

**INTEGRATING THE FOUR EXEMPTIONS FOR OPTIMUM STRATEGIC ESTATE
PLANNING FOR MARYLAND TAXPAYERS**

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Estate planning has been in a state of flux in light of the major changes to the federal estate, generation-skipping and gift tax in 2001 as well major changes to the Maryland's "decoupled" estate tax in 2004, and more recently in 2006 with the advent of the "state-only QTIP." This outline will review the changes, the interrelationship among the federal and state exemptions (and federal and state QTIP elections) and how they change the manner in which we plan and draft testamentary documents. Some of these concepts, particularly the "state QTIP," are novel and our thinking as to optimum strategies may vary over time, especially as new estate tax forms and interpretations are provided. Practitioners should carefully follow these trends and interpretations and are encouraged to take full advantage of future MICPEL seminars and publications as well as developments provided in the Maryland Forms and Practice Manual which I author and supplement ("Maryland Estate Planning, Wills and Trusts Library: Forms and Practice Manual"). In this vein, I acknowledge Data Trace Publishing Company for facilitating the use of certain materials and forms from that publication-- some from a supplement soon to be released. I also would like to acknowledge the members of my office who provided valuable input as well as other colleagues in the estate planning bar who have provided insights on optimum methods for planning in light of these changes.

I. Four Fluctuating Exemptions Across the Federal and State Estate Tax Landscape

- A. Federal Estate Tax Applicable Exclusion Amount (sometimes referred to as "federal estate tax exemption")
- B. Federal Gift Tax Applicable Exclusion Amount (sometimes referred to as "federal gift tax exemption")
- C. Federal Generation-Skipping Transfer ("GST") Tax Exemption
- D. Maryland Estate Tax "Triggering" Exemption (sometimes referred to as "Maryland estate tax exemption")

II. Federal and State Changes in Four Exemptions

A. Impact of Economic Growth Tax Relief Reconciliation Act of 2001 ("EGTRRA")

- 1. *In General.* Under EGTRRA (passed by Congress on May 26, 2001 and signed by President Bush on June 7, 2001), Congress enacted the most widespread reform of the federal transfer tax system

(including estate, gift and generation-skipping transfer tax) since 1981.

2. *Increase in Exemptions/Lowering of Rates.* EGTRRA made a number of incremental changes to the estate tax, the gift tax and the generation-skipping transfer tax. The changes lower the overall liability for federal transfer taxes by lowering the rates and increasing the exemption until 2010 when the estate and the generation-skipping transfer tax are repealed for individuals who die (or make generation-skipping transfers) in that year. The taxes are reinstated (the EGTRRA provisions “sunset”) for 2011 and thereafter at the rates and with the exemption amounts that were in place before the new law was enacted. The gift tax is retained for all years.

See Appendix A for a Graphic Year-by-Year Summary of Changes Made By EGTRRA.

3. *Repeal of the State Death Tax Credit.*
 - a. *Before EGTRRA.* Before EGTRRA, Maryland’s estate tax, like the estate taxes of many other states, was tied to the federal estate tax. Specifically, the federal estate tax gave each decedent’s estate a dollar-for-dollar credit against the federal estate tax for amounts paid to the state as estate tax, up to a specified limit. Most states took full advantage of this rule by imposing a “sponge tax” or a “pick-up tax” exactly equal to the amount of the federal credit available. This essentially created a revenue sharing system in that there was one tax— with the larger share paid to the federal government and a portion directed to the states.
 - b. *EGTRRA Repeal of Credit.* EGTRRA reduced the state death tax credit under IRC §2011 starting in 2002, and repealed it for years after 2004, although a deduction is now allowed for estate inheritance, legacy or a succession tax paid to states under IRC §2058. The phase-out/repeal of the state death tax credit resulted in the federal government keeping a greater portion of the tax imposed on the decedent’s estates at the expense of the states. The elimination of the state death tax credit was one of the revenue making provisions of EGTRRA – if the federal fisc was to receive all federal estate tax dollars, the loss in federal tax revenues engendered by reducing and ultimately repealing the estate tax was mitigated (even though this is achieved by effectively reducing the estate tax revenues of individual states).

- c. *Effect of Repeal of Credit: Decoupling by Certain States.* The repeal of the state death tax credit propelled Maryland (and certain other states) to (1) “decouple” from the federal estate tax (Maryland in 2004) in order to replace the lost estate tax revenue and (2) provide relief with a state-QTIP (Maryland in 2006). See discussion below.

B. Impact of Maryland’s Decoupled Estate Tax and State-QTIP Election

1. *2004 Decoupling Legislation.* On May 26, 2004, the Governor of the State of Maryland signed a general revenue measure which essentially triggered a Maryland estate tax for taxable estates over \$1,000,000. The tax is especially egregious since (due to peculiar calculations of the repealed state tax credit), if the taxable estate exceeded \$1,000,000, the tax would be triggered on the whole estate. Thus, the effective tax rate for estates between \$1,000,000 and \$1,093,785.32 was 41%. The tax rates for amounts over \$1,093,785.32 ranged from between 5.6% and 16%. The tax applied to estates of decedents dying on or after January 1, 2004. (Note: the state-QTIP and the 16% cap, discussed elsewhere in this outline and program, ameliorated this result for decedents dying after 2005.) The “new” Maryland estate tax survives repeal of the federal estate tax in 2010.
2. *The 2006 Maryland Changes.* On May 2, 2006, the Governor of the State of Maryland signed legislation that essentially maintained the Maryland estate tax “triggering” exemption at \$1,000,000 but ameliorated the effect of the tax with 2 vital changes:
 - a. *State-Only QTIP Election.* A Maryland QTIP Election is permitted for a qualifying QTIP Trust to defer the Maryland estate tax until the death of the surviving spouse, even if no QTIP election is made for federal estate tax purposes. Thus, the QTIP election could qualify the marital trust as a “Maryland QTIP” trust to defer the Maryland estate tax, but that election need not be made to qualify the marital trust as a QTIP Trust to defer the federal estate tax.
 - b. *16% Cap.* The new Maryland estate tax provides relief as the federal credit used to calculate the Maryland estate tax could not exceed an amount equal to 16% of the amount by which the decedent’s taxable estate exceeds \$1,000,000. This cap and its computational peculiarities are dealt with in other parts of this seminar.

III. LEGAL, PRACTICAL AND DRAFTING EFFECTS OF FLUCTUATING AND

VARYING FEDERAL AND MARYLAND ESTATE TAX EXEMPTIONS

A. Estate Tax Planning Strategy for Reduction of Federal Estate Tax: Maximize Federal Estate Tax Exemption for Married Couples Through Credit Shelter/Bypass Trusts.

1. *Summary of Technique.* One fundamental estate tax planning strategy is to absorb the full estate tax exemption in the estate of the first spouse to die. Many married couples who have engaged in estate tax planning have created estate plans that were intended to postpone the payment of estate taxes until after the death of the second spouse while preserving both spouses' exemptions, thus maximizing the amount of assets that can pass estate tax-free. This was often accomplished in Wills or Revocable Trusts through the use of a "Bypass Trust" or a "Credit Shelter" Trust.

The "Bypass Trust," which is set up in the Will or Revocable Trust of each spouse, would be funded after the death of the first spouse with assets equal to the first spouse's federal estate tax exemption (\$2,000,000 in 2006). Any assets in excess of the exemption would pass to the surviving spouse (or to a marital trust for the benefit of the surviving spouse). The assets in the Bypass Trust would not be part of the surviving spouse's estate and would pass ultimately to the children/descendants estate tax-free. In a non-decoupled state, use of the Bypass Trust would essentially allow a married couple to utilize both spouses' exemptions (aggregate \$4,000,000 in 2006) and would save significant estate tax. The example below illustrates the typical benefits of a prototype "Bypass Trust" structure prior to decoupling.

2. *Example: Bypass Trust Strategy (in a Non-Decoupled State)*

Harry and Wilma, residents of a non-decoupled state, have an aggregate estate of \$4,000,000, with each owning \$2,000,000. Harry's Will provides for a "Bypass Trust" which would be funded with assets up to the federal estate tax exemption amount. The balance of Harry's estate would pass to his wife, Wilma. If Harry died in 2006, when the federal exemption was \$2,000,000 his Bypass Trust would receive \$2,000,000, and there would be no federal estate tax due and no Maryland estate tax (since before decoupling, the Maryland exemption was tied to the federal exemption). At Wilma's subsequent death, say, in 2007, the assets in the Bypass trust would pass to the couple's children with no further estate tax, and Wilma could leave an additional \$2,000,000 to the couple's children free of federal and state estate taxes. Using the available federal estate tax exemption for both estates (\$2,000,000 in

2006 for Harry and \$2,000,000 in 2007 for Wilma), the couple is able to pass \$4,000,000 to their children free from federal and state estate tax.

B. Challenges to Maximization of Federal Estate Tax Exemption

There are several issues and challenges that must be considered, overcome and integrated in order to maximize the full federal estate tax exemptions for a married couple.

1. *A Fluctuating Federal Exemption.* The federal estate tax exemption is fluctuating and there are 5 possible estate tax exemptions that may be applicable in the year of death. This poses significant challenges in drafting sophisticated wills and trusts that seek to integrate a client's intent with maximum estate tax benefits. Here are the 5 possibilities:
 - a. 2006-2008: \$2,000,000 exemption
 - b. 2009: \$3,500,000 exemption
 - c. 2010: N/A-- Repeal
 - d. 2011: \$1,000,000 exemption
 - e. ????: Exemption as negotiated in Congress
2. *Distortion of Client's Intent: Formula Clauses and Fluctuating Federal Exemption.*
 - a. *What does the Client Want?* The estate plans governed by tax-oriented formula clauses may have always been distortions of the client's true preferences, even before EGTRRA. The distortions, exacerbated by EGTRRA, have provided a reason to seriously ask the clients "what they really want."
 - b. *Traditional Use of Formula Clauses in Marital and Bypass Trusts.* Wills and Revocable Trusts designed to reduce estate taxes typically contain formula clauses that automatically take advantage of the increases in the applicable exclusion. Thus, Wills with formula clauses would facilitate one's taking advantage of the maximum exemption as it increases. Under these formula clauses, the "Credit Shelter/Bypass" Trust (a.k.a. the "Family Share") would be funded with the maximum lifetime estate tax exemption while the remainder (the "Marital Share") would pass outright to the spouse or to a marital trust for the benefit of the spouse. See Harry and Wilma example above.
 - c. *EGTRRA's Formula Clause Distortion.*

(1) *“Tax Goal” Distorting Dispositive Goal.* While the formula clause would facilitate one’s taking advantage of the maximum estate tax exemption as it increases, it has one major trap to watch out for: **For many clients, the formula language in taking maximum advantage of the estate tax exemption as it has expanded to \$2,000,000 (in 2006) and as it expands to \$3,500,000 (in 2009), will direct more of their estates to the “Family Share” (for funding of the Bypass/Credit Shelter Trust) with less for the “Marital Share.” Thus, the surviving spouse could be “shortchanged” under a Will with a formula clause tied to the lifetime exemption. Indeed, this may thwart the dispositive intentions of the client.** This unintended consequence can be illustrated by the following simple example:

(2) *Example:* Herschel is married with children and grandchildren, and has a net worth of \$3,675,000. In 2001, Herschel’s estate planning attorney drafted a Will with a formula clause which provides for a Bypass/Credit Shelter Trust (the “Family Share”) for the benefit of his children and grandchildren. The remainder (the “Marital Share”) would pass outright to his wife, Worrywart. When Herschel signed his Will in January, 2001, he believed that all of his net worth except for \$675,000 would be available for Worrywart if he died. Indeed, under his Will as drafted, Worrywart would have approximately \$3,000,000 available to her if he died (\$3,675,000 less \$675,000).

Results:

Pre-EGTRRA: If Herschel had died in 2001, Herschel’s objectives as to the support of Worrywart would be achieved. Approximately \$675,000 would pass to the Bypass Trust for the benefit of the children and grandchildren while the bulk of his estate would pass to Worrywart.

Post-EGTRRA: But Herschel’s objectives could be thwarted under his formula clause Will if he dies after 2001 - certainly if he died in 2009! Let’s assume for purposes of this example that Herschel’s net worth does not grow. Here’s how the estate would be divided if Herschel did not change his Will:

Year of Death	Marital Share (outright to wife)	Family Share (FBO children and grandchildren)
2002	\$2,675,000	\$1,000,000
2003	\$2,675,000	\$1,000,000
2004	\$2,175,000	\$1,500,000
2005	\$2,175,000	\$1,500,000
2006	\$1,675,000	\$2,000,000
2007	\$1,675,000	\$2,000,000
2008	\$1,675,000	\$2,000,000
2009	\$175,000	\$3,500,000

Certainly, the result in 2009 would thwart Herschel's objectives. His wife, Worrywart, may be distressed to learn that she has no interest in most of the estate, and this may even compel her to exercise the right of election against her late husband's Will.

Comment Re: Estates with Substantial Net Worth: This "underfunding" of the marital share due to the increasing exemption may be less of a problem with very "large" estates (for instance those over \$10-15 million) where an enlarged family share passing to children and grandchildren would still leave the surviving spouse with adequate resources.

Comment Re Will Structure Solely for the Benefit of Spouse: As will be noted below, Will structures where the Credit Shelter/Bypass is drafted such that the spouse is the sole beneficiary during the lifetime of the surviving spouse would not be impacted significantly by EGTRRA since the surviving spouse would be the sole beneficiary of the trust. The only consequence is that the share that would pass to the surviving spouse in trust as opposed to an outright bequest would be greater.

3. *Distortion in Event of Estate Tax Repeal.* A client's estate plan that is "governed" by maximizing estate tax exemptions and reducing estate taxes may not represent the client's true intent for the disposition of his

estate if there were no estate tax. **If there is a dramatic divergence, the estate planning documents for such clients should probably specify what happens if the estate tax is not applicable.** In Herschel's example above, it is conceivable that his wife could be significantly shortchanged depending on how the Will is drafted and interpreted.

4. *Maximizing Federal Estate Tax Exemption in Estate of First Spouse May Engender Maryland Estate Tax.*

a. *Example: Bypass Trust Strategy: Results If There Were No Decoupling- see Example (Harry and Wilma) in III.A.2 above.*

b. *Impact on "Inflexible" Bypass Trusts after Decoupling.* As a result of Maryland's decoupling legislation which may trigger a Maryland estate tax for estates in excess of \$1,000,000, those existing Wills and Trusts with "Bypass Trusts" that seek to maximize the federal estate tax exemption could engender payment of a Maryland estate tax on the death of the first spouse to die. If the Bypass Trust is fully funded at the first spouse's death to take advantage of the \$2,000,000 federal estate tax exemption, this would (absent a Maryland QTIP election) result in a Maryland estate tax.

Note: If Harry's death, in the example above, occurred in 2006-2008 (when the federal exemption is \$2,000,000) and Harry's Will was not changed, there would be no federal estate tax due but a Maryland tax of \$99,600. If Harry's death occurred in 2009 (when the federal exemption rises to \$3,500,000), the Maryland estate tax would be \$229,200. Of course, as discussed in this outline, the results may be ameliorated by (1) a state QTIP election, (2) the new "16% cap" and (3) large gifts that reduce one's taxable estate.

c. *Hobson's Choice.* The new Maryland estate tax (before the 2006 state QTIP was introduced) essentially forced taxpayers to evaluate the benefits of full maximization of the federal estate tax exemption in the first spouse's estate (at the risk of paying Maryland estate tax) or diminished use of the federal exemption with little or no Maryland estate tax.

d. *Maryland QTIP - After 2005.* The new Maryland QTIP election now eases the dilemma by allowing the estate of the first spouse to utilize the full federal estate tax exemption (\$2,000,000 in 2006) and avoid a Maryland estate tax on the excess (between the Maryland estate tax exemption of

\$1,000,000 and the federal estate tax exemption of \$2,000,000) by electing a Maryland QTIP for that amount. For a Maryland QTIP to work, there must be a valid trust that meets the QTIP requirements of federal tax law and an election on a timely filed Maryland estate tax return to treat the trust as a QTIP trust. (See discussion elsewhere in this outline.) ***The challenge generally is to draft the document in such a way so as to (1) maximize the federal estate tax exemption on the death of the first spouse, and (2) provide for possibility of a Maryland QTIP for the difference between the federal estate tax exemption and the Maryland estate tax exemption (the “gap amount”). Some alternatives will be explored in II.C. below.***

5. *Allocation and Titling of Assets Between Spouses to Maximize Changing and Varying Federal and State Estate Tax Exemptions.*

a. Correct titling and ownership of assets is essential to fully use each spouse’s exemption and ensure that, once used, those assets do not pass back to the surviving spouse in a form that causes inclusion in the surviving spouse’s estate.

(1) *Increase in Federal Estate Tax Exemption.* The increases in the federal estate tax exemption make attention to the titling of assets between a husband and wife (or jointly) even more important. With both the federal estate (and GST) tax exemption currently at \$2,000,000 a person and increasing, it no longer is sufficient (as was the case for many years) to merely make sure each spouse owns at least \$600,000. It is imperative that the estate planner know who owns what and in what form. Once there is an understanding of this, intra-spousal transfers may need to be made because of insufficient assets owned by one spouse in order to take full advantage of his or her estate tax exemption (if that spouse should die first).

(2) *“Cap” of Maryland Estate Tax Exemption.* The \$1,000,000 “trigger” of the Maryland estate tax exemption also makes it important to ensure that there is appropriate titling and ownership of assets even for “smaller” estates below the \$2,000,000 federal exemption threshold. The lower state threshold still requires planning for estates of married couples with combined assets over \$1,000,000.

b. Here are 4 possibilities of ensuring maximum use of exemption:

- (1) *Separate Assets*. Ensure that each spouse has sufficient assets in his or her own name that could be used to fully fund the Bypass Trust in the Will or Revocable Trust of the first spouse. This can be accomplished by outright gifts from one spouse to the other. Although simple, the propertied spouse is often unwilling to give up control of the given amount, not to mention subjecting such gift to the non-propertied spouse's creditors.
- (2) *Inter-Vivos QTIP*. One method of putting assets into the non-propertied spouse's estate (to fully use his or her exemption) is to create an "inter vivos QTIP." The minimum that the donee-spouse needs to receive is the income. At the spouse's death, his or her exemption would be placed in a Credit Shelter Trust, probably for the benefit of the propertied spouse and/or his descendants, and the balance could pass outright or to a marital deduction trust for the benefit of the surviving spouse.
- (3) *Non-probate Assets/Beneficiary Designations/Disclaimer*. Proper attention to non-probated assets such as employee retirement benefits, IRAs and life insurance is critical. These assets could be used to fund the Bypass Trust under the Will if the appropriate trust is designated as primary or contingent beneficiary of the retirement plan or life insurance policy. A common technique is to designate the spouse as primary beneficiary and the Bypass Trust as secondary beneficiary which would allow the surviving spouse to disclaim the benefit/insurance and thereby facilitate funding of the Bypass Trust. See discussion of Disclaimer Trust later.
- (4) *Jointly-Held Assets/Disclaimer Strategy*. For creditor protection purposes, it is often advantageous to have assets held by spouses to be titled as tenants by the entirety. In such event, upon the first spouse's death, the property would pass to the surviving spouse outright, which would seem to preclude utilization of the first spouse's estate tax exemption. However, the surviving spouse can disclaim the first spouse's one-half ($\frac{1}{2}$) interest in the joint property and then fund the Bypass Trust under the first spouse's Will (see Treas. Reg.

§25.2518-2(c)(4)).

C. Drafting Goals

1. ***For Married Couples: Implementing Client's Dispositive Objective While Maximizing the Federal Estate Tax Exemption/Recap.*** Skill will be needed to overcome/integrate the challenges to this objective:
 - a. Dealing with Effect of Fluctuating and Ephemeral Estate Tax Exemptions (5 Possibilities)
 - (1) Prevent Distortion of Client's Intent: Formula Clauses and Fluctuating Federal Exemption.
 - (2) Prevent Distortion in the Event of Repeal
 - (3) Allocation and Titling of Assets to Maximize Changing and Varying Federal and State Estate Tax Exemptions.
 - b. Minimizing Overall Federal and Maryland Estate Tax Burden/Coordinating Maximization of Federal Estate Tax Exemption with Possible Maryland Estate Tax/Use of Maryland QTIP.
2. ***For Unmarried Individuals-*** focus is less on drafting for tax-minimization but in reduction of taxable estate through strategic gifting/minority discounts- see Part V of this outline.

D. Drafting Solutions for Married Couples Maximizing the Federal and Maryland Estate Tax Exemptions (with State QTIP) and Achieving Clients Dispositive Goals.

1. ***Fixed Structure For Married Couples (Appendix B, Form 1)***
 - a. ***Working with "Traditional" Marital and Credit Shelter Trust***
 - (1) With size of credit shelter trust set at the presumably lower state threshold, a formula would refer to the largest amount that would produce no federal or state tax as opposed to referring only to federal estate taxes.
 - (2) The balance would pass to a QTIP/Marital Trust that could be divided into two trusts -- where the executor could choose to make federal or Maryland QTIP election for either trust. This QTIP language affords flexibility to an otherwise "fixed structure."

- (3) Provisions for power and authority to divide trusts should always be in the documents in the current state QTIP era (see Form 2).

b. *3 Bucket Approach (see Form 3)*

- (1) *Bucket #1 to "Credit Shelter Trust"*: One share would pass to a Credit Shelter Trust equal to the amount exempt from both state and federal tax (*i.e.*, capped at \$1,000,000 due to Maryland triggering exemption). This trust can be a family spray trust for the benefit of spouse and/or children or other descendants (and therefore need not require payment of income which would engender leakage in the Credit Shelter Trust).

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- (2) *Bucket #2 to "Gap Marital Trust"*: A second share would pass to a Marital QTIP Trust (in form, known as "MARITAL TRUST A") holding an amount equal to the difference (gap) between the federal estate tax exemption and the state estate tax exemption (*i.e.*, in 2006, this gap would be \$1,000,000). **This is the trust for which the executor can make a state-QTIP election (deferring the estate tax for Maryland estate tax purposes) but not a federal QTIP election (thereby allocating to this trust the remaining federal estate tax of the first spouse).**

- (3) *Bucket #3 to Spouse Outright or in Marital Trust*: The amount in excess of the remaining federal estate tax exemption could pass either (1) outright to the spouse or (2) to a second Marital QTIP Trust, known as "MARITAL TRUST B" for the benefit of the spouse (QTIP for both federal and state estate tax purposes).

2. *Flexible Structure Designed for Post-Mortem Decisions*

a. *Disclaimer Activated Trust (Form 4)*

- (1) "QTIP-able" Disclaimer Trust with Option for Bifurcation
- (2) *Result*: Upon the death of the first spouse, all assets would pass to the surviving spouse. The surviving spouse would have the option to disclaim after the death of the first spouse. Any property disclaimed would be used to fund the Disclaimer Trust. The Disclaimer here may be "QTIPped" as it meets all the requirements of

IRC§2056(b)(7), and this form allows the Personal Representatives to bifurcate the trusts into 2 trusts to facilitate the state and federal QTIP elections and provide an appropriate structure.

- (3) *Purpose:* Provide the surviving spouse with flexibility to ascertain after the first spouse's death what amount of assets, if any, should fund the Disclaimer Trust and elect share that would be includible in the first spouse's estate for federal and Maryland estate tax purposes (no QTIP) and that portion for which a QTIP would be available for both.
- (4) *Risks:* While the disclaimer trust strategy offers the greatest flexibility for planning, it suffers from the inherent risk that the surviving spouse may not execute a qualified disclaimer (*e.g.*, timely filed within 9 months after death, among other requirements) in circumstances where it would have been in the best interests of the remainder beneficiaries (overall lower estate taxes) for the surviving spouse to do so. The surviving spouse may also run afoul of the rules prohibiting the disclaimant from accepting benefits of the disclaimed assets, although the Service has interpreted those rules liberally in recent years.
- (5) *Caution Re: Power of Appointment:* The disclaimer is not valid if the surviving spouse has a limited power of appointment over the Disclaimer Trust because that would run afoul of the prohibition against the disclaimant's directing the disposition of the disclaimed property. Treas. Reg. §25.2518-2(e)(5), Example (5). Two possible solutions are to (1) disclaim the power of appointment, or (2) create a separate trust for disclaimed assets without the power of appointment language. Note that the surviving spouse can serve as sole trustee without estate tax problems in his or her estate provided that distributions from the trust are limited by an "ascertainable standard." See Treas. Regs. §25.2518-2(e)(1)(l).
- (6) *Power of Attorney- Disclaimer Authorization Language.* If the disclaimer option is employed, authority in a power of attorney should be given to the agent to make such disclaimer if the principal is incapacitated.

(7) *Jointly-held Assets.* It is now accepted that a surviving spouse may disclaim ½ of jointly-held property passing at death (disclaimer must be made within 9 months of death). See Treas. Reg. §25.2518-2(c)(4)). This allows the assets to be held jointly during the spouses' lifetime and still be used to fund the Credit Shelter Trust after the death of the first spouse.

b. *Single QTIP Trust Structure (Form 5)*

(1) *Purpose and Use:* Where the testator wishes that all individually held assets pass to a Marital Trust for the benefit of the surviving spouse, a Will or Revocable Trust containing a single QTIP Trust may be a solution. The QTIP Trust provides a lifetime income interest to the surviving spouse with the remainder of the trust assets passing to beneficiaries selected by the first spouse at the surviving spouse's death. Using a QTIP Trust, those assets over which the executor makes the QTIP election would receive the benefit of the estate tax marital deduction and not be subject to estate taxes (assuming the surviving spouse is a U.S. citizen). Furthermore, the surviving spouse would be entitled to the income from the QTIP for the remainder of his/her life. This structure also facilitates a partial QTIP election for federal and/or Maryland purposes. A provision should be included in the Will to divide trusts to facilitate the division of trusts for purposes of the Maryland and federal QTIP.

(2) *Comparison with Disclaimer Trust Strategy*

(A) *Who makes the Election?* The QTIP Trust is similar to the Disclaimer Trust in that each provides flexibility to the elector. The flexibility for a QTIP Trust would lie with the executor's decision to make a full or partial QTIP election over the assets. Thus, unlike the Disclaimer Trust where the discretion lies with the surviving spouse, all discretion lies with the executor of the QTIP trust. In a single QTIP Trust structure designed for this purpose, the executor will have to decide on the federal and state QTIP elections.

(B) *Time Allotted for Decision.* A QTIP election affords the executor 15 months after the date of death in which to make the election (9 months,

plus 6 months extension). There is no extension for disclaimers.

c. *Layered Disclaimer into Single QTIP Trust with Possibility for Partial QTIP/Bifurcation (Form 6)*

3. *Clayton or "Flip" QTIP Structure*- while this was a viable solution before the Maryland QTIP legislation, it is less workable when both the gap amount and any amount in excess of that amount requires QTIP treatment to avoid Maryland and federal estate tax in first spouse's estate.. Perhaps the Clayton QTIP can be revisited as we obtain more guidance from the IRS and the State of Maryland as to the interaction of the federal and state-only QTIP.
4. Possible Curative Language For Existing Credit Shelter Trusts That Are Not QTIP-able and May Exceed Maryland Exemption (and Possible Trigger Maryland Estate Tax in First Estate)- Form 7.

IV. LEGAL, PRACTICAL AND DRAFTING SOLUTIONS FOR GST EXEMPTION

A. EGTRRA's Increase in GST Exemption and Repeal in 2010

1. *"Recoupling" with Fluctuating Estate Tax Exemption.* EGTRRA increased the amount of an individual's GST exemption starting in 2004 so that it matches the amount of the individual's federal estate tax exemption (see chart, Appendix A). The GST exemption thus has the same fluctuating amounts as the estate tax exemption, with the 5 possibilities described earlier:
 - a. 2006-2008 - \$2,000,000
 - b. 2009 - \$3,500,000
 - c. 2010 - Repeal
 - d. 2011 - \$1,000,000 (indexed by inflation)
 - e. ? ?? Other exemption per legislative compromise
2. *Significant Planning in Light of Recoupling of GST and Estate Tax Exemption*
 - a. *Effect of Increased Amounts for Grandchildren and GST Trusts.* The increase in the GST exemption allows a greater portion of the client's wealth to be transferred directly to grandchildren or to GST Trusts (typically trusts for (1) benefit of lineal descendants or (2) for benefit of children and grandchildren, remainder to grandchildren upon death of child/children). These

assets would effectively skip a generation and reduce estate taxes in the children's estate.

- b. *Importance of Asset Titling and Ownership Between Spouses.* The conformity of the GST exemption and the estate tax exemption means that measures to properly title and allocate property between spouses for the purposes of either tax will probably work for purposes of the other tax too. See discussion earlier re: estate tax exemption.

B. GST Planning Based on Size of Estates

1. If value of combined estates of husband and wife will never exceed GST exemption:
 - a. GST exemption can be allocated to all property passing on death of surviving spouse and there is no need to consider GST election on death of first spouse.
 - b. But GST Trusts could be created for children/grandchildren and exemption could be allocated on death of surviving spouse.
2. If dispositive plans of husband and wife do not involve GST transfers, GST tax may be disregarded.
 - a. For example, if property passes outright to children or to descendants of deceased children, there will be no GST transfers.
 - b. Transfers to children are not GST transfers and transfers to descendants of deceased children will be excepted under the predeceased ancestor rule.
3. **If the goal is to pass assets to make a generation-skipping transfer upon the death of the surviving spouse (i.e., to grandchildren or to GST trusts for benefit of children/grandchildren), then planner must be careful to provide for allocation of maximum GST exemption on death of both spouses such that full \$2,000,000 exemption can be allocated to each spouse.**
 - a. *Less Need for "Reverse QTIP" Election.* The conformity of the GST exemption to the estate tax exemption will generally reduce the need for "reverse QTIP" election (for the marital trust) under IRC §2652(a)(3) and reduce the number of trusts required to optimize the use of the estate tax exemption and

GST exemption. (The “reverse QTIP” allows the first spouse to die to be treated as the transferor with respect to the assets in the QTIP for which the election is made.) That would be the case if the first decedent had not used any gift or GST exemption during life, so full estate and GST exemptions are available. In such case, the first spouse’s exemption can be allocated to the Bypass Trust and the surviving spouse’s exemption can be allocated to the GST trusts for the children/grandchildren. This should result in simple documents that are more understandable to the client, less prone to drafting errors, and easier to administer.

b. **For a discussion of the “Reverse QTIP Election” see Chapter 12 of “Maryland Estate Planning , Wills and Trusts Library” (in particular pp 12-6 and 12-7).**

c. *Example- Recoupling Eliminated Reverse QTIP:* Client’s goal is to maximize estate tax and GST exemptions for a married couple. Thus, if at the first spouse’s death, a client’s estate tax exemption is \$2,000,000 and GST exemption is also \$2,000,000, then the goal is to allocate the full \$2,000,000 to a non-federal QTIP trust– *i.e.*, a trust that will absorb the full federal estate tax and GST exemptions. This would be the “Credit Shelter/Bypass Trust” or the non-QTIP elected portion of a marital trust (upon a partial QTIP election) or a separate marital trust to which a Maryland QTIP is elected but not a federal QTIP. Thus, a “reverse QTIP election is not needed because all the GST exemption has been allocated for the Bypass Trust.

To clarify further, assume that a 3 bucket structure is created and that upon the first spouse dies with \$3,000,000 of assets. How would the GST exemption be allocated (maximum \$2,000,000)? The first \$1,000,000 of GST exemption would be allocated to the Credit Shelter Trust (it’s not a QTIP so no “reverse QTIP” is needed). The second \$1,000,000 of GST exemption would be allocated to the “gap trust” of \$1,000,000. That is the trust for which a Maryland QTIP is elected but not a federal QTIP. Therefore, no “reverse QTIP” election is needed for this trust because it’s not a QTIP for federal estate tax purposes. No exemption would be allocated to the third trust, which is the regular QTIP trust (over \$2,000,000) because GST exemption has been maximized.

d. *When is a Marital Trust Advisable and a Reverse QTIP Election Advisable?* The Reverse QTIP Election will still be appropriate

in any case where the client's remaining GST exemption exceeds the client's remaining estate tax exemption. This may occur as a result of significant lifetime gifts to children, that exhaust the estate tax exemption but leaves the GST exemption intact. For example, if a client's remaining estate tax exemption in 2006 is \$1,500,000, but his remaining GST exemption is \$2,000,000 (intact), then only \$1,500,000 of his GST exemption can be allocated to the Credit Shelter/Bypass Trust. In such case, the client's remaining GST exemption can be allocated to the Marital Trust. Actually, due to our new Maryland QTIP structure, the allocations would be even more complex as only \$1,000,000 of GST would be allocated to the Credit Shelter Trust. The next \$500,000 would be allocated to that "gap trust" for which a Maryland QTIP is elected, but not a federal QTIP. And the remaining \$500,000 would be allocated to an "exempt GST/federal QTIP for which a reverse QTIP election" is made. Confusing, isn't it?

- e. For any client for whom the reverse QTIP election might be appropriate (*i.e.*, the desire is to utilize the first spouse's full \$2,000,000 GST exemption), consideration should be given to using a QTIP marital trust even if an outright marital share would accomplish the client's objectives.

C. GST Provisions in Wills and Trusts. Provisions dealing with the power *to divide trusts and allocate GST exemptions*- should always be included. See Form 2 for a short form, and Form 8 for a more elaborate set of provisions governing the GST exempt and GST nonexempt trusts. Particularly in light of the interaction between the GST exemption, the federal estate tax exemption and the Maryland estate tax exemption (and the new Maryland QTIP), it is highly advisable that sophisticated estate planning documents be drafted with the utmost flexibility that will allow post-mortem allocations to maximize estate tax planning for generations.

D. GST Exemption "Decoupled" from Gift Tax Exemption

1. *In general*, the GST exemption has diverged from the lifetime gift tax exemption. In the years between 1997 and 2002, the GST exemption differed slightly from the gift tax exemption due to inflationary adjustments in the GST exemption. Since then, the gift tax exemption has remained at a static \$1,000,000, while the GST exemption is now \$2,000,000 and fluctuating with the estate tax exemption.
2. *Consequences of Decoupling of GST and Gift Tax Exemption - Effect on Lifetime Gifts.* The failure of the gift tax exemption to conform to the GST exemption makes it harder to maximize the leverage of the

GST exemption by allocating the exemption to *inter vivos* gifts of property that might increase in value. For instance, only \$1,000,000 may be transferred to an inter vivos GST/dynasty trust without the imposition of a lifetime gift tax. See discussion later regarding the propriety and wisdom of paying gift tax in the current period of legislative flux.

V. THE DECOUPLED FEDERAL GIFT TAX EXEMPTION

A. EGTRRA's Decoupling of Gift Tax Exemption from Estate and GST Tax Exemptions

1. *No Repeal.* EGTRRA repealed the estate tax and GST tax in 2010. The gift tax was not repealed, primarily due to perceived income tax avoidance opportunities that would result from repeal of the gift tax.
2. *"Decoupled" Exemption.* EGTRRA increased the gift tax exemption to \$1,000,000. This is sharply contrasted with the substantially higher estate and GST tax exemptions (\$2,000,000 in 2006 and scheduled to increase to \$3,500,000 in 2009). **Thus, lifetime taxable gifts over \$1,000,000 would generate current gift tax, even though the estate tax exemption is currently \$2,000,000. This is a trap for the unwary. In addition, this gift tax exemption has to be kept in mind when considering lifetime "generation-skipping" gifts.**

B. Planning Strategies To Reduce Federal and Maryland Estate Tax

1. *Lifetime Gifts up to \$1 million.*
 - a. *General Federal Estate Tax Reduction.* Despite the potential repeal of the estate tax, clients may want to make lifetime gifts, given their expectation that some form of the federal estate tax will always apply to their estates. Assuming the continuation of some form of the federal estate tax, a lifetime gift will take advantage of the time value of money by freezing the transfer tax value of the property at its value as of the date of the gift. If a client gives property away during lifetime, any appreciation subsequent to the gift is generally free from transfer tax until the donee transfers the property. By contrast, if a client retains an asset until his or her death, all the appreciation at his or her death will be subject to federal estate tax.
 - b. *Lifetime Gifting to Counteract the Maryland Estate Tax.* It appears that lifetime gifts up to \$1,000,000 (maximum federal lifetime gift tax exemption) or gifts that even reduce the taxable estate to below \$1,000,000 would minimize or eliminate the

Maryland estate tax altogether. This is based on the fact that Maryland has no gift tax. Moreover, the fact that the Maryland estate tax is computed with reference to the “federal taxable estate,” (particularly the 16% cap which is computed as a percentage of the difference between taxable estate and \$1,000,000), seems to provide an opportunity for tax reduction through lifetime gifts. This strategy works for deathbed gifts. In all events, a current Durable General Power of Attorney that authorizes the agent to make such large gifts is essential. Various gift giving provisions in a durable general power of attorney that are limited to annual exclusion gifts or gifts in accordance with the principal’s past giving patterns, or some other limitation may impede achievement of this purpose.

Note re Basis Step-Up: The recipient of the gift would not receive a step-up in basis on the gifted assets. Therefore, care should be taken as to the type of assets that are used to make the gift.

- c. *Tax-Free Annual Exclusion Gifts (\$12,000 per donee) and Unlimited Direct Payments for Tuition and Medical Expenses*
2. *Gifts in Excess of \$1,000,000 Exemption.* A practical estate planner will probably not recommend most gifts above the \$1,000,000 gift tax exemption because the transfers require actual gift tax payments, and the possible repeal of the estate tax in 2010, even though uncertain, means that transfers could possibly save no estate taxes.
3. *“Tax Exclusive” Computation Favors Gifts But What About Repeal/Higher Exemptions?*
 - a. *General.* Before EGTRRA, taxable gifts that require gift tax payments had been attractive. That is because the gift tax is computed on the value of the property received by the donee, without consideration of the gift tax payment that the donor will also make (a “tax-exclusive” computation) while the estate tax is computed on the total amount available to transfer, including both amounts that the beneficiary will receive and the amount that will be used to pay the estate tax on the transfer (“tax-inclusive” computation).
 - b. *Speculative Benefit Due to 3 Year Rule.* Gift taxes paid within 3 years of death come back into one’s estate. Thus, an estate planner may recommend gifts that will require payment of gift tax only where it looks like the client will survive the 3 years— in

which case gifting could be a benefit. But that window is now being closed because it is now 2006, and any gifts made after 2006 will require an unnecessary payment of gift tax— because in 2010 the estate tax “is scheduled” to be repealed. It appears that a gift that requires payment of a gift tax may be advantageous only if (1) it can remove from a client’s gross estate income and appreciation, or it creates significant valuation discounts that might not be available had the asset been held until death, (2) the client is expected to live for 3 years, and (3) there is no likelihood to the client of a repeal of the estate tax.

C. Large Tax-Beneficial Gifting Opportunities- Beyond Annual Exclusion

Here is a sampling of eight (8) techniques to consider as part of a large and sophisticated gift planning program, or as techniques to leverage gifts for maximum estate tax benefits.

1. Life Insurance Trust (ILIT)*
2. Dynasty Trust*
3. Qualified Personal Residence Trust (QPRT)
4. Grantor Retained Annuity Trust (GRAT)
5. Sale to Intentionally Defective Grantor Trust (IDGT)
6. Charitable Lead Trust (CLT)
7. Charitable Remainder Trust (CRT)
8. Discount Planning with Family Limited Liability Entities (FLLC’s and FLP’s)

* Highly Effective for Generation-Skipping Transfer Tax Planning As Well

APPENDIX A

Year-by Year Summary of Changes Made by EGTRRA

ESTATE TAX	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011 on
Exclusion	\$675,000	\$1 million		\$1.5 million		\$2 million			\$3.5 million		\$1 million
Lowest Rate	37%	41%		45%		46%	45%				41%
Top Rate	55%	50%	49%	48%	47%						55%
5% Bubble	Yes	No									Yes
State Tax Credit	100%	75%	50%	25%	None. State taxes are deductible.						100%
GST TAX											
Exemption	\$1 million indexed (from 1998)			\$1.5 million		\$2 million			\$3.5 million		\$1million indexed
Rate	55%	50%	49%	48%	47%	46%	45%				55%
GIFT TAX											
Exclusion	\$675,000	\$1 million									
Lowest Rate	37%	41%								35%	41%
Top Rate	55%	50%	49%	48%	47%	46%	45%				55%
5% Bubble	Yes	No									Yes

APPENDIX B

FORMS

Family Share (Credit Shelter Trust) Not to Exceed Federal and State Estate Tax Exemption; Balance to Marital Share (with Partial QTIP/Division)

Residuary Estate if Wife Survives Me

Family Share: If my wife survives me, I give to my Trustee, heretofore named, to hold the same under the terms of the CREDIT SHELTER TRUST under the provisions of Section _____ hereof, the largest amount that can pass at the time of my death free of federal estate tax *and* any state tax that may be imposed by the state of my domicile, taking into account the applicable exclusion amount (unified credit) against the federal estate tax, any similar exclusion against any estate tax imposed by the state of my domicile, and any available credit or deduction for state death taxes paid (provided that the use of the credit or deduction does not result in an increase in state death taxes paid).

Marital Share: The balance of my estate shall be [distributed outright to my wife] [distributed to my Trustee, heretofore named, to hold the same under the terms of the MARITAL TRUST under the provisions of Section _____ hereof.]

Residuary Estate if Wife Predeceases Me

If my wife does not survive me, I give my residuary estate to my descendants who survive me, *per stirpes*.

Administration of CREDIT SHELTER TRUST

.01. My Trustee shall collect the income, rents and profits arising from the principal of the CREDIT SHELTER TRUST and after paying all charges, costs and expenses incident to the maintenance, operation and management thereof, shall distribute the income and principal as set forth hereinbelow. The Trustee shall not be required to sell any property or make any property productive for the purposes of making distributions or divisions of the trust property.

(a) During the lifetime of my wife, the Trustee shall pay to any one or more of the group consisting of my wife and children and descendants of any deceased child of mine, living from time to time, such amounts of the net income and principal of the CREDIT SHELTER TRUST and in such proportions among them as the Trustee may deem advisable to provide for their maintenance, support, health, and education (including college, professional or other higher education). In making any determination as to the

amount, if any, that should be paid to any child or descendant of mine hereunder, the Trustee shall bear in mind that my primary objective is to assure that during the lifetime of my wife all of her maintenance, support and health needs shall be provided for. Notwithstanding the above, my Trustee shall not make any such payment to my wife for as long as there should be any assets remaining in the MARITAL TRUST which, in the determination of my Trustee, are reasonably available and adequate for such purposes.

(b) Upon the death of my wife, my Trustee shall distribute the remaining trust principal to my then living descendants, *per stirpes*.

Administration of MARITAL TRUST

.01. The MARITAL TRUST shall be administered and disposed of as set forth hereinbelow

.02. My Personal Representative shall have the sole and absolute discretion to treat expenses as either estate tax or income tax deductions, to select tax valuation methods and dates, and to exercise any other allowable tax election, regardless of the effect thereof on the amount of this bequest, and no adjustment to this bequest shall be required by reason of any such determination made by my Personal Representative. My Personal Representative shall also have the sole and absolute discretion to select the assets to be used in funding this trust estate, provided however, that this bequest shall be funded only with assets which my Personal Representative can elect to qualify for the marital deduction.

.03 I authorize my Personal Representative, in its sole discretion, to elect (1) under IRC Section 2056(b)(7) or equivalent provision of federal law and/or (2) under state estate tax laws allowing for a similar election, including specifically under Section 7-309 of the Tax General Article of the Annotated Code of Maryland or equivalent provision of Maryland law, to qualify all or a specific portion or none of any Trusts created in this Section for the federal and/or state estate tax marital deduction. I specifically authorize such election under any state law even if such election is inconsistent with any similar election made with respect to the federal estate tax. In considering the marital deduction election, I request that my Personal Representative, to the extent practicable and foreseeable, minimize or eliminate the aggregate federal and state estate taxes in my estate and my spouse's estate. Any estate tax payable due to a partial election hereunder shall be paid from the portion of my property over which no marital deduction election was made. My Personal Representative shall make its election in the timely filed federal (or state, as the case may be) estate tax return for my estate and such election shall be conclusive and binding on all parties concerned, and my Personal Representative shall not be liable for any determination made hereunder.

.04. My Trustee shall collect the income, rents and profits arising from the principal of this trust estate and after paying all charges, costs and expenses incident to the maintenance, operation and management thereof, shall distribute the income and principal as follows:

(a) My Trustee shall pay to my wife, the entire net income from this trust estate, commencing from the date of my death, in as nearly equal quarterly or such other convenient installments as may be practicable, for and during the term of her natural life; provided, however, in no event shall such payments be made less frequently than annually. In connection therewith, my wife shall have the right and power to direct that the assets of this trust be reinvested so as to produce such income as is reasonable and consistent with the value of the trust corpus. In addition, with respect to any "Retirement Benefits" payable to the Marital Trust as the beneficiary, my wife shall have the rights described in Section _____ hereof. **[cross reference to special provisions regarding retirement plan benefits payable to a Marital Trust]**. A reasonable sum or sums may be paid to my wife during the administration of my estate as an advance against the income which will accrue to this trust estate.

(b) In addition to the income hereinabove provided, my Trustee shall pay to my wife such sum or sums from the principal of this trust estate as my Trustee may deem to be reasonably required from time to time for her continued health and maintenance in reasonable comfort, and for her support in the standard of living to which she has become accustomed.

(c) In addition to the income and the discretionary distributions of principal hereinabove provided, in the month of December of each calendar year following the calendar year of my death, my wife shall have the right to withdraw from the principal of this Trust such amounts as she may direct the Trustee in writing, not exceeding in the aggregate in any such month of each such calendar year the sum of Five Thousand Dollars (\$5,000.00) or five percent (5%) of the value of the principal of the trust estate valued as of the last day of such month of such calendar year, whichever is greater; provided, however, to the extent said right of withdrawal shall not be exercised in the month of December of any one calendar year, the right of withdrawal for said month of that year shall lapse and not cumulate from year to year.

(d) Upon the death of my wife, this Trust shall terminate; all undistributed income therefrom, including income accrued prior to the time of my wife's death but uncollected, shall be paid over and distributed to my wife's estate; unless there is a contrary provision in the Will of my wife, an amount equal to the excess, if any, of all estate, inheritance and similar taxes, including interest and penalties thereon, becoming payable by reason of my wife's death over the amount which would have been payable had the value of the assets of this Trust not been included in my wife's gross estate, or otherwise taxed by reason of her death, shall be paid over to the appropriate taxing authorities for the account of the Personal Representative of my wife's estate or, in the discretion of the Trustee, distributed to my wife's estate for such purpose; and the entire remaining principal thereof shall be divided and distributed to my then living descendants, *per stirpes*.

Form 2

My Trustee shall have the power to divide any trust created hereunder or any property used to fund or augment any trust created hereunder into two or more fractional shares to be held as separate trusts hereunder, or to divide any trust created hereunder into one or more separate trusts for the benefit of one or more of the beneficiaries (to the exclusion of the other beneficiaries) of the trust so divided, as the Fiduciary, in the exercise of said Fiduciary's sole and absolute discretion, may determine and to allocate to such divided trust some or all of the assets of the trust estate for any reason including, but not limited to, enabling any such trust to qualify as an eligible shareholder of an S corporation as described in IRC Sections 1361(c)(2)(A)(i) or 1361(d), as the case may be, to provide an inclusion ratio (within the meaning of IRC Section 2641(a) of zero for a trust to which an allocation of generation-skipping transfer tax exemption may be made, or to qualify a separate trust for any federal or state Qualified Terminable Interest Property election (including an election provided under Section 7-309 of the Tax General Article of the Annotated Code of Maryland or equivalent provision of Maryland law), or for any other purpose.

Form 3

3 Bucket Structure

SECTION 8. *DISPOSITION OF RESIDUARY ESTATE.*

8.01 *If my wife survives me*, my Personal Representative shall distribute from my residuary estate amounts as calculated hereinbelow.

(a) *Excess Federal Exemption to MARITAL TRUST A.* My Personal Representative shall distribute from my residuary estate a sum equal to my "Excess Federal Exemption" to my Trustee, heretofore named, and its successor or successors, to hold the same IN TRUST, to be known as "MARITAL TRUST A," to be held and administered as a separate trust in accordance with the terms and provisions of Section 9 of this Will. The "Excess Federal Exemption" means the amount (but not less than "0") by which(x) the amount which would pass free of federal estate tax as of the date of my death (hereinafter the "Federal estate Tax Exemption") exceeds (y) the amount which could pass free of state estate tax under the laws of my domiciliary state as of the date of my death. The calculation of the sums under (1) and under (2) above shall be made by taking into account:

(1) all allowable credits and exclusions, but with any state death tax credit utilized only to the extent that it does not require an increase in state death taxes payable;

(2) all interests in property which pass under other provisions of, or outside of, this Will, includible in my gross estate for which no marital or charitable deduction is allowable;

(3) my adjusted taxable gifts; and

(4) expenses of administration charged to principal that are not claimed and allowed as deductions in computing my federal and state estate tax.

(b) Balance of Federal Exemption to CREDIT SHELTER TRUST.

My Personal Representative shall distribute from my residuary estate a sum equal to the balance of my Federal Estate Tax Exemption (as defined in Section 8.01(a) hereinabove) remaining as of the date of my death after satisfaction of the bequest under Section 8.01(a) hereinabove, to my Trustee, heretofore named, and its successor or successors, to hold the same IN TRUST, to be known as the "CREDIT SHELTER TRUST," to be held and administered as a separate trust in accordance with the terms and provisions of Section 10 of this Will.

_____ (c) Remaining Balance of Estate to MARITAL TRUST B.

My Personal Representative shall distribute the balance of my residuary estate, after satisfaction of the gifts under Sections 8.01(a) and 8.01(b) hereinabove, to my Trustee, heretofore named, and its successor or successors, to hold the same IN TRUST, to be known as "MARITAL TRUST B," and to be held and administered as a separate trust in accordance with the terms and provisions of Section 9 of this Will.

8.02 *If my wife does not survive me*, then I hereby direct my Personal Representative to divide my residuary estate among my living descendants, *per stirpes*. I give each share provided in the immediately preceding sentence to my living descendants, *per stirpes*; provided, however, that if any said descendant shall then be under the age of thirty-five (35), such share shall be held by my Trustee IN TRUST, as a separate trust for the benefit of such descendant, with the powers and for the uses and purposes, and to be administered disposed of as set forth in Section 10.01(b) hereof.

See separate provisions for marital and credit shelter trusts above (Marital Trusts should reference "Marital Trust A" and Marital Trust B")

Form 4
Disclaimer Trust With Option to Bifurcate

SECTION 8. *DISPOSITION OF RESIDUARY ESTATE.*

8.01 *If my wife survives me*, then I give my residuary estate unto my wife.

8.02 *If my wife does not survive me*, then I give my residuary estate to my living descendants, *per stirpes*.

8.03 *If my wife survives me but disclaims*, in whole or in part, her interest in any part of her bequest or her interest in any other property which may pass to her under this Will or by operation of law or by reason of her survivorship, or if other assets such as life insurance proceeds or retirement plan benefits are made payable to the trust under my Will, then my Personal Representative shall distribute any such property so disclaimed unto the Trustee, heretofore named, and its successor or successors, to hold the same IN TRUST, to be known as the "DISCLAIMER TRUST," which shall be administered and disposed of as follows:

(a) Accounting from the time of my death, the Trustee shall pay the net income from the DISCLAIMER TRUST to my wife, payable at least annually, for and during her lifetime.

(b) In addition to the income hereinabove provided, the Trustee shall pay to my wife such amounts from the principal of the DISCLAIMER TRUST as the Trustee may deem advisable for her continued health and maintenance in reasonable comfort, and for her support in the standard of living to which she has become accustomed.

(c) Upon the death of my wife, my Trustee shall divide the remaining principal of the DISCLAIMER TRUST among my living descendants, *per stirpes*.

8.04 The following additional provisions shall apply with respect to the DISCLAIMER TRUST:

(a) My Personal Representative shall, in its sole and absolute discretion, determine whether to elect under the provisions of the Internal Revenue Code or any state death tax law applicable to my estate to qualify any portion of the DISCLAIMER TRUST for the federal or state marital deduction. I specifically authorize such election under any state law even if such election is inconsistent with any similar election made with respect to the federal estate tax. The determination of my Personal Representative with respect to the exercise of any such election shall be final and binding on all interested persons. My Personal Representative shall not be liable for any loss resulting from its determination with respect to the exercise of any such election made by it in good faith.

(b) Upon the election by my Personal Representative to qualify a portion of the DISCLAIMER TRUST for the federal or state marital deduction, the Trustee shall divide the DISCLAIMER TRUST into two separate trusts so as to create one trust ("DISCLAIMER TRUST A") based upon the portion of the DISCLAIMER TRUST that would be included in my wife's estate for federal or state estate tax purposes, and one trust ("DISCLAIMER TRUST B") based upon the portion of the DISCLAIMER TRUST that would not be included in my wife's estate for federal or state estate tax purposes.

(c) Both DISCLAIMER TRUST A and DISCLAIMER TRUST B shall be held pursuant to the provisions of this Section 8, except that:

(1) with respect to DISCLAIMER TRUST A, my said wife shall have the right and power to direct that the assets of this trust be reinvested to produce such income as is reasonable and consistent with the value of the trust corpus, and

(2) upon the death of my wife, the Trustee shall pay for the account of my wife's estate, from the principal of DISCLAIMER TRUST A, that amount by which the estate and inheritance taxes payable by my wife's estate shall have been increased by reason of my wife's death and the inclusion of DISCLAIMER TRUST A in her estate for federal or state estate tax purposes. The balance of DISCLAIMER TRUST A shall be added to and become a part of DISCLAIMER TRUST B.

Form 5
Single QTIP Trust Structure

SECTION 9. DISPOSITION OF RESIDUARY ESTATE

9.01. If my wife survives me, I give my residuary estate unto my Trustee, heretofore named, to hold the same IN TRUST, to be known as the "MARITAL TRUST," for the uses and purposes hereinafter set forth.

9.02. My Personal Representative shall have the sole and absolute discretion to treat expenses as either estate tax or income tax deductions, to select tax valuation methods and dates, and to exercise any other allowable tax election, regardless of the effect thereof on the amount of this bequest, and no adjustment to this bequest shall be required by reason of any such determination made by my Personal Representative. My Personal Representative shall also have the sole and absolute discretion to select the assets to be used in funding this trust estate, provided however, that this bequest shall be funded only with assets which my Personal Representative can elect to qualify for the marital deduction.

9.03 I authorize my Personal Representative, in its sole discretion, to elect (1) under IRC Section 2056(b)(7) or equivalent provision of federal law and/or (2) under state estate tax laws allowing for a similar election, including specifically under Section 7-309 of the Tax General Article of the Annotated Code of Maryland or equivalent provision of Maryland law, to qualify all or a specific portion or none of any Trusts created in this Section for the federal and/or state estate tax marital deduction. I specifically authorize such election under any state law even if such election is inconsistent with any similar election made with respect to the federal estate tax. In considering the marital deduction election, I request that my Personal Representative, to the extent practicable and foreseeable, minimize or eliminate the aggregate federal and state estate taxes in my estate and my spouse's estate. Any estate tax payable due to a partial election hereunder shall be paid from the portion of my property over which no marital deduction election was made. My Personal

Representative shall make its election in the timely filed federal (or state, as the case may be) estate tax return for my estate and such election shall be conclusive and binding on all parties concerned, and my Personal Representative shall not be liable for any determination made hereunder.

9.04. My Trustee shall collect the income, rents and profits arising from the principal of this trust estate and after paying all charges, costs and expenses incident to the maintenance, operation and management thereof, shall distribute the income and principal as follows:

See Form 1 above for extended marital trust dispositive and administrative provisions

9.05. In the event that my wife shall predecease me, the property and assets which would have constituted this trust estate under the foregoing provisions shall be distributed to my living descendants, *per stirpes*.

Form 6

DISCLAIMER INTO SINGLE QTIP

9.01 *If my wife survives me*, then I give my residuary estate unto my wife.

8.02 *If my wife does not survive me*, then I give my residuary estate to my living descendants, *per stirpes*.

8.03 *If my wife survives me but disclaims*, in whole or in part, her interest in any part of her bequest or her interest in any other property which may pass to her under this Will or by operation of law or by reason of her survivorship, or if other assets such as life insurance proceeds or retirement plan benefits are made payable to the trust under my Will, then my Personal Representative shall distribute any such property so disclaimed unto the Trustee, heretofore named, and its successor or successors, to hold the same IN TRUST, to be known as the "MARITAL TRUST," which shall be administered and disposed of as follows:

See Form 1 above for extended marital trust dispositive and administrative provisions

Form 7

Possible Cure For Existing Credit Shelter Trusts That Are Not QTIP-able and May Exceed Maryland Exemption (and Possible Trigger Maryland Estate Tax in First Estate)

Notwithstanding Section ____ of the residuary provisions, if my wife survives me, I

authorize my Personal Representative to divide the Residuary Trust held under Section ___ into two or more trusts and to elect for any of those trusts a marital deduction under state law which will eliminate or reduce all state estate tax that would otherwise be due by reason of my death. Each trust for which a marital deduction is elected under this Section ___ shall be administered and disposed of as a separate trust under the same terms and provisions as set forth in Section ___ hereof (providing for the administration of a Marital Trust) [NEED TO RESTATE QTIP MARITAL TRUST PROVISIONS IF NO MARITAL TRUST IS IN EXISTENCE, I.E., ALL INCOME PAYABLE TO SPOUSE AT LEAST ANNUALLY, PRINCIPAL- ONLY FBO SPOUSE-SEE FORMS ABOVE]. I recognize that this election might affect the taxes due by both my estate and my wife's estate as well as the beneficial interests in the trust, and my Personal Representative shall not be liable for any decisions in this regard.

Form 8

GST Provisions: Allocation and Administration of Trusts

.01 The provisions of this Section pertain to the federal generation-skipping transfer tax, and I refer to the Internal Revenue Code (the "Code") and the Federal Regulations, as they may be amended from time to time, for the definition of the technical words used below. For purposes of minimizing or eliminating this tax, and notwithstanding the provisions contained in any preceding Section, I authorize my Personal Representative and Trustee to divide any trust created by this Will into two separate trusts, so that one trust will have an Inclusion Ratio of zero and the other trust will have an Inclusion Ratio of one. The trust having an Inclusion Ratio of zero shall be designated as the "Exempt Trust", and the trust having an Inclusion Ratio of one shall be designated as the "Nonexempt Trust." Each trust shall be held and disposed of in accordance with the preceding provisions of this Will as if no division had been made, subject, however, to the following exceptions:

(a) The Trustee shall not make any discretionary payments of principal to or for the benefit of a Non-Skip Person from the Exempt Trust until the Non-Exempt Trust is exhausted.

(b) Except as provided in paragraph (d) of this Section, the Trustee shall not make any discretionary payments of principal to or for the benefit of a Skip Person from the Non-Exempt Trust until the Exempt Trust is exhausted.

(c) Wherever a beneficiary is entitled to withdraw or receive any part of the principal of a trust, the part which he or she is entitled to withdraw or receive shall be determined as if the trust held for that beneficiary had not been divided as provided above. In no event, however, shall the part which can be withdrawn or received by a Non-Skip Person be paid from the Exempt Trust until the Non-Exempt Trust is exhausted.

(d) Any payments of income or principal which the Trustee may make for the purposes of a Skip Person for medical or educational purposes shall not be made from the Exempt Trust until the Non-Exempt Trust is exhausted.

(e) If the Trustee has discretionary authority to pay income to or for the benefit of more than one person, and if they exercise that authority, the Trustee shall, to the extent possible, make any of these payments to or for a Non-Skip Person from the Non-Exempt Trust and make any of these payments to or for a Skip Person from the Exempt Trust.

(f) If the assets of an Exempt Trust and a Non-Exempt Trust are subject to the federal estate tax upon the death of any beneficiary, then all estate, inheritance or succession taxes, including interest and penalties, payable with respect to the assets held in those trusts, shall, to the extent possible, be paid from the Non-Exempt Trust, unless the failure to make these payments from the Exempt Trust would cause any of the assets held in that trust to be subject to the federal generation-skipping transfer tax.

(g) If, upon the termination of an Exempt Trust, assets allocated to a beneficiary are to be held in trust for that beneficiary, and if there is an Exempt Trust held for that beneficiary under my Will, then I direct that those assets shall be added to that Exempt Trust. If, upon the termination of a Non-Exempt Trust, assets allocated to a beneficiary are to be held in trust for that beneficiary, and if there is a Non-Exempt Trust held for that beneficiary under my Will, then I direct that those assets shall be added to that Non-Exempt Trust.

(h) If a Non-Exempt Trust terminates because of the death of a Non-Skip Person and if, as a result, a federal generation-skipping transfer tax would otherwise be payable with respect to any of the property distributable from the trust, then I give that Non-Skip Person the power to appoint to those creditors of his or her estate designated by the Non-Skip Person in his or her Will, from the assets of such trust, an amount equal to the minimum amount necessary to cause the federal estate tax payable with respect to his or her estate and the generation-skipping transfer tax payable with respect to the Non-Exempt Trust to be reduced to the lowest combined amount possible. The exercise of his power of appointment shall be effective only if the Non-Skip Person makes specific reference to this power in his or her Will.

.02 The Trustee shall not exercise any power which would cause the assets held in the Exempt Trust to be subject to the federal generation-skipping transfer tax.