

SELECTED EXCERPTS FROM
SPOUSAL TRUST CREATED UNDER A WILL

Husbands and wives commonly make an outright bequest of their respective estates to the surviving spouse. Often, a better alternative is to have their wills drafted so that each leaves his or her estate to the other in trust, rather than making a direct distribution. Such a trust created under a will for the benefit of the surviving spouse is called a “spousal trust.” The surviving spouse not only is entitled to all of the net income earned by the trust, but also has the power to encroach on capital as needs arise.

Paragraph #2 here.

If, however, the deceased leaves his or her estate to a qualifying spousal trust, the \$60,000 of income in the trust will enjoy the same graduated tax rates as the \$60,000 of income on the surviving spouse’s own property. In other words, the trust income will not be added to the survivor’s income and taxed at the highest marginal rate. Consequently, yearly tax savings would exceed \$6,000.

Paragraph #4 here.

Sometimes it is advantageous to create a non-qualifying spousal trust, or perhaps two trusts, one qualifying and one non-qualifying. The will could be drafted to allow latitude to the executor/spouse to determine which assets fall into each trust.

Paragraph #5 here.

Is a Spousal Trust Only for the Wealthy?

The initial reaction of most couples is that they don’t have nearly enough assets to justify creation of spousal trusts. Often, however, their estates are much larger than they suppose, especially when they add insurance proceeds received upon death and various pension and RRSP or RRIF payouts. The income from these various assets plus salary (if the surviving spouse continues to work) may subject much of the survivor’s income to the highest marginal tax rate, in which case income-splitting with a spousal trust could be beneficial.

Paragraph #7 here.

Example: When J. died his will provided that \$250,000 of assets from his estate be used to create a spousal trust. His wife, B., received the income for the balance of her life, and

she withdrew \$50,000 of principal when she moved to a retirement home. Because she knew she could tap principal for special needs, she did not feel “boxed in” by the trust. At the time of her death \$200,000 remained in the trust, and it was distributed to a charity with which she and her husband had long been associated, and the charity used the funds to establish a permanent endowment in their names. If they had children, they could have had all or a portion of the principal distributed to them.

Final Paragraphs here...

Revised June 2003