# QTIP Trusts Could Allow Big Gifts With Small Costs

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Wealthy individuals concerned that the higher estate and gift tax exemptions will disappear in 2026 can use a special trust planning technique to ensure they use up their bonus exclusion amount without giving up much.

Those who are interested in making large gifts before 2026 are going to want “some kind of backdoor access . . . to those funds,” and qualified terminable interest property (QTIP) trusts offer that kind of access, according to Steve R. Akers of Bessemer Trust Co., who spoke April 26 at an American Law Institute Continuing Legal Education conference in Austin, Texas.

For estate planning clients who were previously married and had a QTIP trust created for them by their spouse, the client can give a small fraction of the trust’s income interest — even just a 1 percent interest — yet still have all of the trust’s remainder interest deemed a gift under section 2519, Akers said. And in the meantime, the client would still receive 99 percent of the trust’s income, ensuring a largely untouched cash flow, he said.

It’s "a way of making a large gift, if there’s a very large QTIP trust, without the client really giving up anything,” Akers explained.

Further, if the QTIP trust itself is larger than the deemed gift that the client wishes to make, the trust may be able to be divided into two trusts under state law, and the deemed transfer can be made from just one trust, according to Akers.

A QTIP trust typically provides the surviving spouse with a steady source of income while allowing the original grantor to limit how the trust’s assets are ultimately distributed.

Akers's presentation materials on the QTIP strategy indicate that because the client still receives 99 percent of the income from the trust, 99 percent of the QTIP trust’s assets would be included in the client’s estate because of section 2036. That would then exclude the gift of the remainder interest from being an adjusted taxable gift during estate tax calculations, but the amount of gift tax that would have been payable at the time the gift was made would still be subtracted from those calculations.

“The effect is that the date of gift value portion of the amount of the remainder interest that is included in the gross estate under [section] 2036 is offset by the ‘gift tax payable’ subtraction with respect to that amount, so only the net appreciation is effectively subjected to estate tax — thus making use of the gift exclusion amount that was available at the time of the gift,” according to the presentation.

Akers's presentation acknowledges that this method “does not make the most efficient use of the gift [tax] exemption . . . but this [section] 2519 approach may be all that the spouse is willing to do in terms of making of gifts."

Another downside to this planning strategy, according to Akers, is that the property in the trust is not eligible to receive a stepped-up basis upon death of the surviving spouse.

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