Grantor Trust Basics

By Philip A. Di Giorgio

While all men (and women) may indeed be created equal, all trusts are not created equal, at least for tax purposes. In general, a trust is treated as a separate entity for income tax purposes from its grantor and as such the trustee is obliged to report the trust's annual income on an IRS Form 1041 Fiduciary Income Tax Return. However, the income, deductions and credits of some trusts are attributable to grantors and others as substantial owners under I.R.C. § 671. These trusts are known as "grantor trusts."

I. Some Motivations to Obtain Treatment as a Grantor Trust

There are a number of motivations which might inspire a grantor to structure a trust as a grantor trust. Such motivations include, but are not limited to, the following:

- One such motivation is avoiding the disparity between the tax rates for trusts and for individuals. In 2009, the top tax rate of 35% is applicable to married couples filing jointly with taxable income of $372,950 or more, whereas the top income tax rate of 35% applies to trusts with taxable income of $11,150 or more.
- Another motivation for structuring a trust as a grantor trust is to permit the assets of a trust to grow tax free for the benefit of the beneficiaries, with the income tax instead being borne by the grantor. This effectively enables a grantor to pass wealth to trust beneficiaries free of transfer taxation, making the grantor trust a powerful estate planning tool.
- Yet another motivation might be a grantor's desire to avoid the recognition of capital gains in transactions between the grantor and a trust established by the grantor.

II. Income Tax Filing Requirements for Grantor Trusts

In general, the trustee of a grantor trust must obtain an EIN for the trust and file an IRS Form 1041 Fiduciary Income Tax Return for the trust unless the trustee elects one of the optional filing methods.[1] Note, however, that in some cases where an optional reporting method is elected, it may not be necessary for the trust to obtain an EIN.[2]

The optional reporting methods are described in Treasury Regulation § 1.671-4(b) and in the instructions for Form 1041. Most trusts must file on a calendar year basis and the due date of a Form 1041 Fiduciary Income Tax Return for a calendar year trust is on or before April 15 of the year following the close of the calendar year.

III. Seven Statutory Triggers for Grantor Trust Status

1. Reversionary Interests in Excess of 5% of Principal or Income;
2. Power to Control Beneficial Enjoyment of Principal or Income;
3. Certain Administrative Powers;
4. Power to Revoke;
5. Income for Benefit of Grantor or Grantor's Spouse;
6. Person Other Than Grantor Treated as Substantial Owner; and
7. Foreign Trusts Having One or More U.S. Beneficiaries

These seven statutory triggers for grantor trust treatment are set forth in greater detail under I.R.C. §§ 673 through 679, and the regulations promulgated thereunder.

IV. Basic Categories of Grantor Trusts

There are many different types of trusts that may be classified as grantor trusts. For the purposes of this article, however, all grantor trusts will be broken into the following three basic categories: Revocable Trusts; Irrevocable Trusts Included in the Grantor's Gross Estate for Estate Tax Purposes; and Intentionally Defective Grantor Trusts (IDGTs) Excluded from the Grantor's Gross Estate for Estate Tax Purposes.

A. Revocable Trusts

All revocable trusts are classified as grantor trusts under I.R.C. § 676. Typically, the grantor retains complete control and access over the assets contributed to a revocable trust. Revocable trusts are commonly drafted in order to simplify the estate administration process to avoid probate or to provide for the ongoing manage-

ment of the grantor's assets by a successor trustee if and when the grantor becomes incapacitated.

Revocable trusts are grantor trusts as to both income and principal. It is generally accepted among practitioners in the trusts and estates field that transfers to revocable trusts will not trigger any capital gains or other income tax consequences for the grantor. The income, deductions and credits of grantor trusts are attributable to the grantor under I.R.C. § 671. Thus, for example, the sale of a residence by a revocable trust that triggers a capital gain will be attributable to the grantor, who also would be entitled to claim the I.R.C. § 121 exclusion from capital gain on the sale of that residence to the same extent that said exclusion would be available had the residence been sold directly by the grantor.[3]

All of the ordinary income and capital gains earned by revocable trusts are reported on the grantor's income tax return. A revocable trust typically uses the grantor's Social Security number as its tax identification number. A Form 1041 is not generally filed in connection with a revocable trust until after the grantor's death when the trust becomes irrevocable, and a separate identification number must be obtained for the trust.

Congress recognized that the relationship between a grantor and his or her revocable trust is more intertwined for tax purposes than other grantor trusts when, as a part of the Taxpayer Relief Act of 1997, it permitted trustees of trusts that were revocable until the time of the grantor's death to make an election under I.R.C. § 645 to have the trust treated as a part of the decedent's estate for a limited period of time.

B. Irrevocable Trusts Included in the Grantor's Gross Estate for Estate Tax Purposes

Several factors will cause a trust to be included in a grantor's gross estate for estate tax purposes. Many of these factors also trigger grantor trust status.

Some of the most common factors that would cause estate tax inclusion are:

- Grantor retains the right to possess or enjoy the transferred property for life;[4]
- Grantor retains the right to income from the transferred property for life;[5]
- Grantor retains the right to designate who will possess or enjoy the transferred property;[6]
- Grantor retains a reversionary interest in excess of 5% of the value of the transferred property as of the date of death;[7]
- Grantor retains the right to alter, revoke or amend the trust;[8]
- Grantor is deemed to have a general power of appointment over trust assets;[9]
- Grantor has retained an incident of ownership over an insurance policy transferred to a trust;[10] and
- Grantor transfers or otherwise relinquishes any of the aforementioned powers within three years of death.[11]

Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs), Charitable Lead Annuity Trusts (CLATs), and Retained Income Trusts are all examples of irrevocable trusts that may be designed as grantor trusts and that may be included in the grantor's gross estate, even if properly designed, in the event that the grantor does not survive the trust term. The inclusion would be automatic for GRATs and QPRTs under I.R.C. § 2036(a)(1). For CLATs, estate inclusion would only occur under limited circumstances where the transfer to the CLAT is deemed not to be a completed gift,[12] or the grantor was deemed to retain too much control over the charitable beneficiary.[13]

The advantage of estate tax inclusion is that the beneficiaries of the decedent's estate will be entitled to a stepped-up basis in the trust's assets for income tax purposes.[14] The disadvantage is that, depending on the size of the estate and the allowable deductions, estate tax may be due on such assets.

Treatment of GRATs as Grantor Trusts: A GRAT is treated as a grantor trust as to income because of the annuity payments that must be made to the grantor from income and, to the extent income is insufficient, from principal.[15] A GRAT is treated as a grantor trust as to principal if the grantor has retained a testamentary power to appoint accumulated capital gains.[16] In addition, the retention by the grantor of a reversionary interest having a value in excess of 5% of the value of the GRAT at the time of transfer will also cause the GRAT to be treated as a grantor trust.[17]

If a grantor is treated as the owner of a GRAT under the grantor trust rules, no gain will be recognized in connection with transfers between the grantor and the GRAT.[18]

The income generated by the assets of a GRAT that is treated as a grantor trust will be taxed to the grantor during the GRAT term, thereby generating additional estate tax savings to the grantor, while transferring additional wealth to the GRAT beneficiaries. If the grantor survives the GRAT term, the assets transferred to a properly designed GRAT will be excluded from the grantor's estate.

A GRAT is generally not a good planning vehicle for generation-skipping tax because the grantor's gen-

eration skipping transfer tax exemption cannot be applied to property transferred to the GRAT until the end of the GRAT term.

If the grantor fails to survive the GRAT term, "the portion of the trust's corpus included in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust or other payment (without reducing or invading principal) as determined in accordance with Treasury Regulation § 20.2031-7 (or Treasury Regulation § 20.2031-7A, if applicable). The portion of the trust's corpus includible in the decedent's gross estate under I.R.C. § 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death."[19]

Treatment of QPRTs as Grantor Trusts: All of the income of a QPRT must be paid to the grantor.[20] Consequently, all QPRTs are grantor trusts as to income under I.R.C. § 677. As with GRATs, a QPRT in which the grantor has retained a testamentary power of appointment over principal or a reversionary interest in excess of 5% will be a grantor trust as to principal under I.R.C. § 674(a) or § 673(a), respectively.

Treatment of CLATs as Grantor Trusts: The grantor of a CLAT may only claim an income tax deduction for assets transferred to the CLAT if the trust is a grantor trust.[21] If the CLAT is treated as a grantor trust the income of the CLAT will be attributed to the grantor.[22]

Treatment of Retained Income Trusts: Where a grantor retains a non-qualified income interest for life, the trust would be treated as a grantor trust with respect to income under I.R.C. § 677. Such trusts are commonly used in connection with Medicaid planning. By granting the grantor a power to substitute property held by the grantor for property of equivalent value held by the trust, these trusts can also be made grantor trusts as to principal. [23] If the grantor retains a special power of appointment over the corpus of the trust, transfers to such trusts are incomplete gifts for gift tax purposes,[24] causing the trust corpus to be included in the grantor's gross estate under I.R.C. §§ 2036(a)(1) and 2036(a)(2).

C. Grantor Trusts That Are Excluded from the Grantor's Gross Estate

Such trusts are commonly known as Intentionally Defective Grantor Trusts, and typically referred to as IDGTs. The primary tax characteristic of an IDGT is that it has one or more provisions that trigger grantor trust status under I.R.C. §§ 673 through 679 for income tax purposes, but no provision that would trigger the inclusion of trust assets in the grantor's gross estate for estate tax purposes. Trusts commonly designed as IDGTs include, but are not limited to, Irrevocable Life Insurance Trusts (ILITs) and Dynasty or Generation-Skipping Transfer Tax (GST) Trusts.

In general, assets transferred to a grantor trust retain the same character and tax basis, for income tax purposes, as they had in the hands of the grantor just prior to the transfer.[25] A notable exception to this rule found in the case *Rothstein v. United States*.[26] However, in Rev. Rule 85-13,[27] the IRS indicated it will not follow *Rothstein*. What does this mean for taxpayers in the Second Circuit? Taxpayers may generally rely on Revenue Rulings published in the *Internal Revenue Bulletin* as long as the facts and circumstances at issue are substantially the same as those outlined in the ruling and the ruling has not been superseded, modified or revoked.[28] In addition, according to at least one commentator, the IRS decision not to follow the *Rothstein* case in Rev. Rul. 85-13 will be applied by the IRS even in the Second Circuit.[29]

The Treatment of ILITs: The ILIT is probably one of the most common IDGTs in use. The grantor typically creates an ILIT with the intention of transferring an existing life insurance policy or gifting cash to the ILIT to enable the trustee to pay the premiums on a new policy, or both. If properly drafted and maintained, the assets of the ILIT will be excluded from the grantor's estate. Many ILITs, at least at inception, have nothing in them but an insurance policy with little or no value. Typically, the grantor gifts to the trust cash sufficient to pay the premium due on the policy, usually about a month or so prior to the premium due date, and the trustee uses this cash to pay the premium.

As time goes by, however, the policies, other than straight term policies, often accumulate significant cash values, and may generate enough income to require the filing of a fiduciary income tax return. If the provisions of the ILIT do not include any of the grantor trust triggers, the ILIT must have a trust identification number assigned to it and pay taxes on the net income retained by the trust in any given year. Such an ILIT would not be an IDGT.

The ILIT as a Grantor Trust: If the terms of an ILIT permit any portion of its income to be applied toward the payment of premiums on life insurance policies on the life of the grantor, at the direction of the grantor or a non-adverse party, without the approval or consent of an adverse party, the grantor will be treated as the owner of that portion of the trust permitting its income to be so used.[30] The issue whether such a power held by the grantor in a fiduciary capacity would cause estate tax inclusion was answered in the negative in the case of the *Estate of Jordahl v. Commissioner*.[31] This is one way of making an ILIT a grantor trust.

Another provision commonly used to trigger grantor trust status in an ILIT is the retention by the grantor of a power to substitute property held by the grantor

for property of equivalent value held by the trust. This power must be held by the grantor in a non-fiduciary capacity.[32]

Until recently, the issue of whether or not the retention of such a power by the grantor, in a non-fiduciary capacity, would cause estate tax inclusion under I.R.C. §§ 2036 or 2038 was unsettled. In a recent ruling, however, the IRS addressed this issue as follows:

> 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 IRC § 2036 or § 2038, provided the trustee has 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, and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.[33]

If the ILIT is a grantor trust under I.R.C. § 677(a)(3), § 675(4)(C), or any other provision of the I.R.C., all of the income of the trust will be taxable to the grantor.

A Note on Demand (Crummey) Powers: In order to qualify for the annual exclusion from gift tax, which is currently $13,000 per year per donee, the gift made by the grantor to the donee must be a gift of a present interest.[34] In order to enable the grantor to take advantage of the annual exclusion from gift tax for cash gifts made to the trust to cover annual insurance premiums, the ILIT typically grants each beneficiary the power to demand the withdrawal of the beneficiary's pro-rata share of any contribution made to the trust. This power is usually limited to the annual exclusion amount available to the grantor in respect to each donee in a given calendar year. To avoid having the lapse of such a demand power held by a beneficiary from being treated as a release (and therefore a gift) the amount of the beneficiary's power which may lapse in any calendar year should be limited to the greater of $5,000 or 5% of the trust corpus.[35]

The demand power described above would ordinarily make the beneficiary the owner, subject to the grantor trust rules, as to that portion of the trust over which the beneficiary has the power exercisable solely by himself or herself to vest the corpus or income therefrom in himself or herself.[36] However, I.R.C. § 678(a) will not apply if the grantor is already treated as the grantor of that portion of the trust for income tax purposes I.R.C. § 678(b).[37]

Exchanging or Transferring an Insurance Policy Held by an ILIT: If the goal is simply to retire an insurance policy that has outlived its usefulness in exchange for a policy of similar value that is more in tune with the current needs of the trust, an I.R.C. § 1035 exchange may be an appropriate way to avoid the recognition of a capital gain upon the exchange of the policy.

If the trustee wishes to transfer a policy which has accumulated a significant cash value, the trustee must consider the transfer-for-value rule under I.R.C. § 101(a)(2), which could require the recognition of income by the grantor upon the sale of the policy. In order to avoid this potential tax hazard, such trustee should consider the sale of the policy to a grantor trust. Such a transfer between two grantor trusts created by the same grantor will not trigger the transfer for value rule.[38]

Dynasty Trusts v. GRATs: The Dynasty Trust is a vehicle commonly used for generation-skipping transfer (GST) tax planning. Transfers of assets by gift or sale to a Dynasty Trust designed as an IDGT are similar to transfers to a GRAT in that both techniques belong to a category of estate planning techniques known as an "estate freeze." The estate freeze technique allows wealthy taxpayers to plan beyond the limitations of the lifetime exemption from gift tax, which is currently limited to $1,000,000, and the exemption from GST tax, which is currently limited to $3,500,000. The objective of an estate freeze is to transfer assets that are expected to appreciate in value to the grantor's heirs at their current value and with minimal gift tax consequences to the grantor, thereby "freezing" the value of the taxable estate.

An estate freeze is especially effective when interest rates are as low, as they have been of late, because the success of a GRAT is tied to the ability of the GRAT's assets to outperform the I.R.C. § 7520 rate in effect at the time of transfer; the success of a sale to an IDGT depends on the ability of the IDGT's assets to outperform the applicable federal rate (AFR) in effect at the time of transfer. When interest rates are low, it is more likely that assets will outperform the § 7520 rate or the AFR, resulting in greater amounts of wealth being transferred to the beneficiaries of a grantor trust free of transfer taxes. For this reason, when interest rates are low family Dynasty Trusts, and the use of note-sale/gift transactions, become very popular among taxpayers of significant wealth.[39]

A Dynasty Trust, like a GRAT, may be designed as a grantor trust for income tax purposes. If a Dynasty Trust is designed as a grantor trust, a sale by the grantor to that trust will not be recognized for tax purpos-

es.[40] Unlike a GRAT, however, a transfer to a Dynasty Trust designed as an IDGT can be used as an effective GST tax planning tool. In addition, if the grantor dies during the term of a note issued to the grantor in exchange for a sale to a Dynasty Trust, only the value of balance on the note, together with any accrued interest, will be included in the grantor's estate. Finally, unlike a GRAT, which is intended to last for a term of years that it is hoped the grantor will survive beyond, the Dynasty Trust, like most other IDGTs, is generally intended to last for the balance of the grantor's life and well beyond.

V. Other Considerations

A. Tax Basis of Assets Transferred to a Grantor Trust

Assets transferred gratuitously by a grantor to a grantor trust have the same tax basis in the hands of the trustee immediately after the transfer as they did in the hands of the grantor immediately before the transfer.[41]

B. Relieving the Grantor of the Income Tax Burden of Grantor Trusts

What happens if the grantor's estate is reduced so significantly during the grantor's lifetime that the income tax attributable from the IDGT or other grantor trust to the grantor becomes a burden? A release of a grantor trust power by the grantor can cause adverse tax consequences in certain circumstances, such as when the trust holds assets subject to debt in excess of basis.[42] A grantor trust can be designed, however, to grant a disinterested party, such as a trust protector, the power to toggle off the grantor trust provisions—so the trust is no longer a grantor trust and the income of the trust is no longer attributable to the grantor—without triggering adverse tax consequences.

One safe, although usually expensive, way to toggle grantor trust provisions back on once they have been toggled off, or add them where they previously did not exist, is through a trust reformation.[43] In the alternative, a disinterested trustee could be given the discretion to reimburse the grantor from trust assets for the amount of income tax attributable to the grantor from the trust. The payment of the tax by the grantor would not constitute a gift by the grantor because the grantor is liable for the tax; and the trustee's discretionary power to reimburse the grantor would not cause inclusion of trust assets in the grantor's estate.[44]

C. Income Tax Consequences of Notes and Termination of Grantor Trust Status

Release of Grantor Trust Powers During the Grantor's Lifetime: As previously discussed, the initial transfer of assets to a grantor trust by the grantor is disregarded for tax purposes. If the trust ceases to be a grantor trust, however, the grantor is no longer considered to be the owner of the trust. At that time, the grantor will be considered to have made a transfer for tax purposes of the assets previously transferred to the trust.

If the grantor sold assets to a trust in exchange for a note, for example, which was not recognized as a gain at the time of transfer because of the trust's status as a grantor trust, then upon the release by the grantor of the power that made the trust a grantor trust, the grantor would be deemed to have completed the transfer and will be required to recognize the gain.[45] The amount of the gain would be the difference between the grantor's adjusted basis in the property held by the trust and the outstanding balance of any debt deemed to be assumed by the trust at the time the trust ceased to be a grantor trust.[46] Therefore, the potential recognition of gain on termination of grantor trust status is a compelling reason not to extinguish grantor trust status prior to extinguishing the debt acquired by the trust at the time of transfer.

Termination of Grantor Trust Status as a Result of Grantor's Death: Commentators generally agree that a grantor trust ceases to be a grantor trust upon the death of the grantor. The tax consequences of the death of the grantor while a note is received in exchange for a sale to an IDGT are still unclear.

While most authorities specifically address the termination of grantor trust status during the grantor's life, there is no clear authority on whether gain must be recognized on the outstanding balance of a note held by a grantor trust on the grantor's death. The amount of gain that must be recognized by a deceased grantor's estate will likely be determined by the estate's basis in the trust's assets.[47] Some commentators maintain that the basis of the grantor's estate in the trust assets as of the date of death will be the same as the grantor's basis in the assets as of the date of transfer to the trust.[48] Other commentators, however, take a more aggressive position and argue that it may be possible for the grantor's estate to acquire a stepped-up basis in the trust assets as of the date of death.[49]

Given the uncertainty of the potential capital gains that may be triggered by the grantor's death, this practitioner agrees with the commentators who argue that the best approach is to make every effort to ensure that the note is paid off prior to the date of death.[50]

VI. Conclusion

The grantor trust is an essential estate planning tool. It offers practical and beneficial solutions to a wide variety of planning objectives, running the gamut from simple probate avoidance to asset protection to

complex tax planning and more. However, the income, gift, estate and generation skipping transfer tax implications will vary significantly depending upon the provisions of the trust and the actions taken by the trustee. Therefore, the attorney draftsman, the grantor and the trustee must give serious consideration to tax implications before implementing an estate plan that utilizes a grantor trust.

Endnotes

1. 26 C.F.R. § 1.671-4 (Treas. Reg.).
2. *See, e.g.*, IRS, Dep't of the Treas., Instructions for Form 1040, Optional Reporting Method 1, 12 (2008).
3. *See* 26 U.S.C. § 671 (IRC); *see also* IRS Priv. Ltr. Rul. 199912026.
4. I.R.C. § 2036(a)(1).
5. *Id.*
6. *Id.* at § 2036(a)(2).
7. *Id.* at § 2037(a)(2).
8. *Id.* at § 2038.
9. *Id.* at § 2041.
10. *Id.* at § 2042.
11. *Id.* at § 2035(a).
12. *See, e.g.*, IRS Priv. Ltr. Rul. 8051170; *see also* Rev. Rul. 77-275, 1977-2 C.B. 346.
13. *See Rifkind v. United States*, 54 AFTR 2d 84-6453 (Cl. Ct. 1984); *see also* I.R.C. § 2036(a)(2).
14. I.R.C. § 1014.
15. *Id.* at § 677; *see also* IRS Priv. Ltr. Rul. 200001013.
16. I.R.C. § 674(a).
17. *Id.* at § 673(a).
18. *See, e.g.*, IRS Priv. Ltr. Rul. 20001013; *see also* IRS Priv. Ltr. Rul. 9519209; Rev. Rul. 85-13, 1985-1 C.B. 184.
19. Treas. Reg. § 20.2036-1(c)(2).
20. *Id.* at § 25.2702-5(c)(3).
21. *See id.* at § 1.170A-6(c)(2); *see also id.* at § 25.2522(c)-3(c)(2).
22. I.R.C. § 671.
23. *Id.* at § 675(4)(c).
24. Treas. Reg. § 25.2511-2(c).
25. *See, e.g.*, Rev. Rul. 85-13, 1985-1 C.B. 184; *see also* Rev. Rul. 72-406, 1972-2 C.B. 462.
26. 735 F.2d 704 (2d Cir. 1984).
27. Rev. Rul. 85-13, 1985-1 C.B. 184.
28. *See* Treas. Reg. § 601.601(d)(2)(e); *see also Ford Motor Co. v. US*, 102 AFTR 2d 2008-6419, Oct. 2, 2008, Code § 7422; *Rauenhorst v. Commissioner*, 119 T.C. 157 (T.C. 2002).
29. *See* Ronald D. Aucutt, *Installment Sales to Grantor Trusts*, in ALI-ABA Course of Study, Planning Techniques for Large Estates, April 20–24, 2009, 1793–1797 (2009).
30. I.R.C. § 677(a)(3).
31. *Estate of Jordahl v. Commissioner*, 65 T.C. 92 (T.C. 1975).
32. *Id.* at § 675(4)(C).
33. Rev. Rul. 2008-22, 2008-16 I.R.B. 796.
34. I.R.C. § 2503(b)(1).
35. *Id.* at § 2041(b)(2).
36. *Id.* at § 678(a).
37. *See* IRS Priv. Ltr. Rul. 200729005; *see also* IRS Priv. Ltr. Rul 200730011.
38. *See* IRS Priv. Ltr. Rul. 200514002; *see also* Rev. Rul. 2007-13, 2007-11 I.R.B. 684.
39. A discussion of note-sale/gift transactions involving Dynasty Trusts is beyond the scope of this article.
40. I.R.C. § 671; *see also* Rev. Rul. 85-13, 1985-1 C.B. 184.
41. I.R.C. § 1015(a).
42. *See* Treas. Reg. 1.1001-2(e), example 5; *see also Madorin v. Commissioner*, 84 T.C. 667 (T.C. 1985); *Estate of Levine v. Commissioner*, 634 F. 2d 12 (2d Cir. 1980), *aff'g*, 72 T.C. 780 (T.C. 1979).
43. *See, e.g.*, IRS Priv. Ltr. Rul. 200848017.
44. *See* Rev. Rul. 2004-64, 2004-2 C.B. 7.
45. The rules involving installment sales and deferred recognition of gain are beyond the scope of this article.
46. *See* Treas. Reg. § 1.1001-2(c), example 5; IRS Tech. Adv. Mem. 200011005 (Nov. 23, 1999); *Madorin v. Commissioner*, 84 T.C. 667 (T.C. 1985); *Estate of Levine v. Commissioner*, 634 F. 2d 12 (2d Cir. 1980), *aff'g*, 72 T.C. 780 (T.C. 1979) *and* Rev. Rul. 77-402, 1977-2 C.B. 222.
47. *See* Dunn & Handler, *Tax Consequences of Outstanding Trust Liabilities When Grantor Status Terminates*, 95 J. TAX'N 49 (July 2001)(*Tax Consequences*).
48. *Id.*
49. *See* Blattmachr, Gans & Jacobson, *Income Tax Effects of Termination of Grantor Trust Status by Reason of the Grantor's Death*, 97 J. TAX'N 149 (September 2002); *see also* Jeremiah W. Doyle IV, *Grantor Trusts* (Mar. 18, 2009) (materials prepared by Jeremiah W. Doyle IV for the Estate Planning Council of Eastern N.Y., Inc.'s conference entitled *Grantor Trusts: What They Are, How They Work and Practical Applications for Practitioners*).
50. *See* Akers, *Transfer Planning Including Use of GRATS, Installment Sales to Grantor Trusts and Defined Value Clauses to Limit Gift Exposure*, STATE BAR OF TEXAS, 32ND ANNUAL ADVANCED ESTATE PLANNING AND PROBATE COURSE (June 2008); *see also Tax Consequences, supra* note 47.

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