

Memorandum in Support TRUSTS AND ESTATES LAW SECTION

T&E #3

June 11, 2013

S. 4851
A. 6556

By: Senator Bonacic
By: M. of A. Weinstein
Senate Committee: Investigations and
Government Operations
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the tax law, in relation to the estate tax treatment of disposition to surviving spouses who are not United States Citizens

LAW AND SECTION REFERRED TO: Section 951(c) of the Tax Law

THE TRUSTS AND ESTATES LAW SECTION SUPPORTS THIS LEGISLATION

Internal Revenue Code Section 2056(b)(7) allows an estate tax marital deduction for a transfer to a Qualified Terminable Interest Trust ("QTIP") which meets the specific requirements of the statute. For Federal tax purposes the value of the QTIP is includible in the taxable estate of the surviving spouse.

Internal Revenue Code Section 2056(d)(1) provides that a disposition to a spouse who is not a citizen of the United States will not qualify for an estate tax marital deduction unless the disposition is to a Qualified Domestic Trust. ("QDT") as defined in Sec 2056A. A QDT election must be made on the Federal estate tax return. In that case, the Estate of the first spouse to die will get a marital deduction and the value of the trust remainder will be subject to estate tax upon the death of the surviving spouse. Section 2056A(b)(1). However, there is no provision under New York Tax Law creating a New York tax on the value of the QDT when the surviving spouse dies.

During 2011 and 2012, an estate of more than \$1 million, but less than \$5 million, does not file a Federal estate tax return, but does file a New York return. The question therefore arises whether, in light of the fact that no New York tax will be collected, a QDT has to be established for NY purposes. The bill clarifies that in this situation, the QDT election and provisions need not be followed. The trust will qualify for the marital deduction without the costs of qualifying under the QDT rules.

Based on the foregoing, the Trusts and Estates Law Section **SUPPORTS** this legislation.

Person Who Prepared Memorandum: Laurence Keiser, Esq.

Chair of the Section: Carl T. Baker, Esq.