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The sweet spot for the trust technique I mention in this newsletter, in my view, is generally for readers who wish to protect a nest egg of \$1.0 million or more. This technique ideally takes into account (i) disability, (ii) asset protection and (iii) estate tax planning.

It is not typically a technique for short-term assets for current housing, food, medical, vacations, and so forth.

As background, the notion of estate planning alone is simply inadequate for motivating most people to address whatever planning is needed for themselves and their families. It gets relegated quite low on the list of priorities compared to the abundance of other constraints most people have on their available time and energy.

Picture this: A client completes her core estate planning documents and that same evening is attending a cocktail party. She tells her friends "I just left the office of my lawyer who prepared my estate planning documents. These documents will help make sure my estate benefits from the available estate exemption when I die and also that my husband and I will not pay tax until after both our deaths." The interest meter within this group probably at this point drops to about zero.

By contrast, imagine this same client at the party stating, "I just left the office of my lawyer who helped me put together planning documents that cover, for example, if I were to stumble out on the sidewalk after this party, hit my head, and tragically become incapacitated. My lawyer included all the necessary estate tax bells and whistles. She also is enabling me to sleep much more soundly with the satisfaction

that I am now virtually judgment-proof for asset protection purposes." In which direction do you think the interest meter is heading in this discussion?

More compelling than a bland slate of estate tax laws – and more realistic for most of us -- are the problems we face with disability and asset protection.

Keeping the above two factors as the framework, coupled with an underpinning of the estate tax planning features, is much more practical and pertinent for most people.

The technique in this newsletter is an inter-vivos QTIP trust (an acronym for qualified terminable interest property). Inter-vivos means you create and fund the trust now, compared to a testamentary trust that is funded at the time of death.

Typically, the spouse with the greater portion of assets creates and funds this QTIP trust. The other spouse is the sole beneficiary of the QTIP trust for lifetime. If the beneficiary spouse dies first, the donor spouse (who funded the trust) thereafter becomes the beneficiary of the trust for life. Ultimately, after both spouses' deaths, this QTIP trust is for their children (or for any other remainder beneficiaries under the specific design of the trust). Now back to the three features of this trust:

One, the QTIP trust is an excellent vehicle for dealing with **disability**. If you or your spouse later become disabled and can no longer act as trustee, the trust document will include the names of successor trustees who will step in and oversee the trust assets on your behalf.

## Protecting a Nest Egg

February 2012 from James M. Kane, Attorney

Page 2 of 3

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Without a trust set-up, the alternatives generally for dealing with disability are either (i) an agent acting under a power of attorney document; or (ii) a court-managed guardianship. Neither of these two options is as effective as a successor trustee.

This is because a successor trustee is the legal owner of the trust property and is not merely an agent; third parties will deal with a trustee more readily than with an agent. And, generally speaking, third parties may balk at relying on a financial power of attorney and insist on a court guardianship with a judicial determination of incapacity. This can be costly.

Two, the QTIP trust provides **asset protection**. This generally is because the spouse who funds the trust is not a beneficiary until, and unless, the other spouse dies first. The funding spouse has no present interest in the trust against which a claimant can presently maintain a successful levy. The other spouse (the non-funding spouse) is the current beneficiary and is not the party who funded the trust. Thus, the trust assets are not subject to levy to satisfy claims against the beneficiary spouse.

Three, for **estate tax planning** the QTIP trust provisions are designed so that property in the trust is available to absorb the benefit of the first-to-die spouse's estate tax exemption amount, in addition to the surviving spouse's exemption when the surviving spouse dies regardless of the ordering of the spouses' deaths.

By using both spouses' estate exemptions against the value of this one QTIP trust, the couple doesn't have to try and anticipate which one will die first, eliminating the typical worry about whether the first-to-die spouse will own enough property to use fully his or her estate exemption. The QTIP trust property will be treated as owned by whichever spouse dies first for use of that first-to-die spouse's own estate exemption. In addition, any excess value of the

QTIP trust assets exceeding the first spouse's exemption can apply against the surviving spouse's own estate exemption when the second spouse dies.

An additional estate planning feature in some circumstances is that this one QTIP trust can end up being the pour-over receptacle for both parents' estates following their deaths (for assets that are not already in the trust during lifetime). This can help streamline and reduce the number of trusts within the family.

Finally, for **income** and **gift tax purposes** there is a degree of simplicity in the operation of this QTIP trust. No separate trust income tax return is required. All income, losses, deductions, etc., are reportable on your personal tax return Form 1040. The trust is designed also so that your transfer of assets into the trust is not a gift for gift tax purposes, called an incomplete gift for tax purposes. Thus, no gift tax return is required.

What if this married couple later gets divorced?

This divorce concern can be designed within the structure of this QTIP trust. An example of a divorce agreement was addressed in an earlier IRS private letter ruling 200413011 December 3, 2003). This IRS letter ruling also provides an excellent, comprehensive technical summary of the QTIP trust.

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## **Protecting a Nest Egg**

February 2012 from James M. Kane, Attorney

Page 3 of 3

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