

# THE A/B MARITAL TRUST AND ITS USE BY THE BUSINESS OWNERS<sup>1</sup>

by Bradley W. Rothhammer

The business owner who has not had his Will and Trust revised or amended since September 13, 1981 should contact his estate planning advisors now. Under the Tax Reform Act of 1976, Congress enacted some new estate and gift tax provisions. These provisions included a new progressive unified rate schedule for lifetime gifts and testamentary transfers. A new unified credit has replaced the \$30,000 specific exemption for gift tax purposes and the \$60,000 estate tax exemptions. Changes in the maximum marital deduction and in the method of calculating the estate tax were also included in the Tax Reform Act of 1976; and in the Economic Recovery Tax Act of 1981 (ERTA).

ERTA has increased the amount of the estate which can pass to our spouse's estate (known as the marital deduction) tax free. The marital deduction is the most significant deduction available for purposes of computing the federal estate tax. The Economic Recovery Tax Act of 1981 created an unlimited marital deduction. This means that *unlimited* amounts of property (other than certain terminable interests) can be transferred between spouses without estate or gift tax. The provisions which disallow the marital deduction for transfers between spouses of community property are also eliminated. The unlimited marital deduction as used in estate planning, may take the form of a testamentary trust created by will, or an inter vivos trust which is used in conjunction with "pour-over" provisions in a will or an A/B Marital Deduction Trust which is frequently of use to business owners.

Generally, when a business owner with an A/B Trust dies, two trusts are created. The "A" Trust becomes the marital trust for the sole benefit of the spouse. The "B" Trust becomes the residuary trust for the benefit of the spouse as well as the children. The amount that passes into the residuary trust or "B" Trust is most commonly an

amount equal to the unused portion of the unified credit, which is the amount of assets that anyone can pass tax free to someone other than their spouses.

A key advantage of the A/B Residuary Trust arrangement is the estate tax savings to be generated at the death of the surviving spouse. The phased increase in the unified credit for decedents dying after 1981 will accentuate the desirability of "bypass planning," a term used to describe the technique of creating a trust (called a "bypass trust" or credit trust) which is no larger than the unified credit equivalent.

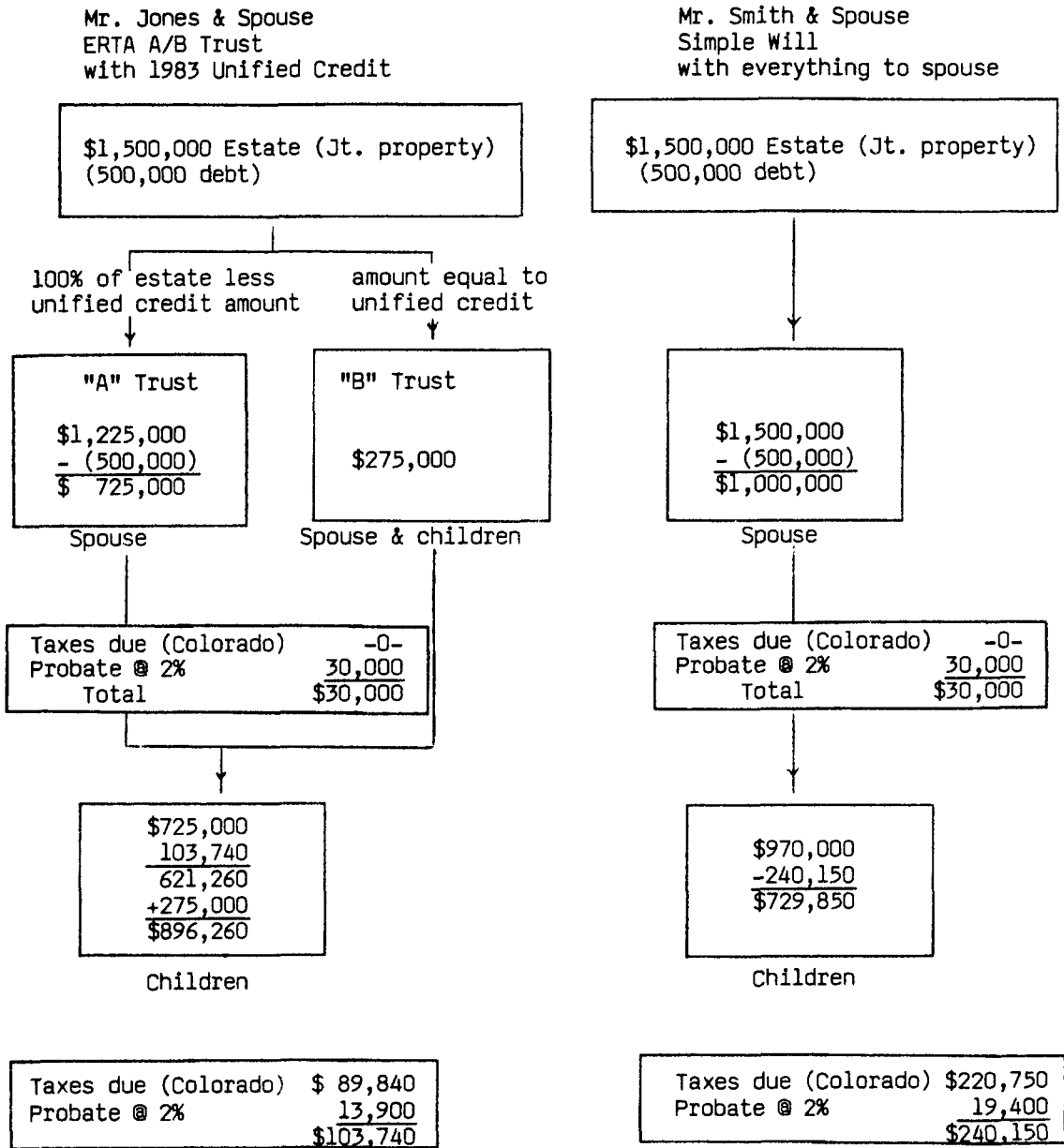
Year of Gift	Increasing unified credit	Increasing amount that is transfer exempt from tax
1981	\$ 47,000	\$175,625
1982	62,800	225,000
1983	79,300	275,000
1984	79,300	325,000
1985	121,800	400,000
1986	155,800	500,000
1987	192,800	600,000

It should be preferable to shelter an amount equal to the credit equivalent before providing for amounts to qualify for the marital deduction. This is because property qualifying for the marital deduction must (unless otherwise consumed or given away by the surviving spouse) be included in the surviving spouse's estate at that spouse's death. Property in a bypass trust that is sheltered from estate tax in the decedent's estate by the unified credit may also be available for the surviving spouse's benefit, but *will escape taxation in the surviving spouse's estate.*

The surviving spouse's power under the bypass trust should be limited. Some limitations to be considered include:

1. The surviving spouse may receive income from the "B" Trust.
2. The surviving spouse should not have the power to appoint trust assets to himself/

1. Presented at the annual conference of the International Society of Arboriculture in Indianapolis, Indiana in August 1983.



**Figure 1. In this example, a savings of \$136,410 is realized through the use of an A/B Marital Deduction Trust.**

herself, his/her estate, or creditors. If the surviving spouse has a general power of appointment, the trust assets are includable in his/her estate.

3. The surviving spouse may, however, have a power to withdraw the greater of \$5,000 or five percent of the value of the corpus of the "B" Trust.

4. If the surviving spouse is the trustee with the power to invade the trust for his/her benefit without an ascertainable standard, the trust assets are includable in his/her estate.
5. If the surviving spouse has the power to appoint a successor trustee without cause and the trustee's discretion to invade the trust is not limited by an ascertainable standard, the assets are includable in his/her estate. A comparative example is illustrated in Figure 1.

The "A" portion of the A/B Marital Deduction Trust can be designed in such a way as to provide a Qualified Terminal Interest Provision (Q.T.I.P.). A Q.T.I.P. allows all or part of the amount in the "A" trust to be used by the spouse but withholds the General Power of Appointment. Thus, the

spouse's interest in the property terminates at death. The spouse may not possess a special power to appoint trust property but may possess a power of withdrawal. This power insures that trust property is available if needed during the surviving spouse's lifetime for decedents. The spouse can be given a testamentary (power of appointment at death) special power of appointment over the qualifying income interest property, thereby retaining testamentary flexibility.

The A/B Marital Deduction Trust is one of the many ways that your team of estate planning advisors (attorney, C.P.A. and financial planner) can save you and your family money. If you haven't revised or amended your existing Will and/or Trust since before September 13, 1981, or if you are without proper estate planning, contact your advisors now. The sooner your estate and family are protected the better.

## *CONTRIBUTED ABSTRACT*

## **LONG-RANGE URBAN REFORESTATION**

by **Martin Bemis and Rena Weichenberg**

In Prospect Park, an historic Omsted-Vaux masterpiece of five-hundred and twenty-six acres, horticulturists working out of the park administrator's office are attempting to create a continuum of healthy trees for future park users. One specific project is the reforestation of a 9.5 acre woodland area located in the center of the park, and as such, subject to severe urban stress. Although tulip, oak, sweetgum, and elm trees lend this woodland its forest character, invasive plant species such as Norway maples and black cherries make up the majority of the young growth. Unless combative measures are taken this area will, in future years, be characterized by weed trees. Our goal is to prevent this by using spot reforestation; the clearing of small pockets of invasive material and replanting with desirable species. Using trees and understory materials suitable to the given soil and microclimate, we intend to gear the forest's development into one of a natural succession. A 100% inventory of existing plant materials (tree and shrubs) was undertaken to determine the precise make-up of the forest. The trees were categorized according to desirability, condition, and wildlife interest. In the spring of 1984, the initial selective thinning and plantings using native trees, 2-2½" caliper, will be carried out. These plantings mark the beginning of an ongoing planting and maintenance program to insure that future generations will be able to enjoy this beautiful woodland.