

## Memorandum 90-8

Subject: Study L-1029 - Qualified Domestic Trusts (Revision of Recommendation)

The Commission has approved its Recommendation relating to Qualified Domestic Trusts for printing and submission to the 1990 legislative session. The transmittal letter states:

The Commission is aware of pending federal legislation to revise the law governing qualified domestic trusts (H.R. 3150) and will make corresponding revisions in the recommended California legislation if federal revisions are enacted.

The legislation of which the Commission is aware has not yet been enacted. Meanwhile, however, legislation of which we were not aware has been enacted that does affect the qualified domestic trust statute.

The Revenue Reconciliation Act of 1989 (H.R. 3299) does not substantially change the basic substance of the qualified domestic trust statute, but it does make it possible for persons to make necessary curative changes to comply with the qualified domestic trust statute. Among its features are:

(1) For persons dying before the operative date of the qualified domestic trust legislation, a one-year grace period after the operative date to comply with the statute.

(2) Allowance of the marital deduction for a surviving spouse who becomes a citizen before the estate tax return is made.

(3) Only one trustee, rather than all, must be qualified domestic trustees.

(4) Reformation of the trust to comply with the qualified domestic trust statute is permitted if made before the return date of the estate tax or if a judicial proceeding to reform the trust is commenced before the due date.

(5) The qualified domestic trust rules do not apply if the decedent was a resident of a foreign country with which the United States has relevant tax treaties.

Given these changes, the staff believes curative legislation in California is no longer as urgent as it was before enactment of the Revenue Reconciliation Act of 1989. The staff has checked with Bob Mills of San Francisco, who has been acting as our informal consultant on this matter and who first brought the problem to our attention, and he agrees with this assessment.

The staff recommends that the Commission not publish the recommendation or submit legislation at this time, but simply follow developments to see whether or not some type of state curative legislation will be needed.

Respectfully submitted,

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Assistant Executive Secretary