

Verne, B. Michael

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From: [REDACTED]  
Sent: Thursday, February 08, 2007 12:48 PM  
To: Verne, B. Michael  
Subject: GRATs

Mike,

I am trying to determine whether a distribution of voting shares from a GRAT to the settlor constitutes an acquisition of shares, which of course turns on whether the settlor is deemed to hold the assets in the trust. I have reviewed a number of informal PNO opinions on the FTC web site, from which I draw the following conclusions:

1. If the trust is revocable, then the settlor is deemed to hold the assets of the trust.
2. If the settlor has the power to remove and replace trustees, he is deemed to hold the assets of the trust.
3. If the settlor has a reversionary interest in the assets constituting the corpus of the trust, he would be considered to hold the assets of the trust. Receiving a stream of income does not constitute a reversionary interest.

With respect to the GRAT at issue, on point 1, the GRAT is not revocable. On point 2, the settlor does not have the power to remove trustees, but can fill vacancies and appoint additional trustees. I think these facts point to the settlor not holding the assets in the trust.

Point 3 is a bit more unclear. The settlor does receive annual payout, and in theory if the value of the trust assets does not increase sufficiently over time, those payouts could drain the assets. Still, based on my reading of the informal opinions, I do not think that constitutes a reversionary interest. The trust has a term of 5 years, after which the assets of the trust shall be administered and distributed to persons other than the settlor, so no reversionary interest after the term. However, if settlor dies within the 5 year term and has not exercised his power to appoint the assets (I believe through his will) then the assets of the trust will be paid to his estate. On these facts, can I still conclude that the settlor does not have a reversionary interest, and thus on the basis of the other facts above does not hold the assets of the trust?

Many thanks,

[REDACTED]

I AGREE WITH ALL  
THREE CONCLUSIONS -  
BM  
2/8/07