

801.1
802.71

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 05, 2014 3:40 PM
To: Verne, B. Michael; Walsh, Kathryn
Cc: [REDACTED]
Subject: Question regarding GRAT Distributions

Hi, Mike and Kate -

We have a few quick questions about distributions from a grantor retained annuity trust (GRAT).

(1) Would an annuity payment (consisting of voting stock of a third party issuer) made by the GRAT to the settlor of the GRAT constitute a reportable acquisition under HSR if the jurisdictional thresholds were met? Assume the GRAT and the settlor are separate persons for HSR purposes. (The GRAT is irrevocable; the settlor does not have the right to remove and replace the trustee, nor does the settlor have a reversionary interest in the corpus of the GRAT, only the right to annuity payments.) See, e.g., Informal Interpretations 1201007 (January 17, 2012) and 0702013 (February 8, 2007).

(2) Would the annuity distribution be considered exempt under 802.71 as a gift, since the trustee, not the settlor, is causing the transaction to occur and it is without consideration? See Statement of Basis and Purpose, 43 Fed. Reg. 33450, 33505 (1978).

As always, many thanks for your advice.

Best,

[REDACTED]

[REDACTED]

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1. We have been fine with annuity payments of cash from a GRAT to the settlor. That is not really a distribution of the corpus of the trust, but a distribution of the revenue stream generated by the holdings of the GRAT (e.g., dividends). The question has come up in the context of whether this constitutes a reversionary interest. We would not be inclined to treat a distribution of voting securities to the settlor the same way, because that is a distribution of the corpus of the trust to the settlor, and we think potentially reportable. The only other twist on GRATs that we have encountered is that we have allowed a like kind exchange of assets between the settlor and the GRAT. That is, the settlor takes assets from the GRAT and replaces them with assets of the same value.
2. We would not classify this as a gift under 802.71

BMW
3/6/14

KW CONCURS