

---

# Qualified Domestic Trust

Prepared for: Sample

Prepared by: Brentmark

---

© 2020-2022 Brentmark Software, Inc. All Rights Reserved.

This illustration is not complete without all its pages.

Powered By



# Qualified Domestic Trust

The purpose of this analysis is to show settlement costs and totals to beneficiaries through three different disposition strategies for a married couple where the first person to die is a U.S. citizen, and the second to die is a non-U.S. citizen. Different rules apply when the second to die is also not a resident of the U.S. The three disposition strategies are:

1. No QDOT is created.
2. A QDOT is created with the entire first estate value.
3. A Bypass Trust is created at the first death, then the remainder of the estate is placed into the QDOT.

## Why Consider a QDOT?

- When a scenario involves two U.S. citizens, the first to die is allowed an unlimited Marital Deduction and portability of their Deceased Spousal Unused Exclusion (DSUE).
- When the surviving spouse is not a U.S. citizen, there is no Marital Deduction allowed. Special rules do apply for usage of portability of the DSUE for non-citizens.

## When No QDOT is Created?

The first estate becomes taxable at the time of death. The exclusion that remains for the first to die is utilized, and a potential Estate Tax is calculated. Under this scenario, the Net Estate (estate less estate tax), is considered an outright bequest to the surviving spouse.

At time of the second death, the net after-tax value, with growth, is combined with the separate estate value for the second to die.

The tax implications are more severe for a surviving spouse who is a non-resident non-citizen (NRNC). The NRNC is entitled to an exclusion amount of only \$60,000.

Non-citizen residents are entitled to the same Federal Exclusion amount as a U.S. citizen, based on inflation, for the year of death.

A QDOT is not exempt from estate tax. Its purpose is to defer estate taxes.

Upon death of the non-citizen surviving spouse, the QDOT is subject to §2056A estate tax, and the QDOT property is includible in the surviving gross estate of the spouse.

The transfer of property from the deceased spouse to the non-citizen surviving spouse can qualify for the Marital Deduction if they meet both of the following criteria:

1. The non-citizen surviving spouse becomes a U.S. citizen before the deadline to fill the federal estate tax return of the deceased spouse.
2. The non-citizen surviving spouse has continued to, without disruption, reside in the U.S. after the death of the deceased spouse and before coming a citizen.

## Bypass Trust

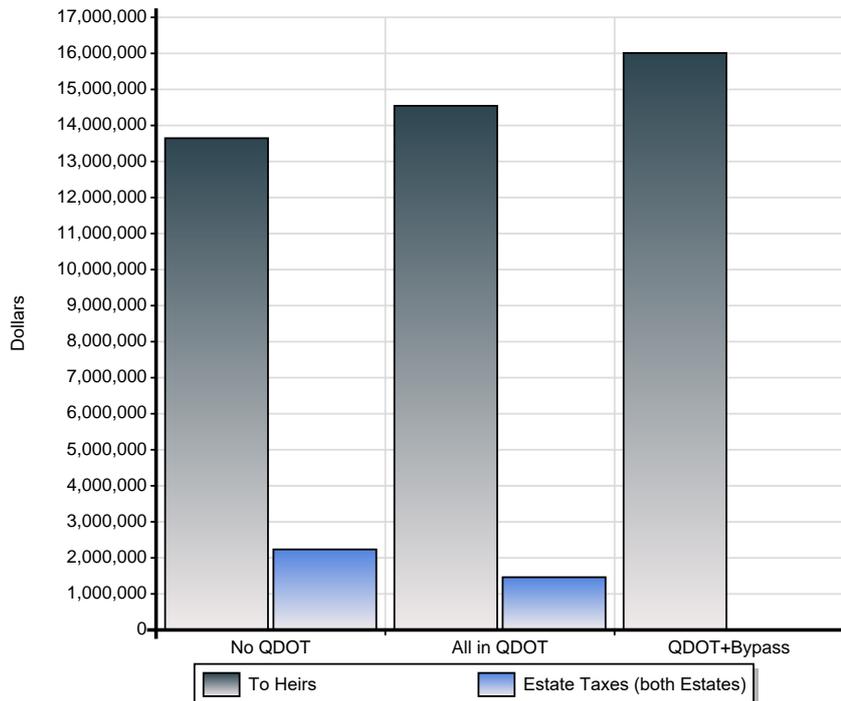
By using a Bypass Trust (Credit Shelter Trust), it is possible to see lower Estate Taxes. The Bypass Trust is funded with the remaining Federal Exclusion amount from the first to die. In 2022, the maximum Federal Estate Tax Exclusion is \$12,060,000. This technique results in no Estate Tax on the amount placed in the Bypass Trust. Any remaining portion of the estate not in the Bypass Trust is subject to tax at second death if placed into a QDOT.

## Qualified Domestic Trust: Summary

- For this analysis, it is assumed that the spouse who is a US citizen dies first, in year 2022. At that time, the estate value is \$14,520,000. The prior Adjusted Taxable Gifts of the U.S. citizen sum to the amount of \$1,500,000, and the Unified Credit used on those prior Adjusted Taxable Gifts was \$545,800. This leaves \$10,560,000 of exclusion that can be used at time of first death.
- The surviving spouse is non-US citizen, who resides in the US. At the time of their death in 2024, any outright assets passing directly to them from the first death are taxable. In addition, assets that are in a QDOT are taxable. It is assumed that at the time of death, their "separate" estate value is 320,000. Since the spouse is a resident of the US, they are allowed to have prior gifts, and total in the amount of \$200,000, using Unified Credit in the amount of \$54,800. This leaves an exclusion available of \$12,350,000.
- It is assumed that the first estate (net estate taxes) will appreciate at 3.95% every year until the year the surviving spouse dies. The value entered for the separate estate of the surviving spouse assumes the actual value at death of surviving spouse, so the growth rate entered will not impact this figure.
- For future years where the Federal Exclusion amount is not known, and inflation rate of 2.00% is used. For years after 2025, it is also assumed that the estate tax calculations do not sunset.

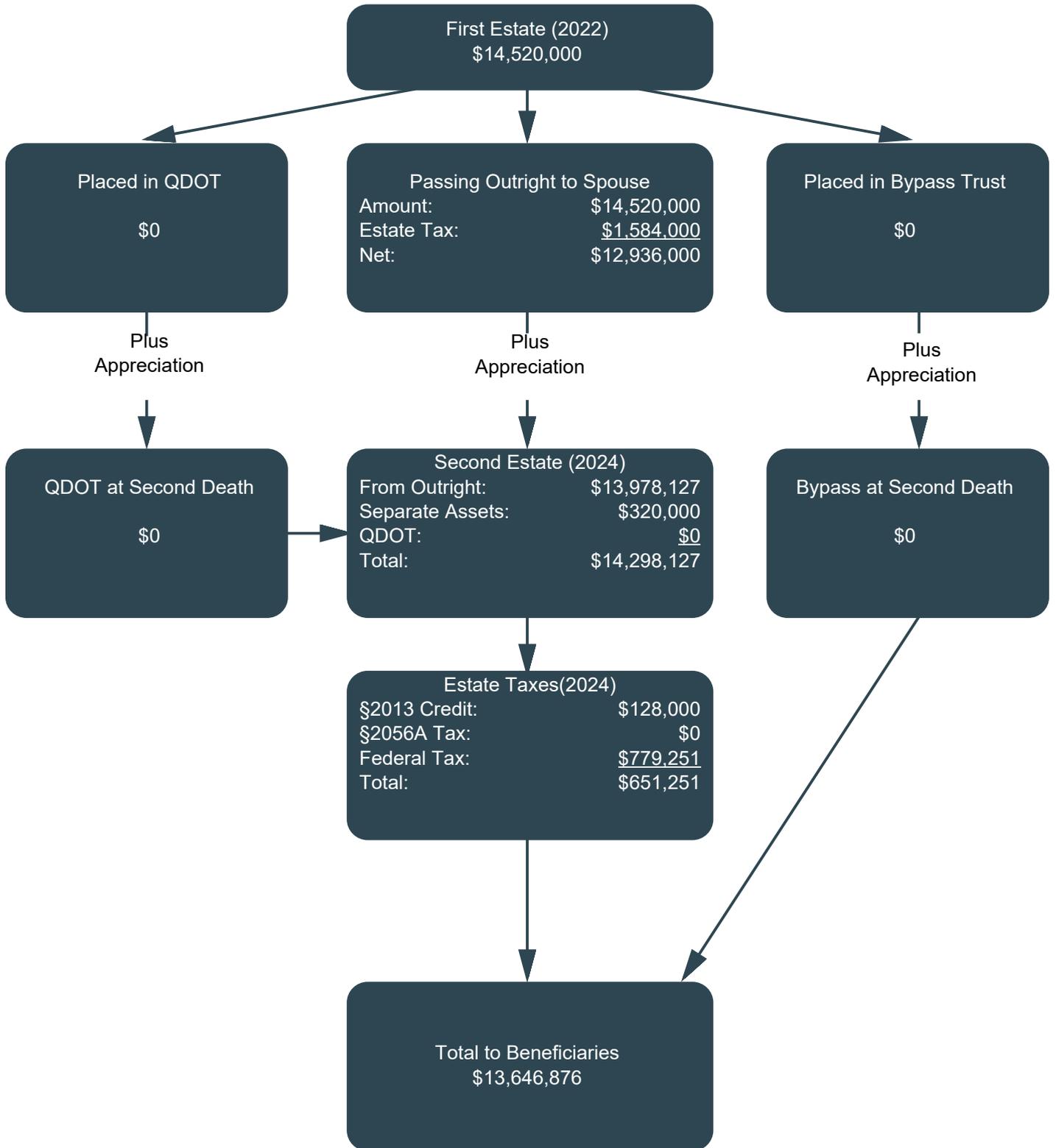
First Estate	No QDOT	All in QDOT	Bypass and QDOT
Gross Estate:	\$14,520,000	\$14,520,000	\$14,520,000
Taxable Estate:	\$14,520,000	\$0	\$0
Passing Outright to Spouse:	\$12,936,000	\$0	\$0
Estate Tax:	\$1,584,000	\$0	\$0
Amount Placed in QDOT:	\$0	\$14,520,000	\$3,960,000
Amount Placed in Bypass:	\$0	\$0	\$10,560,000
Second Estate			
QDOT with Growth:	\$0	\$15,689,735	\$4,279,019
Non-U.S. Citizen Estate:	\$320,000	\$320,000	\$320,000
Outright from First Death (Growth):	\$13,978,127	\$0	\$0
Total Estate:	\$14,298,127	\$16,009,735	\$4,599,019
DSUE Allowed:	\$0	\$0	\$0
§2013 Credit:	\$128,000	\$0	\$0
§2056A Estate Tax:	\$0	\$1,335,894	\$0
Estate Tax on Non-US Citizen Estate:	\$779,251	\$128,000	\$0
Total Estate Tax:	\$651,251	\$1,463,894	\$0
To Heirs:	\$13,646,876	\$14,545,841	\$4,599,019
Bypass with Growth:	\$0	\$0	\$11,410,716
Total to Beneficiaries:	\$13,646,876	\$14,545,841	\$16,009,735

# Qualified Domestic Trust: Graph

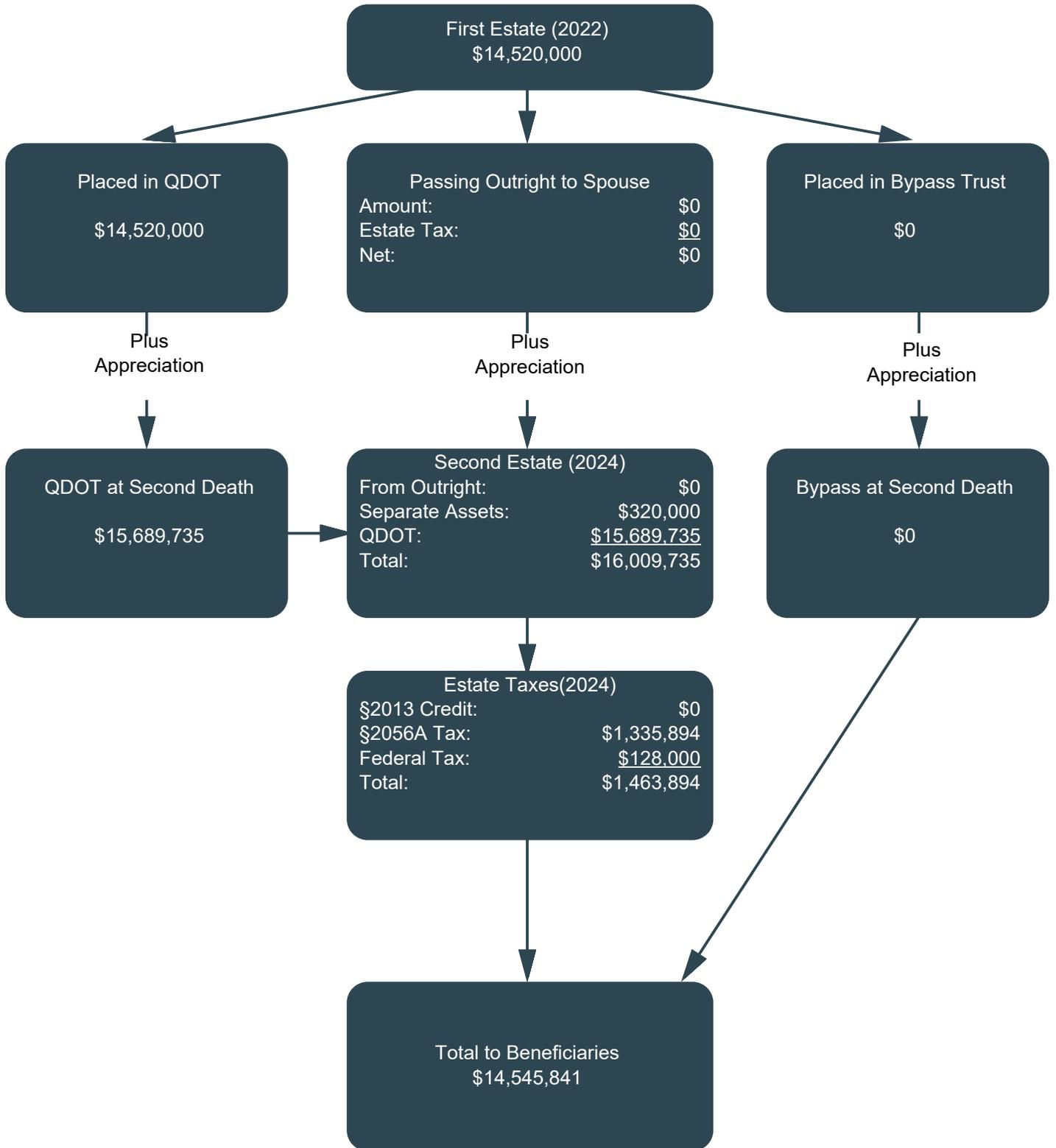


*This scenario is a hypothetical illustration based on the assumptions you entered via the inputs inside the program. It is to be used solely as a conceptual guide to understand and quantify your planning needs. It would be wise to consider this illustration together with all other information you deem necessary in making your investment decisions. This illustration is not a guarantee of the performance of any specific investment. Actual performance from your investments and assets may vary. This illustration is not legal or tax advice. You should consult with your attorney and accountant to review this information and determine its appropriateness for your particular situation. The provider of this illustration provides no guarantee and assumes no responsibility or liability for the accuracy of the information provided (including whether the interest rate you have selected is in fact "reasonable") or for your reliance based on this information.*

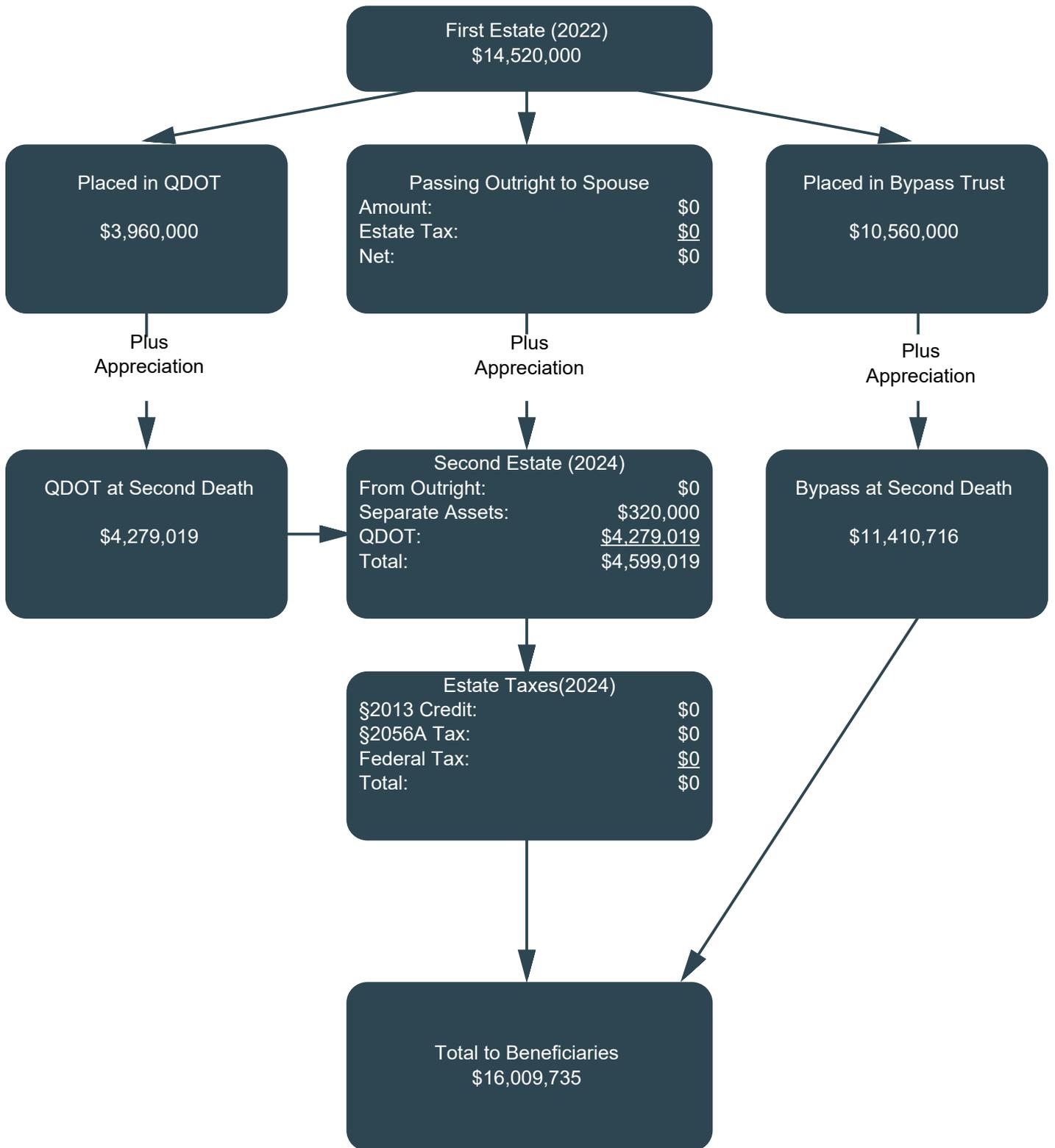
# Qualified Domestic Trust: No QDOT



# Qualified Domestic Trust: All in QDOT



# Qualified Domestic Trust: Bypass and QDOT



# Qualified Domestic Trust: Explanatory Text

On November 10th, 1988, the Technical & Miscellaneous Revenue Act of 1988 (TAMRA) was put into effect. Before this, U.S. citizens and residents were allowed to transfer assets during their lifetime or upon death to a surviving spouse with no Estate or Gift tax implications. TAMRA prohibits non-citizen surviving spouse's opportunity to return to their country of citizenship to avoid United States Federal Estate Taxation. TAMRA eliminated the Federal Marital Deduction when assets are inherited by non-citizen spouses, except in certain circumstances.

For a surviving spouse who has not obtained U.S. citizenship, the denial of the Marital Deduction can be severe. Section 2056A of the IRC allows transfers of assets to a Qualified Domestic Trust (QDOT). The QDOT is a way to preserve marital assets by utilizing the Marital Deduction. This technique requires the assets to be placed in a Trust. However, several requirements need to be considered.

The QDOT must be created before the Estate Tax filing of the deceased spouse. Some exceptions allow up to 15 months to file the Estate Tax return for the deceased spouse, but this is typically completed within 9 months of the date of death.

When the surviving spouse dies, the QDOT will be subject to Estate Taxes and the Net Trust assets will pass to the beneficiaries under the Trust Agreement, which is usually the children of the two spouses.

Income earned by the trust is subject to Federal (and State if applicable) Income Tax. Distributions can be made to the surviving spouse from "income earned", but the spouse will be required to pay income taxes. Distributions made from trust principal, require Section 2056A estate taxes to be calculated and withheld by a Trustee. Exceptions to Section 2056A Estate Taxes are made for principal distributions concerning health, education or support of the surviving spouse or child.

Requirements of a QDOT:

- Administration governed by a U.S. state (including Washington D.C.).
- Qualifies as an Ordinary Trust via Section 301.7701-4(a).
- Qualifies as an Appointment Trust, QTIP Trust, Charitable Remainder Trust, or an Estate Trust.
- At least one Trustee has to be a U.S. citizen or a U.S. corporation.
- If QDOT is more than \$2,000,000, then at least one Trustee must be a U.S. bank.
- Trust Distributions (except for income) can only be made if the Section 2056A Estate Tax is withheld by a Trustee.
- In the event of a hardship, a Section 2056A may not be imposed on distributions from the principal.

There are few alternatives to this strategy. The best strategy is to have the non-US citizen gain citizenship while both spouses are alive.