



**OVERVIEW OF COMMON
SNTs
AND TAX CLASSIFICATION**

ROBERT A. MASON, CELA, CAP, ACTEC Fellow

2026 NATIONAL CONFERENCE ON SPECIAL NEEDS PLANNING
AND SPECIAL NEEDS TRUSTS

STETSON UNIVERSITY COLLEGE OF LAW • OCTOBER 21, 2026

www.masonlawpc.com

1

1

Two Different Questions

BENEFITS LAW	INCOME TAX
Whose assets? Who may benefit? What Medicaid / SSI rule applies?	Who is the tax owner? Form 1040 or Form 1041? Whole trust—or only a portion?

*WORKING RULE: Classify the trust twice. Keep the analyses in separate
mental boxes.*

2

2

Words That Confuse

“special needs” “asset protection” “irrevocable”

**NONE OF THESE IS AN INCOME-TAX
CLASSIFICATION**

The signer, the funder, the beneficiary, and the tax owner
can be four different people.

*For federal income-tax ownership:
Go to IRC §§ 671–678 Grantor Trust Rules*

3

3

Seven Trust Families

D4A / PAYBACK

1ST-PARTY AP TRUST

SPOUSAL B1 / B2

REVOCABLE

THIRD-PARTY B3 / B4

TESTAMENTARY

PLAIN OLD 3RD PARTY

*Same "special needs" neighborhood.
Very different benefits-law and tax addresses.*

4

4

The Sixty-Second Tax Refresher

GRANTOR

NONGRANTOR

Tax alter ego
Income / deductions /
credits → owner's 1040

Separate taxpayer
Form 1041 • DNI • K-1
Compressed brackets

BUT REMEMBER § 671: "ANY PORTION"

Income? Principal?
A fractional share?
A particular asset?



5

5

Grantor Trust Does NOT Automatically Mean . . .

REVOCABLE

AVAILABLE
FOR
MEDICAID

ESTATE
INCLUSION

Different bodies of law. Similar vocabulary. Easy
place to get in trouble.

Tax ownership answers "who reports the income?"
It does not, by itself, answer "who can reach the
asset?" or "is it in the gross estate?"

6

6

Grantor Trust Cheat Sheet

I attached a one page “Grantor Trust Cheat Sheet” to the back of your session outline.

7

7

D4A / Self-Settled Payback SNTs

- Benefits label: beneficiary's own assets + sole benefit + Medicaid payback.
- Tax rule: follow the money, not the signature page.
- Conventional beneficiary-funded D4A → grantor trust for the disabled beneficiary.
- Irrevocable does NOT make it nongrantor.



The person who “established” the trust may be someone else. The money is Sam’s

8

8

Spousal Sole Benefit Trusts — B1 / B2

I LOVE THESE THINGS!

- Transfer exception can move assets “off the benefits board” without a transfer penalty.
- Sole-benefit design usually requires actuarially sound payout or D4A-like payback.
- IRC §§ 673 and 677 commonly point toward grantor status.
- Tax ownership ≠ Medicaid availability.

Highly appreciated assets? Transfer in kind.
Avoid the needless liquidation & cap gains!

9

9

3rd Party Sole Benefit Trusts — B3 / B4

BENEFITS LAW

Disabled child (B3)
or disabled person < 65 (B4)

“Solely for the benefit of”
Actuarial soundness
matters

*Upside: Qualified Disability Trust exemption — let the next
session take you deeper.*

TAX STARTING POINT

BEGIN WITH
NONGRANTOR

Then identify an actual
§§ 673–677 switch before
changing the answer.

10

10

Plain Old Third-Party SNTs

NOT EVERY THIRD-PARTY SNT IS A B3 / B4 SOLE
BENEFIT TRUST

GRANTOR

NONGRANTOR

Design choice during donor's life

Grantor: simpler reporting; donor pays the tax
Nongrantor: separate taxpayer; possible QDT planning

BENEFITS TRAP: Do NOT give the beneficiary an enforceable
HEMS / support standard.

11

11

Irrevocable First-Party Asset Protection Trusts

NOT A D4A TRUST

GRANTOR

NONGRANTOR

PARTIAL GRANTOR

Pick your poison!

§ 677 income right might reach only the income portion.
If the objective is principal / capital-gain ownership, confirm
a separate power actually reaches principal.

*Example power for principal: power of substitution under
§ 675(4)(C)*

12

12

Why Might You Want One or the Other?

WHY GRANTOR?

- Administrative simplicity
- Preserve owner-level tax attributes (think § 121)
- Settlor bears the income-tax cost

WHY NONGRANTOR?

- Client does not bear trust tax
- Avoid a grantor power that may complicate benefits-law drafting

"Nongrantor" is not a synonym for "bad."

13

13

Revocable Trusts: The Easy One

§ 676

Power to revest title → grantor trust

A standard probate-avoidance revocable trust does NOT protect the settlor's assets from Medicaid spend-down.

Death changes the taxpayer. Duh!

A continuing single settlortrust normally becomes a nongrantor trust.

14

14

Testamentary SNTs

TAX LABEL: NONGRANTOR

The settlor under the will is dead.
No living settlor remains to be owner under §§ 673–677.

BENEFITS ADVANTAGE: SPOUSE-BY-WILL

§ 1396p(d)(2)(A) excludes a trust created "by will" from the self-settled trust definition.

Do NOT let a community spouse leave everything outright to an institutionalized spouse.

At least have a testamentary trust in case the community spouse gets hit by a school bus or lightning.

15

15

Ten Things to Remember Before Lunch — 1 to 5

1. Classify twice: benefits law first, income tax second.
2. Follow the money — signer ≠ tax grantor.
3. Beneficiary-funded D4A = grantor trust for beneficiary.
4. Spousal B1/B2 commonly triggers §§ 673 and 677.
5. B3/B4 third-party SBT: begin with nongrantor.

19

19

Ten Things to Remember Before Lunch — 6 to 10

6. “Irrevocable” does not determine grantor status.
7. Revocable trust: § 676 makes the answer easy.
8. Testamentary trust: nongrantor — and spouse-by-will can be powerful.
9. Grantor status does NOT automatically mean Medicaid availability.
10. Grantor status does NOT automatically guarantee estate inclusion.

20

20

The Whole Session in Three Lines

CLASSIFY TWICE

FOLLOW THE MONEY

CHECK THE POWER — §§ 673–678

21

21

QUESTIONS?

Q #1: WHAT'S FOR LUNCH?
