

Grantor Trust Presentation

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- **TRUSTS ARE SEPARATE AND INDEPENDENT TAXPAYERS**
- **THEY ARE TAXED AS INDIVIDUALS ARE TAXED EXCEPT WHEN A SPECIAL RULE APPLIES**
- **TO DIVIDE INCOME IS TO CONQUER INCOME TAX ON ACCOUNT OF “BRACKET RIDE”**
- **USE OF TRUSTS PROLIFERATES**
- **HELVERING V. CLIFFORD, 309 US 331 (1940)**
- **ADOPTION OF GRANTOR TRUST RULES BY REGULATIONS UNDER THE GROSS INCOME SECTION OF THE 1939 CODE**
- **PRIOR TO THE CONTRACTION OF INCOME TAX RATES AND THE SEPARATE NEARLY “FLAT TOP RATE” STRUCTURE FOR TRUSTS, TRUSTS SERVED THE PURPOSE OF DIVIDING AND THEREBY LOWERING INCOME TAX**

- **THE INCOME, DEDUCTIONS AND CREDITS AGAINST TAX OF THE TRUST ARE ATTRIBUTED TO THE TRUST'S GRANTOR (OR OTHER "TRUST OWNER") AS THOUGH THE TRUST DID NOT EXIST**
- **A TRUST MAY BE A GRANTOR TRUST WITH RESPECT TO MORE THAN ONE TAXPAYER**
- **A TRUST MAY BE A GRANTOR TRUST ONLY WITH RESPECT TO A FRACTIONAL PORTION OF THE TRUST**
- **A TRUST MAY BE A GRANTOR TRUST ONLY WITH RESPECT TO HORIZONTAL PARTIAL INTEREST (SUCH AS THE INCOME INTEREST OR THE REMAINDER INTEREST)**



- **PERMIT TRUST INCOME TO GROW TAX FREE BECAUSE THE GRANTOR (OR OTHER TRUST OWNER) MUST PAY THE INCOME TAX. REV. RUL. 2004-64**
- **PERMIT ASSETS TO BE SOLD FROM THE GRANTOR TO THE TRUST AND THE REVERSE WITHOUT INCOME TAX EFFECT. CF PLR 200949012 (AS TO SEC. 678)**
- **PERMIT LOW BASIS ASSETS IN THE TRUST TO BE PURCHASED WITH CASH WITHOUT GAIN RECOGNITION BY THE GRANTOR PRIOR TO DEATH**
- **INCOME MAY BE TAXED HIGHER BECAUSE ATTRIBUTED TO THE GRANTOR (E.G., STATE INCOME TAXES)**
- **ACHIEVE S CORP STATUS**
- **HAVE ENTITY THAT IS DISREGARDED FOR INCOME TAX BUT NOT OTHER PURPOSES**

MORE ON WHAT IT MEANS TO BE A GRANTOR TRUST



- **REV RUL 85-13**
- **Reg. 1.1001-2 (c) Example 5: “ C, an individual, creates T, an irrevocable trust. T is a ‘grantor trust’ ... C is treated as the owner of the entire trust. *** C renounces the powers previously and expressly retained that initially resulted in T being classified as a grantor trust. Consequently, T ceases to be a grantor trust and C is no longer considered to be the owner of the trust. *** Since prior to the renunciation C was the owner of the entire trust, C was considered the owner of all the trust property for Federal income tax purposes, including the partnership interest.”**

EFFECT OF TURNING GRANTOR TRUST STATUS OFF AND ON



- **CRANE GAIN: MADORIN; REV. RUL. 77-402; EXAMPLE 5 TO REG. § 1.1001-3. APPLICATION TO OTHER ASSETS (E.G., RIGHT TO IRD) CCA 2009-23-024 (“THE CONVERSION OF A NONGRANTOR TRUST TO A GRANTOR TRUST IS NOT A TRANSFER FOR INCOME TAX PURPOSES...THAT REQUIRES RECOGNITION OF GAIN TO THE OWNER”)**
- **TRANSFER FOR VALUE IF TO A NON-GRANTOR TRUST**
- **LOSS OF S CORPORATION STATUS IF TO A NON-GRANTOR TRUST (ESBT ELECTION)**

SUMMARY AND CONCLUSIONS



- **REV RUL 85-13 IS A MOST IMPORTANT RULING**
- **THERE SHOULD BE NO GAIN AT DEATH ON GRANTOR DEBT AND, PERHAPS, NONE DURING LIFE ON GRANTOR TRUST EVEN IF GRANTOR TRUST STATUS ENDS BEFORE DEATH**
- **HAVE SPOUSE (OR MARITAL DEDUCTION TRUST) LOAN TO PURCHASING TRUST SO THERE WILL BE NO INDEBTEDNESS AS TO THE GRANTOR**
- **THE BIG ISSUE IS BASIS: THE BEST ANSWER IS SECTION 1014 AUTOMATIC CHANGE. IRA HAS “PROMISED” GUIDANCE**
- **THE OBAMA ADMINISTRATION WOULD CHANGE THE RULE: WHATEVER IS SOLD TO A GRANTOR TRUST COMES BACK INTO THE SELLER’S GROSS ESTATE**