

Gillis, Diana L.

From: Gillis, Diana L.
Sent: Friday, May 29, 2015 3:25 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.
Subject: RE: Question Regarding Distributions from Irrevocable Trusts

- [REDACTED]
- (1) Distributions to settlor's spouse, rather than settlor, are not reversionary interests.
 - (2) This also does not count as a reversionary interest. Here is a relevant passage from the Premerger Notification Practice Manual, 5th ed.

Receiving a stream of income from the GRAT does not constitute a reversionary interest for these purposes, even if the value of the assets or stock held by the GRAT does not increase sufficiently so that the annual payouts to the settlor actually exhaust the GRAT's assets. So long as the settlor is not a beneficiary of the GRAT (and would not therefore receive the GRAT's assets or stock at the end of the GRAT's term), the settlor would not be deemed to have a reversionary interest in the GRAT's corpus, even if the settlor died during the term of the GRAT and the assets of the GRAT were then paid to his or her estate.

-Diana

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HSR filing questions? Check the [PNO Blog](#) and [HSR Tips](#).

From: [REDACTED]
Sent: Friday, May 29, 2015 2:01 PM
To: Walsh, Kathryn E.
Subject: RE: Question Regarding Distributions from Irrevocable Trusts

Hi Kate:

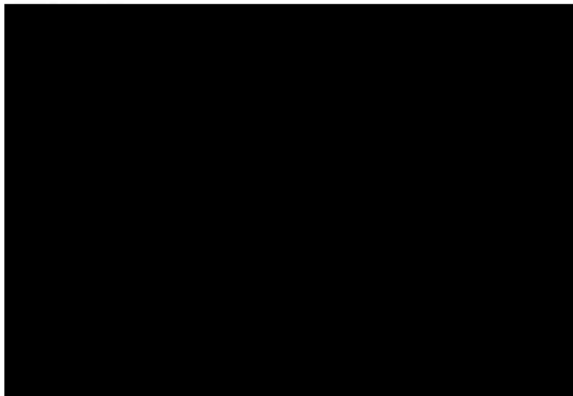
I have a couple of questions about the following distributions from irrevocable trusts and whether they would be considered to be a reversionary interest in the corpus.

- (1) Would payments of income and principal made by an irrevocable trust to the settlor's wife for the settlor's wife's health, maintenance and support constitute a reversionary interest under 801.1(c)(4) (such that the settlor holds the assets in the irrevocable trust)? The irrevocable trust is otherwise separate from the settlor for HSR purposes as the settlor does not have a right to remove and replace the trustee and has no express reversionary rights. In prior Informal Interpretations (See, e.g., Informal Interpretations 1403001, 1201007), it appears that a distribution of corpus (versus just income) by an irrevocable trust to the settlor would trigger a reversionary interest. Would it hold true, if such distribution was to settlor's wife, but limited to health, education, maintenance and support?

(2) Would an annuity to a settlor made by a settlor retained annuity trust (GRAT) equal to 28.59511% of the net fair market value of the trust property (as of the date of the trust agreement) for a term of 4 years constitute a reversionary interest under 801.1(c)(4) (such that the settlor holds the assets in the GRAT). The GRAT is irrevocable and Settlor does not have the right to remove and replace the trustee and has no express reversionary rights. The annuity amount will be paid by the trustee first from income and, to the extent that income is not sufficient, from principal. Upon expiration of the trust term of 4 years, and the payment of the final annuity amount to the grantor, the trustee will pay the principal of the trust as follows: If the grantor is then living, to the grantor's spouse, if living and if the grantor's spouse is not living, then to the grantor's children. This seems to draw from Informal Interpretation 1403001 and it would appear that the distribution of the corpus in this case to the settlor would trigger a reversionary interest.

Thank you very much for your advice on these questions.


Regards,



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Fri May 29 2015 11:00:51

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