38 step up denial)	yes	no	probably	yes	yes
2 No "Step down" in basis on 2nd death	no	yes	no	no	yes
3 Avoid potential lesser basis step up when fractional interests (LLC, TIC, etc) fund trust, at 2nd death	n/a	no	no	yes	yes
Basis Treatment at Death of Beneficiary (Child)					
4 "Step up" in basis on child's death (if dynastic style, protective trust, to extent GST exempt)	yes	no	no	no	yes
5 No "Step down" in basis on child's death (if dynastic style, protective trust)	no	no	no	no	yes
Ongoing Income Tax Treatment and Flexibility					
6 Capital Gains Able to Escape Tax Rate Trap of 43.4% or 23.8% over \$11,950 if bene lower bracket	n/a	no	no	no	yes
7 Ability to spray income to lower tax bracket beneficiaries or possibly even charity	no	no	no	no	yes
8 Ability to spray capital gains as well	no	no	no	no	yes
9 Ability for "above the line" charitable deduction	no	no	no	no	yes
10 Ability for spouse to make lifetime LPOA tax-free "gifts"	no	no	no	no	yes
11 Ability for better tax treatment for special assets (personal residence, small business stock, etc)	yes	no	no	no	maybe

Asset Protection Considerations

12	Inherited Principal protected from creditors (assumes not 401(k), IRA, homestead, etc)	no	yes	yes	yes	yes
13	Income from inherited assets protected from creditors	no	maybe	no	no	yes
14	Protection from divorce, remarriage, squandering spousal elective share, ERISA/REA, etc	no	yes	yes	yes	yes
15	Better incapacity/management capability	no	yes	yes	yes	yes
16	Potential Medicaid/govt benefits advantage	no	yes	some	no	yes

Federal Estate/Gift/GST Tax Features

17	Inherited assets escape estate tax at 2nd death	no	yes	no	no	yes
18	Allows GST use at first death (reverse QTIP)	no	yes	yes	no	yes
19	No need for timely filed 706/portability to exploit 1st decedent spouse's \$5.25m estate/GST exclusion	no	yes	no	no	yes
20	Can save millions in add'l estate tax in event of simultaneous death if one spouse's estate > \$5.25m	no	yes	yes	yes	yes
21	Surviving spouse can remarry w/o jeopardizing first spouse's use of exclusion (losing DSUE)	no	yes	no	no	yes

State Estate & Income Tax Features

22	Inherited assets escape state estate tax at 2nd death (to extent of exclusion, if not separate state QTIPed)	no	yes	no	no	yes
23	Ability to spray income to beneficiary in low tax bracket or low tax state	no	no	no	no	yes
24	Ability to shelter trust income from state income tax for trust income not K-1'd to beneficiary	no	maybe	maybe	maybe	maybe
25	Can save hundreds of thousands in add'l state estate tax in event of simultaneous death if only one spouse's estate > state exclusion	no	yes	yes	yes	yes