

Maximize Tax Benefits and Protect Your Spouse with a Qualified Terminable Interest Property Trust

Valentine's Day spending totaled nearly \$26 billion in 2024, including an all-time high of \$6.4 billion spent on jewelry.¹ Yet many Americans report feeling disappointed that their partner did not do enough to celebrate Valentine's Day.²

More than 40 percent of US adults say they feel stressed about finding the perfect gift for loved ones.³ About one-third plan to give a gift of experience this year instead of material possessions, marking a consumer shift toward gifts that are seen as more experiential and personalized than material items.⁴

While the gift of a *qualified terminable interest property* (QTIP) trust may not be the most romantic Valentine's Day gesture, it could prove to be more thoughtful, caring, and valuable than an off-the-shelf purchase.

What Is a QTIP Trust?

A QTIP trust is an irrevocable trust for married couples that offers a tax advantage for the *trustmaker* (the spouse who creates the trust) and financial security for the surviving spouse while preserving wealth for future generations. Here is how it works:

- The trustmaker's assets are transferred to the QTIP trust upon their death. These assets are then held in trust for the surviving spouse according to the terms of the trust.
- QTIPs qualify for the federal estate tax *marital deduction*. This means the assets (accounts and property) transferred to the trust are not subject to federal estate taxes at the time of the trustmaker's death, effectively deferring those taxes until the surviving spouse's death.
- The surviving spouse receives income generated by trust assets for the rest of their life, giving them financial security and support.
- The trustmaker names beneficiaries who will receive the trust assets upon the surviving spouse's death. They could be family members, such as children or grandchildren, a charity, an entity, or anyone else the trustmaker chooses.
- A trustee appointed by the trustmaker manages the trust assets and ensures they are used in accordance with the trust's terms, which can be customized to meet the trustmaker's wishes and allows the trustmaker to retain control over the assets "from the grave."

What Makes a QTIP Trust Different?

¹ *Valentine's Day Shopping Statistics*, CapitalOne Shopping (Dec. 18, 2024), <https://capitaloneshopping.com/research/valentines-day-shopping-statistics/>.

² *Have you ever felt disappointed by a romantic partner not doing enough on Valentine's Day?* YouGov (Jan. 18, 2021), <https://today.yougov.com/topics/entertainment/survey-results/daily/2021/01/18/0f873/2>.

³ Niranjana Rajalakshmi, *Why you're so stressed out about finding the perfect Valentine's Day gift*, News, The Univ. of Arizona (Feb. 7, 2024), <https://news.arizona.edu/news/why-youre-so-stressed-out-about-finding-perfect-valentines-day-gift>.

⁴ *Consumers Plan to Increase Valentine's Day Spending to Nearly \$26 Billion*, Nat'l Retail Fed. (Jan. 24, 2024), <https://nrf.com/media-center/press-releases/consumers-plan-increase-valentines-day-spending-nearly-26-billion>.

There are as many different types of trusts as there are flavors in a box of Valentine's Day chocolates. In a way that sets them apart from other trusts, QTIPs offer a unique balance between providing for a surviving spouse and maintaining trustmaker control over the trust's assets.

- **Trustmaker control.** While a QTIP is required to pay all the income it generates to the spouse beneficiary, the trustmaker can specify whether and under what circumstances the spouse may access the trust's principal.
- **Estate tax savings.** QTIPs allow the trustmaker's estate to take advantage of the unlimited marital deduction to minimize estate taxes.
- **Protection from creditors.** Assets held in a QTIP trust are generally protected from the surviving spouse's creditors and from claims in any future remarriage. The level of protection will depend on the level of control the surviving spouse has over the trust's assets. However, after assets have been distributed to the surviving spouse, they may be subject to a creditor's claim.

Customizing a QTIP Trust

One of the strengths of a QTIP trust lies in its flexibility. Some ways to customize a QTIP include the following:

Distributions of Principal

The trustmaker has almost unlimited leeway to dictate when and how the trustee can distribute principal to their spouse. For example, they can limit access to the principal for only health, education, maintenance, or support expenses (i.e., the HEMS standard). They can also give the trustee sole discretionary authority to distribute principal based on the spouse's needs. They can even prohibit spousal access to the principal altogether to preserve assets for remainder beneficiaries.

Spousal Control

Although the trustmaker has the final say on the ultimate distribution of assets when the surviving spouse passes, they can give the surviving spouse some degree of control using strategies such as a *testamentary limited power of appointment*, which lets the surviving spouse choose how the remaining trust assets are distributed upon their death among a defined group of beneficiaries predetermined by the trustmaker (e.g., children, grandchildren, other family members).

Why Use a QTIP Trust?

A QTIP trust can be an effective estate planning tool if you want to provide for your spouse after your death but ultimately limit the spouse's control over your assets and have your assets pass to different beneficiaries.

This arrangement may prove useful when you have children from a previous marriage, your spouse does not manage money wisely or has creditor issues, or there is some other unique family dynamic. A QTIP trust can also be part of a business succession strategy that ensures your spouse has an income stream from the business without being involved in running it.

This Valentine's Day, instead of the customary candy, cards, flowers, and jewelry, consider showing your love with the gift of a QTIP trust that lasts a lifetime—and, in many cases, even longer. Call our office to schedule an appointment.