

Memorandum Urging Approval

TRUSTS AND ESTATES LAW SECTION

T&E #8-GOV

June 28, 2016

A. 10121
S. 7788

By: M. of A. Quart
By: Senator Bonacic

Assembly Committee: Ways and Means
Senate Committee: Investigations and Government
Operations
Effective Date: Immediately

AN ACT to amend the tax law, in relation to the estate tax treatment of dispositions 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 AND URGES APPROVAL

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 State Tax Law creating a New York State tax on the value of the QDT when the surviving spouse dies.

In 2016, an estate of more than \$4.187 million, but less than \$5.45 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 State tax will be collected, a QDT has to be established for NY purposes. Section 951(c) of the tax law 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.

Chapter 538 of 2013, which enacted Section 951(c), took effect in December of 2013 and is set to expire on July 1, 2016. Expiration of Section 951(c) will create confusion among practitioners regarding whether a QDT should be prepared where the decedent has a non-citizen surviving spouse and a gross estate valued between the New York and Federal estate taxation exemption amounts. QDTs that are unnecessary for New York purposes will impose substantial burden on these estates, including significant legal fees and administrative expenses.

This bill would extend the sunset provision of Section 951(c) of the Tax Law until April 1, 2019, at which point this concern will no longer exist because the New York State exemption will equal the exemption for Federal Estate Tax.

Based on the foregoing, the Trusts and Estates Law Section **SUPPORTS** enactment of this bill to extend the sunset provision of Section 951(c) of the Tax Law until April 1, 2019 and urges the Governor to **APPROVE** the bill.

Section Chair: Magdalen Gaynor, Esq.