

Trusts

What's Under the Hood?

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Grantor Trusts

But taxation is not so much concerned with the refinements of title as it is with **actual command** over the property taxed—the actual benefit for which the tax is paid.

CORLISS v. BOWERS, 281 U.S. 376 (1930).

Grantor Trusts—History

The concept of a grantor trust was created to prevent income shifting.

Year	Regular	SURTAX	TOTAL TOP RATE
1913–1915	1%	6%	7%
1916	2%	13%	15%
1917	4%	63%	67%
1918–1921	8%	65%	73%
1922–1923	8%	50%	58%
1924	6%	40%	46%
1925–1931	5%	20%	25%
1932–1933	8%	55%	63%
1934–1935	4%	59%	63%
1936–1940	4%	75%	79%
1941	4%	77%	81%
1942–1943	6%	82%	88%
1944	3%	91%	94%

Year	Regular	SURTAX	TOTAL TOP RATE
1945–1963	3%	88%	91%
1964	3%	74%	77%
1965–1981	70%		70%
1982–1986	50%		50%
1987	38.50%		38.50%
1988–90*	33%		33%
1991–1992	31%		31%
1993–2000	39.60%		39.60%
2001	39.10%		39.10%
2002	38.60%		38.60%
2003–2012	35%		35%
2013–2017	39.60%		39.60%
2018-2022	37%		37%

Grantor Trusts—Overview

- When a trust is classified as a “Grantor Trust,” the grantor is treated as the “owner” of the underlying trust property, as if the trust did not exist.
- All items of income, deduction and credit of the trust are reported directly on the grantor’s individual income tax return (Form 1040).
- As stated by the IRS in Rev. Rul. 85-13, a grantor trust is treated as being indistinguishable from the grantor, where transactions between the trust and the grantor are disregarded for income tax purposes.

Grantor Trusts—Overview

- Grantor trusts are used in wealth transfer strategies by taking advantage of the **disconnect** between the income tax rules and the estate & gift tax rules.
- The grantor makes a gift to a trust that is designed to be treated as a grantor trust for income tax purposes, but not for transfer tax purposes.
- **Alternatively**, assets are sold to the trust for FMV.
The sale is income tax-free. Because the donor pays the income tax, his/her estate is depleted by the taxes paid.

Grantor Trusts—Overview

- Grantor trusts are used in domestic asset protection strategies (“DAPT”). In the usual scenario, the grantor is a discretionary income or principal beneficiary.
- A commonly seen grantor trust is the irrevocable life insurance trust (“ILIT”).
- A variation of the theme is the spousal lifetime access trust (“SLAT”).
- Medicaid Asset Protection Trusts are usually structured as Grantor Trusts.
- The NON-Grantor trust is used for state income tax planning.

Grantor Trusts—Definitions

- **GRANTOR**—any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer of property to a trust.
- **ADVERSE PARTY**—A person with a substantial beneficial interest in the trust that will be adversely affected by the exercise or non-exercise of a power possessed by such person. An interest in the trust is substantial if “its value in relation to the total value of the property subject to the power is not insignificant.” Generally, an interest of a remainderman is only adverse as to the exercise of a power over principal. The interest of an ordinary income beneficiary could be adverse only to a power over income or also adverse to a power over principal. §672(a).
- **NON-ADVERSE PARTY**—A person who is not an adverse party. §672(b).

Grantor Trusts—Definitions

RELATED OR SUBORDINATE PARTY—a Non-Adverse party who is:

- The grantor's spouse, parent, issue, sibling,
- Employee, or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; or
- A subordinate employee of a corporation of which the grantor is an executive.

For purposes of §§ 674 and 675, a related or subordinate party is presumed to be subservient to the grantor in respect of the exercise or non-exercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

Grantor Trusts—Overview

Section 672(e) – Spousal attribution

A grantor shall be treated as holding ANY POWER OR INTEREST held by:

- any individual who was the spouse of the grantor at the time of the creation of such power or interest; or
- any individual who became the spouse of the grantor after the creation of such power or interest.

The rule applies only with respect to periods after such individual became the spouse of the grantor. An individual legally separated from his/her spouse under a decree of divorce or of separate maintenance is not considered as married.

Note: Divorce itself will not terminate attribution once it has attached.

Grantor Trusts—Overview

- If a person creates or funds a trust on behalf of another person, both persons are treated as grantors of the trust.
- A person who creates a trust but makes no gratuitous transfers to the trust is not treated as an owner of any portion of the trust under §§ 671-677 or 679.
- A person who funds a trust with an amount that is directly reimbursed to such person within a reasonable period of time and who makes no other transfers to the trust that constitute gratuitous transfers is not treated as an owner of any portion of the trust under §§ 671-677 or 679.
§1.671-2(e).

Grantor Trusts—Overview

Reg. §1.671-2(e)(5)

- If a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally will be treated as the grantor of the transferee trust.
- However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, then such person will be treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust.
- See example (8) below—very important when decanting trusts.

Grantor Trusts—Overview

Example (1)

A creates and funds a trust for the benefit of her children. B subsequently makes a gratuitous transfer to the same trust. Both A and B are grantors of the trust.

Example (3)

A, an attorney, creates a trust on behalf of A's client, B, and transfers \$100 to the trust out of A's funds and is then subsequently reimbursed by B for the \$100. The trustee has discretion to distribute the income or principal to B and B's children. Both A and B are treated as grantors of the trust – B is treated as the owner of the entire trust under section 677, but A is not an owner of any portion of the trust under sections 671 through 677 regardless of whether A retained any power over or interest in the trust.

However – Both A and B are responsible parties for purposes of any trust reporting requirements (e.g., FBAR, 3520, etc.).

Grantor Trusts—Overview

Example (4)

A creates and funds a trust, but A does not retain any power or interest in the trust that would cause A to be treated as an owner of any portion of the trust under sections 671 through 677. B holds an unrestricted power, exercisable solely by B, to withdraw certain amounts contributed to the trust before the end of the calendar year and to vest those amounts in B. B is treated as an owner of the portion of trust that is subject to the withdrawal power under section 678(a)(1). However, B is not a grantor because B neither created the trust nor made a gratuitous transfer to the trust.

Example (8)

G creates and funds a trust for the benefit of G's children and grandchildren. After G's death, under authority granted to the trustees in the trust instrument, the trustees of the trust transfer a portion of the assets of the existing trust (“trust-1”) to another trust, “trust-2”, and retain a power to revoke trust-2 and revest the assets of trust-2 in trust-1. G is considered the grantor of trust-1 and trust-2. In addition, because the trustees of trust-1 have retained a power to revest the assets of trust-2 in trust-1, trust-1 is treated as the owner of trust-2 under section 678(a).

Grantor Trust Reporting

Optional Filing Method One (Only 1 Grantor)

The trustee gives all payors of income during the tax year the name and TIN of the grantor—1099s are then issued directly to the grantor rather than the trust

Form 1041 is NOT FILED

Grantor trusts that haven't applied for a TIN and are going to file under Optional Method 1 don't need a TIN for the trust as long as they continue to report under that method.

Grantor Trust Reporting

Optional Filing Method Two (Only 1 Grantor)

The trustee gives all payors of income during the tax year the name, address, and TIN of the trust—1099s are then issued to the trust itself.

The trust then issues 1099s to the grantor that shows the trust as the payor and the grantor as the payee.

Grantor Trust Reporting

Optional Filing Method Three (Multiple Grantors)

The trustee must give all payors of income during the tax year the name, address, and TIN of the trust.

The trust then issues 1099s to each person treated as the grantor showing the trust as the payor and each grantor as the payee—showing all items of income, deduction, and credit of the trust attributable to the part of the trust treated as owned by each grantor.

Grantor Trust Reporting

If **not** using an optional filing method:

- If the entire trust is a grantor trust:
 - Fill in only the entity information of Form 1041.
 - Don't show any dollar amounts on the form itself – only on an attachment to the form.
 - Don't use Schedule K-1 (Form 1041) as the attachment.
- If only part of the trust is a grantor type trust, the portion of the income, deductions, etc., that is allocable to the non-grantor part of the trust is reported on Form 1041 under normal reporting rules.

Grantor Trust Reporting

If **not** using an optional filing method, show on the attachment:

- The name, identifying number, and address of the person(s) to whom the income is taxable
- The income of the trust that is taxable to the grantor or another person
- Report the income in the same detail as it would be reported on the grantor's return had it been received directly by the grantor; and
- Any deductions or credits that apply to this income

Report these deductions and credits in the same detail as they would be reported on the grantor's return had they been received directly by the grantor.

Grantor Trust Reporting

Department of the Treasury — Internal Revenue Service

U.S. Income Tax Return for Estates and Trusts

2022

OMB No. 1545-0092

Form 1041

Go to www.irs.gov/Form1041 for instructions and the latest information.

A Check all that apply:		For calendar year 2022 or fiscal year beginning _____, and ending _____, 20	
<input type="checkbox"/> Decedent's estate		C Employer identification number _____	
<input type="checkbox"/> Simple trust		D Date entity created _____	
<input type="checkbox"/> Complex trust		E Nonexempt charitable and split-interest trusts, check applicable box(es). See instructions.	
<input type="checkbox"/> Qualified disability trust		<input type="checkbox"/> Described in sec. 4947(a)(1). Check here if not a private foundation <input type="checkbox"/>	
<input type="checkbox"/> ESBT (S portion only)		<input type="checkbox"/> Described in sec. 4947(a)(2) <input type="checkbox"/>	
<input checked="" type="checkbox"/> Grantor type trust			
<input type="checkbox"/> Bankruptcy estate—Ch. 7			
<input type="checkbox"/> Bankruptcy estate—Ch. 11			
<input type="checkbox"/> Pooled income fund			
B Number of Sch K-1 attached (see instructions) _____	F Check applicable boxes:	<input type="checkbox"/> Initial return	<input type="checkbox"/> Final return
	<input type="checkbox"/> Change in trust's name	<input type="checkbox"/> Change in fiduciary	<input type="checkbox"/> Amended return
		<input type="checkbox"/> Change in fiduciary's name	<input type="checkbox"/> Net operating loss carryback
		<input type="checkbox"/> Change in fiduciary's address	

G Check here if the estate or filing trust made a section 645 election Trust TIN _____

Income	1 Interest income	1	
	2a Total ordinary dividends	2 a	
	b Qualified dividends allocable to: (1) Beneficiaries _____ (2) Estate or trust _____		
	3 Business income or (loss). Attach Schedule C (Form 1040)	3	
	4 Capital gain or (loss). Attach Schedule D (Form 1041)	4	
	5 Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	
	6 Farm income or (loss). Attach Schedule F (Form 1040)	6	
	7 Ordinary gain or (loss). Attach Form 4797	7	
	8 Other income. List type and amount _____	8	
9 Total income. Combine lines 1, 2a, and 3 through 8	9		

Under the terms of the trust instrument, this is a grantor trust. All income is taxable to the grantor as set forth under sections 671 - 678 I.R.C. A statement of income, deductions, and credits is attached.

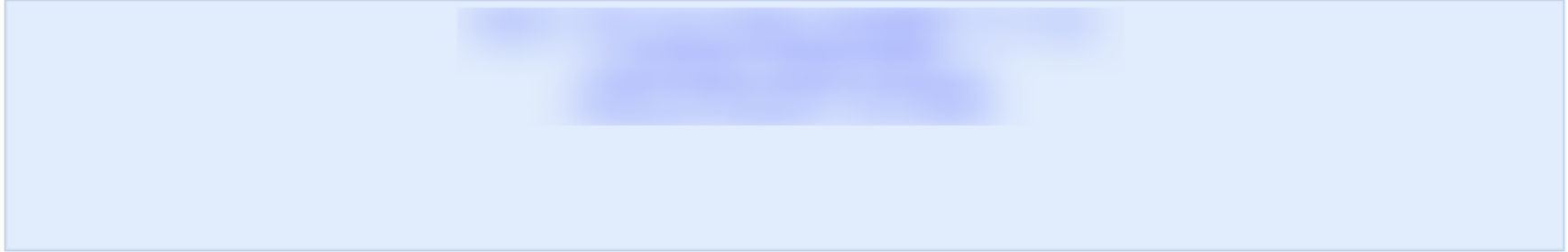
10 Interest. Check if Form 4952 is attached <input type="checkbox"/>	10	
11 Taxes	11	
12 Fiduciary fees. If only a portion is deductible under section 67(e), see instructions.	12	
13 Charitable deduction (from Schedule A, line 7)	13	
14 Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions	14	
15a Other deductions (attach schedule). See instructions for deductions allowable under section 67(e)	15 a	

Grantor Trust Reporting

Grantor Letter: US Grantor Letter

2022 Federal Grantor Information

Page 1



Grantor Name and Address [Redacted]	Trust Tax ID: [Redacted] Grantor ID/SSN: [Redacted] % Ordinary Income: 100.000000 % Capital Gain/Loss: 100.000000
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The following income, deductions and credits are to be reported on the income tax return of the above named grantor.

The information from passthrough activity is reported on the Passthrough Summary.

Income

Ordinary Dividends

(Enter on Line 3b Form 1040)

[Redacted] \$ 3,765. \$ 3,765.

Qualified Dividends

(Enter on Line 3a, Form 1040)

[Redacted] \$ 335.

Grantor Trust Reporting

Changing Filing Methods:

A trustee who previously had filed Form 1041 can change to one of the optional methods by filing a final Form 1041 for the tax year that immediately precedes the first tax year for which the trustee elects to report under one of the optional methods.

On the front of the final Form 1041, the trustee must write “Pursuant to section 1.671-4(g), this is the final Form 1041 for this grantor trust,” and check the Final return box in item F.

Grantor Trusts—Statutory Scheme

The IRC starts with the general rule defining the power that will result in grantor trust status. The general rule is then made inapplicable with exceptions (i.e., no grantor trust)—but then provides exceptions to the exceptions (i.e., grantor trust status).

§671 – Trust income, deductions & credits attributable to grantor

§672 – Definitions and rules

Grantor Trusts—Statutory Scheme

§673 – Reversionary Interests

§674 – Power to Control Beneficial Enjoyment

§675 – Administrative Powers

§676 – Power to Revoke

§677 – Income for Benefit of Grantor

§678 – Person Other Than Grantor Treated as
Owner

§679 – Foreign Trusts Having One or More U.S.
Beneficiaries

§ 673—Reversionary Interests

The grantor is treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5% of the value of such portion.

§ 673(b)—NOT a grantor trust if

1. the power or interest becomes possessory only following the death of one of the lineal descendants of the grantor before the descendant reaches age 21; and
2. the descendant is also the only current beneficiary of the portion of the trust in which the reversion exists.

Note: §2503(c) children's trust should not be a grantor trust under § 673 merely because the grantor or the grantor's spouse will receive the trust assets if the child dies before reaching age 21.

§674 – Power to Control Beneficial Enjoyment

It's when the grantor or a non-adverse party **control the enjoyment or disposition of trust property** without the consent of an adverse party.

The following 8 powers may be held by anyone (including grantor) **without triggering grantor trust status**:

1. Power to apply income to support a dependent
2. A postponed power to affect beneficiary enjoyment
3. A power exercisable only by will
4. A power to allocate among charitable beneficiaries
5. A power to distribute trust corpus in certain limited circumstances
6. A power to temporarily withhold income
7. A power to withhold income during the recipient's disability
8. A power to allocate recipients and disbursements between income and principal.

§675 – Administrative Powers

Certain administrative powers exercisable by the grantor or a non-adverse party, or both, without the approval or consent of any adverse party, will cause grantor trust status. These include:

1. The power to deal with the trust for less than adequate consideration.
2. The ability to borrow trust assets.
3. Certain additional administrative powers exercised in a non-fiduciary capacity.

§676 – Power to Revoke

The grantor will be treated as the owner of any portion of a trust as to which the grantor (or the grantor's spouse) or any non-adverse party, retains the power to re-vest title to the trust assets to the grantor.

Exception: deferred power to re-vest or revoke

§677 – Income for Benefit of Grantor

Grantor status triggered if:

1. Income payable to Grantor or Spouse
2. Income available to discharge grantor's legal support obligation
3. Income available for payment of life insurance premiums

§678 – Person Other Than Grantor Treated as Owner

This section may be triggered if a third party is given:

1. A power of appointment
2. A Crummey withdrawal right, unless the grantor holds a grantor trust power under §§ 671-679
3. A power to use the trust funds to discharge the third party's own legal obligations.

§679 – Foreign Trusts Having One or More U.S. Beneficiaries

The US grantor of a foreign trust that has one or more US beneficiaries is treated as the owner of the trust's assets under the grantor trust rules.

A trust is a foreign trust **unless both** of the following are true:

1. A US court can exercise primary supervision over the trust; and
2. One or more US persons have the authority to control all substantial trust decisions.

Section 1.04 Powers Reserved by Me as Grantor

As Grantor, I retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this instrument.

(a) Action on Behalf of My Trust

Whenever I am serving as Trustee, I may act for and conduct business on behalf of my trust without the consent of any other Trustee.

(b) Amendment, Restatement, or Revocation

I may amend, restate, or revoke this instrument, in whole or in part, for any purpose.

§ 676

§ 674

Any amendment, restatement, or revocation must be made in writing and delivered to my then-serving Trustee.

(c) Addition or Removal of Trust Property

I may add property to my trust and may remove any property from my trust at any time.

(d) Control of Income and Principal Distributions

I retain the right to control the distribution of income and principal from my trust. I may direct my Trustee to distribute as much of the net income and principal of the trust property as I consider advisable to me or to other persons or entities. My Trustee may distribute the net income and principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of my trust.

§ 677

(e) Approval of Investment Decisions

I reserve the absolute right to review and change my Trustee's investment decisions. But my Trustee is not required to seek my approval before making investment decisions.

Section 1.05 Grantor Trust Status

By reserving the broad rights and powers set forth in Section 1.04 of this Article, I intend to qualify my trust as a Grantor Trust under Internal Revenue Code Sections 671 to 677. This means that, for federal income tax purposes, I will be treated as the owner of all the assets held in my trust during my lifetime, as if I held them in my individual capacity.

During any period that my trust is a Grantor Trust, the Taxpayer Identification Number of my trust will be my Social Security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).



Trust Provision

Section 1.07 Grantor Trust Status

By reserving the right to income and principal set forth in Section 1.06 of this Article, I intend to qualify my trust as a “Grantor Trust” under Sections 671 to 677 of the Internal Revenue Code so that, for federal income tax purposes, I will be treated as the owner during my lifetime of all the assets held in my trust as though I held them in my individual capacity.

While I am alive, the taxpayer identification number of my trust will be my Social Security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

Intentionally Defective Grantor Trusts

- An IDGT is an irrevocable trust with a deliberate flaw designed to provide tax advantages.
- It contains specific language intended to allow the grantor to be taxed on trust income, without affecting estate tax rules.
- The grantor retains the income tax liability for the trust, which can be beneficial for estate planning purposes.
- Assets within the trust are not included in the grantor's estate, as contributions are considered completed gifts, thus reducing the taxable estate.

Intentionally Defective Grantor Trusts

- Once established, the IDGT is irrevocable, and the grantor cannot serve as a beneficiary or trustee, ensuring separation of control.
- A spouse can act as a trustee, which allows for some degree of indirect control over the trust's assets and management. If the spouse is both a beneficiary and a trustee, distributions to the spouse must adhere to an ascertainable standard to avoid inclusion in the grantor's estate.
- Appointing an independent trustee can provide more flexibility, as distributions to the spouse need not be limited by the ascertainable standard.

Statutorily Mandated Estate Inclusion

- **Near death** transfers (§2035).
- Transfers with **retained** lifetime enjoyment (§ 2036).
- Transfers **taking effect** at death or conditioned upon surviving the decedent (§ 2037).
- **Revocable** Transfers (§ 2038).
- **Jointly-held** property (§ 2040).
- Property over which the decedent held a **general power of appointment** (§ 2041).
- Life insurance policies on the decedent's life over which the decedent retained certain **incidents of ownership** (§ 2042).

Statutorily Mandated Estate Inclusion

Example: Transfers with Retained Lifetime Enjoyment (§ 2036)

EXAMPLE (MAPT):

While either of us is living, our Trustee shall administer the trust as provided in this Article.

1. Residence and Distribution Provisions

While either of us is living, our Trustee shall administer all property held by our trust as follows:

(a) Residence Provisions

- Only as it relates to our Principal Residence held by the Residence Trust, we have the right to exclusive lifetime use and occupancy of the property for so long as either of us continue to permanently reside therein, after which time our right to exclusive lifetime use and occupancy will end. The following provisions apply to our Principal Residence:

(1) No Payment of Rent; Payment of Maintenance

We may not be required to pay rent for such property, but will be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments, and normal costs of maintenance and upkeep of the property.

Grantor Trust Powers that WILL NOT cause a Trust to be included in a Grantor's estate for estate tax purposes

- Grantor's spouse is a trustee of the trust
- Grantor's spouse is an income and principal beneficiary of the trust
- Grantor (and/or spouse) has the power to substitute trust assets for non-trust assets of equal value
- Person not "related" to grantor has the power to add beneficiaries (other than after-born children) to the trust (e.g., charities, spouses, collateral relatives)

Grantor Trust Powers that WILL NOT cause a Trust to be included in a Grantor's estate for estate tax purposes

- Grantor's spouse has the right to borrow trust assets for an adequate interest rate, but without collateral
- Grantor has the right to borrow trust assets for an adequate interest rate, but without collateral
- Trustee is authorized to use income to pay premiums on insurance on the life of the grantor or the grantor's spouse

Rev. Rul. 2023-2

Revenue Ruling 2023-2 clarifies a critical point: assets transferred into an irrevocable trust during the owner's lifetime and **removed from their estate will not qualify for basis adjustment at the time of their death.** If the asset stays in the owner's estate through specific legal strategies, the basis adjustment may still apply. But this can affect income taxes while the owner is still alive.

Rev. Rul. 2008-22 and 2011-28

A grantor's retained power, exercisable in a nonfiduciary capacity, to acquire property held in trust **by substituting property of equivalent value will not**, by itself, cause the value of the trust corpus to be includible in the grantor's gross estate under §2036, §2038 or §2042.

Trustee must have a fiduciary **obligation** (under local law or the trust instrument) **to ensure the grantor's compliance** with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor **are in fact of equivalent value**.

Rev. Rul. 2008-22 and 2011-28

The **substitution power** cannot be exercised in a manner that can shift benefits among the trust beneficiaries

- (a) the trustee has both the power (under local law or the trust instrument) to reinvest the trust corpus and a duty of impartiality with respect to the trust beneficiaries; or
- (b) the nature of the trust's investments or the level of income produced by any or all of the trust's investments does not impact the respective interests of the beneficiaries, such as when the trust is administered as a unitrust (under local law or the trust instrument) or when distributions from the trust are limited to discretionary distributions of principal and income

Rev. Rul. 2004-64

Payment by the **grantor** of a grantor trust of his or her personal income tax attributable to the grantor trust's income is not itself a taxable gift by the grantor to the grantor trust.

This is the “general conclusion”—the holding is actually expressed under three examples (“situations”).

Rev. Rul. 2004-64

Situation 1—Neither local state law nor the trust contains any provision requiring or permitting the trustee to distribute to the grantor amounts sufficient to satisfy grantor’s income tax liability.

Situation 1 Holding—The grantor is merely satisfying his/her own tax liability—not making an additional gift to the trust. Under IRC §671 the grantor is personally liable for the tax on trust income—not the trust

Rev. Rul. 2004-64

Situation 2—The trust requires the trustee to distribute to the grantor amounts sufficient to satisfy grantor's income tax liability.

Situation 2 Holding—Grantor has retained the right to have trust property expended in discharge of grantor's legal obligation. This causes the full value of the trust's assets to be included in grantor's gross estate under §2036(a)(1)

Rev. Rul. 2004-64

Situation 3—The trust provides that the trustee may, in the trustee's discretion, distribute to the grantor amounts sufficient to satisfy grantor's income tax liability.

Situation 3 Holding—The trustee's power to reimburse the grantor for his/her tax liability will NOT cause inclusion in grantor's gross estate because reimbursement was in the trustee's sole discretion. The payment of income taxes by the grantor was NOT an additional gift to the trust.

Trust Powers that will ensure Grantor Trust Status

- Power to substitute assets of equivalent value.
- Power to add charitable beneficiaries.
- Power to enable grantor to borrow without adequate security.

Beneficiary Grantor Trust

Section 678(a)—a person other than the grantor (e.g., a beneficiary) shall be treated as the owner of any portion of a trust with respect to which:

1. The person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself; or
2. The person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would cause a grantor to be treated as the owner of such portion of the trust within the principles of §§671 to 677, inclusive.

Beneficiary Grantor Trust

Parent makes a gift of \$1,000,000 (or more, up to \$5M) worth of non-voting stock to a dynasty trust f/b/o children/grandchildren.

The trust is structured so that child can (a) manage and control the trust assets as the trustee; (b) be the primary beneficiary of the trust; and (c) have a limited power of appointment (i.e., the ability to “re-write” the estate plan).

Beneficiary Grantor Trust

Irrevocable trust created for the benefit of a beneficiary by a member of his or her family.

Parent (grantor) contributes assets to fund the trust and allocate sufficient GST exemption to create a zero inclusion ratio.

Named grantor must, in all cases, create the trust with funds that are clearly his or hers.

The creator of the BGT retains no power or interest that would cause him or her to be deemed to own the trust under §§671-679.

Beneficiary Grantor Trust

The trust will become a “678 trust” by funding the trust solely with gifts subject to a power of withdrawal – the “Crummey power.”

After the withdrawal right lapses, the beneficiary is entitled to mandatory or discretionary distributions of principal and income.

The beneficiary may also be a trustee or trust advisor.

The withdrawal power lapses as to no more than the greater of \$5,000 or 5 percent of the trust assets, so that the lapse does not constitute a taxable release for estate or gift tax purposes, and the trust assets are not includable in the beneficiary's gross estate.

Beneficiary Grantor Trust

ESTATE INCLUSION “RISK”

Since the Crummey power is usually a “hanging” power of withdrawal, Child would have estate tax inclusion only to the extent of the amount “hanging” at death.

Life insurance on the Child can be used to hedge against estate tax exposure for the next 10-15 years due to the unexpired portion of the “hanging” power.

The cost of insurance is substantially less than the cost of insurance on the parent-grantor.

Beneficiary Grantor Trust

The gifts need not be limited to the annual exclusion.

Beneficiary must be given a power of withdrawal over the ENTIRE contribution, so that the entire trust would be a grantor trust as to the beneficiary to obtain §678(a) treatment.

PLR 200747002, 201039010 and 201216034 for reference

Beneficiary Grantor Trust

PROVISIONS TO INCLUDE IN TRUST TO AVOID 671-679

Grantor is not a beneficiary under the Trust and has no interest under the Trust.

No income or principal of Trust may be paid or appointed for the benefit of Grantor or Grantor's spouse, or to pay premiums on insurance policies on the life of Grantor and/or Grantor's spouse.

Neither Grantor nor Grantor's spouse may act as a Trustee of Trust and that no more than one-half of Trustees of Trust may be related or subordinate parties to Grantor, within the meaning of § 672(c).

Beneficiary Grantor Trust

PROVISIONS TO INCLUDE IN TRUST TO AVOID 671-679

Grantor does not intend to be treated under subpart E of Part I of subchapter J as the owner of Trust.

Neither Grantor nor any other “non-adverse party” as that term is defined in § 672(b) shall have the power to (1) purchase, exchange or otherwise deal with or dispose of Trust's principal or income for less than adequate consideration or (2) borrow any of Trust's principal or income without adequate interest or security.

No person, other than a United States person, shall have the authority to control any substantial decision (within the meaning of § 7701(a)(30)(E) of any trust created and held under Trust. No court, other than a court within the United States, shall exercise primary supervision over the administration of any trust created and held under Trust.



Thank you!

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