

# A Practical Guide to Drafting Marital Deduction Trusts (with Sample Forms and Checklists)



By Sebastian V. Grassi, Jr., published by the ALI-ABA (2004), hard cover, 634 pages, plus CD-ROM, \$147.50, <http://www.ali-aba.org/aliaba/BK36.asp>, (800) 253-6397

The federal estate tax system that has been in place, with periodic modifications, since 1916 is scheduled for complete repeal in 2010—only to be restored in 2011 to its statutory form from 2001. Will such repeal occur or be made permanent? How can lawyers help clients make informed and flexible choices when the legal landscape is unstable?

In this time of uncertainty, *A Practical Guide to Drafting Marital Deduction Trusts* by Sebastian V. Grassi, Jr. is a valuable addition to the library of the estate planning practitioner. Mr. Grassi, who practices in Troy, Michigan, is a frequent contributor to national, state, and local publications as well as a regular speaker at continuing legal education seminars.

Those familiar with Mr. Grassi's writing and speaking will expect a thorough review, and they will not be disappointed by this 634-page desk book that is at once practical and scholarly. Mr. Grassi provides fundamentals for the new lawyer while challenging the experienced practitioner with an excellent review of advanced techniques. Technical material is presented in a user-friendly manner, broken down in digestible topics, easily located through the Table of Contents, effectively cross referenced throughout the text, and searchable through a useful index.

Mr. Grassi begins by providing a brief history of the estate tax and of the marital deduction. He notes that the estate tax has been enacted and repealed three times in our country's history. Thus, any scheduled repeal may not be permanent.

Mr. Grassi clearly analyzes the advantages and disadvantages of seven types of bequests

that qualify for the federal estate tax marital deduction. Mr. Grassi's analysis makes clear that the tax and non-tax implications of marital deduction planning will survive any temporary or permanent repeal of the federal estate tax. For example, the "QTIP"-type marital deduction trust will continue to offer advantages, whether or not the federal estate tax is repealed, because it allows the first-spouse-to-die to direct how the remainder of a trust will pass at the death of the second-spouse-to-die, thus permitting clients to provide for a surviving spouse while still "locking in" a remainder for children of a prior marriage. Mr. Grassi notes that the QTIP-type trust also should be eligible for some income tax basis adjustment under the carry-over basis regime that is scheduled to replace the repealed estate tax in 2010.

Mr. Grassi devotes nearly one-half of his volume to forms, checklists, and charts. The charts and checklists summarize the virtues and pitfalls associated with selecting and funding marital deduction gifts—a vexing but exceedingly important topic. The forms include two impressive samples of Marital Deduction Trusts:

- Appendix 1 is a revocable living trust form that offers considerable flexibility through the Clayton contingent QTIP election, or, in the alternative, for an outright gift to the surviving spouse who may renounce part or all of a gift, which then passes to a Disclaimer Trust for the spouse and/or children.
- Appendix 2 is an inter vivos QTIP Trust form that includes the option of providing a unitrust definition of trust income.

Those familiar with Mr. Grassi's work, including his 2003 companion book, *A Practi-*

*cal Guide to Drafting Irrevocable Life Insurance Trusts* (published by ALI-ABA in 2003), will not be surprised to learn that the sample forms are complex, and would be nearly impenetrable by most clients. At the same time, there is a reason for every concept in his forms.

An added bonus of reviewing Mr. Grassi's difficult forms is to observe how he deals with a myriad of issues, from the distribution of tangible personal property to the designation of successor trustees, from planning for divorce, remarriage, and creditor protection to drafting for flexibility in the event that the estate tax is modified or repealed. A Fellow of the American College of Trust and Estate Counsel, Mr. Grassi taps the knowledge of other nationally recognized experts, so that readers receive, for example, the benefit of Natalie Choate's comments on qualifying retirement benefits for the marital deduction.

Although the book is lengthy, Mr. Grassi himself points out that new developments will demand attention as we serve our clients in this uncertain environment. For example, Mr. Grassi notes that joint trusts may become more common and useful if the estate tax is repealed, or if the estate tax exemption removes most clients from the estate tax system. We can look forward to Mr. Grassi's supplement while we take advantage of his current, very useful volume. ♦

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