

Navigating Tax Reimbursement Clauses in Grantor Trusts: Implications and Considerations

April 26, 2024



A grantor trust is a powerful estate planning tool, but recent developments may render it less effective in some cases. This is a result of a newly issued IRS legal memorandum that discusses the gift tax consequences of modifying a grantor trust and adding a tax reimbursement clause. The memo has created issues in the gift tax world, as it has reversed a previous IRS decision made only a few years ago.

In a grantor trust, the grantor maintains control over both income and assets within the trust during their lifetime. The grantor of the trust is treated as an owner of any part of the trust, and as such the income, deductions, and credits of the trust must be included as part of the grantor's taxable income. A tax reimbursement clause allows for the trustee to make distributions from the trust and reimburse the grantor for the income tax attributable to the trust income reported on the grantor's taxable income.

The new IRS memo concluded that “[t]he modification to add the tax reimbursement clause will constitute a taxable gift by the trust beneficiaries because the addition of a discretionary power to distribute income and principal to the grantor is a relinquishment of a portion of the beneficiaries’ interest in the trust.” Based on this determination, if the tax reimbursement clause was included at the trust’s inception, it does not trigger a taxable event, but modifying the trust at a later date to include the clause would result in gift tax consequences.

Adding this clause after a trust was created, now creates a taxable gift by the trust beneficiaries on their portion of their interest of the trust. Valuing the gift by the beneficiary leads to questions on how to value the gift for tax purposes. The IRS noted this difficulty in the a footnote, stating that “although the determination of the values of the gifts requires complex calculations, the child and child’s issue cannot escape gift tax on the basis of the fact that the gift is difficult to calculate.”

Taxpayers need to be aware of this change to (1) fully understand whether a grantor trust is the best vehicle for their given set of circumstances, and (2) evaluate the potential implications of future trust modifications if already utilizing a grantor trust.

As the landscape of grantor trusts evolves, it’s imperative for taxpayers and their advisors to stay informed. If your grantor trust lacks a tax reimbursement clause and you wish to revisit its structure, seek professional guidance from experienced advisors to assess the impact on beneficiaries and navigate the complexities of tax exposure. By proactively addressing these issues, you can optimize estate planning efficiency and protect your interests. For more information or to discuss this matter in greater detail, contact your Anchin Relationship Partner.