Joint Exempt Step-Up Trust (JEST) Chronology
The 4 Steps from Drafting to Implementation
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Before Funding

Husband's Assets

Joint Assets: Joint Tenants w/ Right of Survivorship — 1/2 to each Spouse's Share

Joint Assets: Tenancy by the Entirety — 1/2 to each spouse's share or actuarial value

Wife's Assets

The IRS could find a gift upon contribution of TBE assets to the joint revocable trust, but this gift will qualify for the marital deduction if recipient spouse can withdraw what is added to his or her share. Also see PLR 200201021.

STEP 2

Funding of Joint Revocable Trust
each spouse has the right to revoke his/her share until

Husband's Share

Husband's Assets

1/2 of former JTWROS Assets

1/2 of former TBE Assets (or by other percentage)

Wife's Share

Wife's Assets

1/2 of former JTWROS Assets

1/2 of former TBE Assets (or by other percentage)

STEP 3

Division upon First Dying Spouse's Death
assume Husband dies first

Credit Shelter Trust A
Funded from Husband's Share in the amount of Husband's available estate tax exemption (EST)

Q-TIP Trust A
If Husband's Share exceeds his available EST, the excess will fund this trust

Credit Shelter Trust B
If Husband's Share is less than his available EST, Wife's Share will fund this trust in the amount of Husband's remaining EST (but not in excess of her available EST)

Q-TIP Trust B
If Wife's share has any remaining assets, they will be used to fund this trust

Step 3 note:

CST A and CST B can be merged if there is no concern with estate tax, stepped-up basis, creditor protection, or credit shelter trust effectiveness. Q-TIP Trust A and Q-TIP Trust B can be merged if there is no concern with respect to stepped-up basis or credit protection effectiveness.

STEP 4

Results of JEST technique

- For Wife & descendant's benefit (limited by ascertainable standard)
- Assets will receive a stepped-up basis
- Assets are protected from Wife's creditors
- Assets escape estate tax on Wife's death

-Wife can be beneficiary of income and principal
-Assets will receive a stepped-up basis on Husband's death, and then again on Wife's death
- Assets included in Wife's taxable estate
- Will be protected from Wife's creditors

-Assets may receive a stepped-up basis, but this is more likely if Wife is not a beneficiary
- May escape estate tax liability on Wife's death
-For creditor protection and estate tax exclusion purposes, CST B may be moved to an APT jurisdiction
Special Consideration: If Wife is found to have a gift of trust assets to Husband upon Husband's death, this gift may qualify for the marital deduction
- If IRS argues that Wife has gifted to trust the gift will be incomplete because of her power of appointment

-Wife will be income beneficiary
-Assets may receive a stepped-up basis on Husband's death & again on Wife's death
- Assets included in Wife's estate
- May not be protected from Wife's creditors unless moved to APT trust jurisdiction
- If IRS argues that Wife has gifted to trust the gift will be incomplete because of her power of appointment