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October 21, 2026



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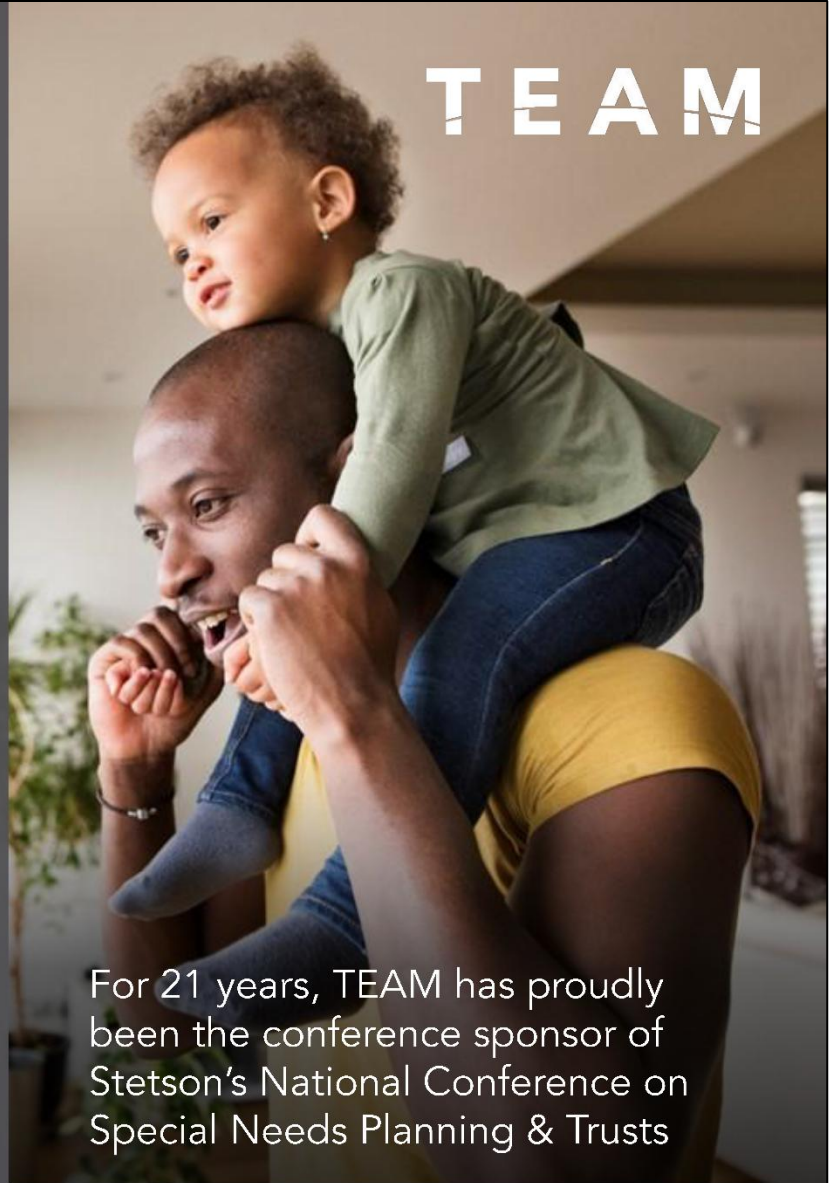
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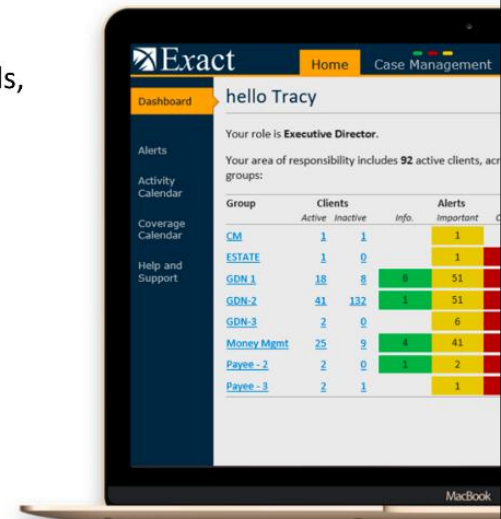
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I. Tax Reference Resources and Authorities

A. Internal Revenue Code: Navigating the Labyrinth

1. Breaking Down the Beast: Subtitles and SNT Priorities

The primary source of federal tax law is the Internal Revenue Code (the “Code”). It can be found at Title 26 of the United States Code. The Code has a reputation of being overly complex and incomprehensible; however, upon closer look, one will find that the Code is structured in an orderly, logical manner. The Code is divided into nine subtitles and each subtitle is divided into smaller units. For example, subtitle A of the Code contains all the income tax provisions, subtitle B contains all the gift and estate tax provisions (which are critical for third-party SNT funding and planning), and subtitle F contains all the procedure and administration rules.

2. Subchapter J: The Heart of Darkness for SNT Practitioners

Each subtitle of the Code is divided into chapters and each chapter is divided into subchapters. For example, subtitle A, chapter 1, subchapter A (§§ 1–59A) contains all the provisions necessary to compute a taxpayer’s actual tax liability (e.g., the applicable tax rates and various tax credits). For SNT practitioners, the most critical subchapter is Subchapter J (§§ 641–692), which contains the rules governing the income taxation of estates, trusts, and beneficiaries, including the grantor trust rules so frequently utilized in first-party SNTs.

3. Deciphering the Hieroglyphics: The Basic Code Unit

Each subchapter is divided into even smaller units, parts. Further, parts may be divided into subparts; and subparts divided into sections. The “section” is the basic unit in the Code. Sections are numbered sequentially, with breaks in sequence to provide room for new Code provisions to be added.

Sections are divided into subsections. Subsections are divided into paragraphs. Paragraphs are divided into subparagraphs. Subparagraphs are divided into clauses and even subclauses. Instead of employing all of those terms typically one simply says “section” followed by the full citation. For example, rather than saying “subparagraph C of paragraph 2 of subsection b of section 642,” one would simply say “section 642(b)(2)(C)”, which you will

recognize as the provision granting a larger personal exemption for a Qualified Disability Trust (QDT).

4. Some Important Code Vocabulary

Every word and every phrase of the Code have a purpose. Congress does not use transitional phrases or flowery prose in writing the Code. There are specific words and phrases you will need to know to speak the language of tax.

a. The Magic Provision: “For Purposes of . . . “

One of the major differences between Code language and English is that Congress has absolute power over Code language but often has only a minimal command of the English language. Congress can change the meaning of a word or phrase through the provisions of the Internal Revenue Code. Such magic is performed by uttering the phrase “for purposes of . . . ,” which has the effect of a Congressional “abracadabra.” Whenever you see the phrase “for the purposes of,” you know to expect a definition that will be unique and essential to your application of the statutory provision you are reading.

b. The Code Red Flag: “Except as Provided”

When you are solving a problem in federal taxation, as in any area of the law, it is always important to make sure that the rule you are using applies to your particular circumstance. To that end, you must be certain that no other sections of the Code address your problem in a more specific manner. Fortunately, the Internal Revenue Code often alerts you to the fact that there is another Code provision that might override the statutory language you are reading. This warning language is always expressed as “except as provided” Therefore, we call the phrase “except as provided” the Code “Red Flag.”

c. Strong Words: “Notwithstanding Any Other Provision”

Some Code sections stand alone. That is, Congress has decided that some areas of tax law are so important that the sections which govern those areas must have their own set of rules, which apply “notwithstanding any other provision.” When you encounter these strong words, you know that Congress is telling you to ignore anything else you might have read in connection with the tax consequences of an item of income or deduction, because what you are about to read will apply despite anything else that may appear to be on point.

d. Mandatory v. Elective Language

While most of the provisions of the Code apply whether you want them to or not, there are some enactments that allow for elective tax treatment. Fortunately, it is very easy to distinguish mandatory declarations from elective ones, because of the Code language used to differentiate them. Mandatory provisions make use of the term “shall” to indicate that the taxpayer is required to do something. On the other hand, where tax treatment is optional, the Code will provide for a result “at the election of the taxpayer.”

e. “Treated as” or “Considered”

Sometimes the Code requires you to pretend that a tax item is something other than what it really is. The best way to explain that rather cryptic statement is through an example every SNT practitioner should know. Section 663(b) (an elective, not mandatory, provision) provides that if a trust distributes income to or for the benefit of a beneficiary within the first 65 days of a tax year, the distribution “shall be considered” as paid or credited on the last day of the *preceding* tax year. Thus, even if a trustee writes a distribution check for a disabled beneficiary’s care on February 15th, the Tax Code allows you to elect to pretend the distribution occurred on December 31st of the prior year.

Other Subchapter J provisions that rely heavily on the statutory terms “treated as” or “considered” to create legal fictions include:

- § 671: The grantor trust rules, where the grantor is “treated as the owner” of the trust assets, requiring the IRS to pretend the trust entity does not exist for income tax purposes.
- § 645: Where an eligible revocable trust is “treated and taxed as part of an estate” for a temporary period following the settlor’s death (optional with a timely election).
- § 643(e)(3): Where an in-kind distribution of property to a trust beneficiary is “treated as a sale” at fair market value if the trustee makes a statutory election.
- § 642(c)(1): Where a trust’s charitable contribution paid in Year 2 is “considered as paid” in Year 1 at the trustee's election.

f. “Including (But Not Limited To)”

The phrase “including (but not limited to)” always indicates that the items which follow are to be taken only as examples, not as an exclusive list. Thus, when § 61 states that gross income means income from whatever source derived, including (but not limited to) the items listed by that section, you know that items such as interest and rents are examples of gross income, but that there could be (and in fact there are) many other types of income which fall under the purview of gross income, even though they are not specifically listed.

g. “Allowed” v. “Allowable”

When a taxpayer properly takes a deduction, we say that the taxpayer has been allowed that deduction. On the other hand, when a taxpayer does not take a deduction she could have properly taken, we say that the deduction was allowable. In the context of § 1016(a), you can see that a taxpayer’s basis must be adjusted for the depreciation deductions allowable. This could mean that a taxpayer’s basis is adjusted downward by a depreciation deduction she never actually used.

B. Treasury Regulations: Giving the Monster Fangs

1. Administrative Dark Arts: Regulatory Power and Prefixes

The treasury regulations are the most important administrative interpretation of the Code, and should be part of any tax research. Congress granted general authority to the Treasury Department to promulgate regulations to interpret and give meaning to the Code. *See* IRC. § 7805(a). Congress also delegated specific rule-making authority to the Treasury Department in certain Code sections. As a result of the congressional grant of power, treasury regulations generally have the force and effect of law.

2. The Regulatory Pipeline: From Proposed to Final

Treasury regulations, which the Treasury Department promulgates under the Administrative Procedures Act (APA), are first issued as proposed regulations and published for public comment in the Federal Register. Once the comment period expires and revisions are made, regulations are published in final form as Treasury Decisions in the Code of Federal Regulations. On occasion, proposed regulations are also issued as temporary regulations. Unlike temporary and final regulations, which are authoritative, proposed regulations in the Federal Register do not have the force and effect of law. Although not authoritative, however, proposed regulations are relevant in tax research since the Treasury has authority to apply final regulations retroactively to the date they first appeared as proposed in the Federal Register. Regulations are numbered the same way as the Code sections to which they relate, but preceded by a numerical prefix which indicates the type of tax (income, estate, gift) involved. For example, a numerical prefix of “1” indicates an income tax provision (e.g., Treas. Reg. § 1.671-4 governing reporting methods for grantor trusts), while a prefix of “20” indicates estate tax and “25” indicates gift tax.

3. Slaying *Chevron*: Challenging the IRS in a Post-*Loper Bright* World

One of the most debated questions in modern tax litigation involves the balance of power between the executive branch and the judiciary. Specifically, what level of deference should courts grant treasury regulations when faced with an ambiguous Code provision? For decades, courts applied the approach in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and would defer to a treasury regulation if it reasonably resolved a statutory ambiguity. *See Mayo Foundation v. United States*, 131 S. Ct. 704 (2011) (holding *Chevron* governed judicial review of tax regulations and that there was no justification for a tax-specific deference regime).

In the recent landmark decision *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Supreme Court overturned the *Chevron* doctrine, holding that the APA gives courts ultimate authority to exercise their independent judgment in deciding whether an agency has acted within its statutory authority. While reinforcing the APA’s requirements, the Supreme Court also reverted to the standard set in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), which gives weight to an agency’s interpretation according to its persuasiveness. Although *Loper Bright* was not a tax case, it will have a significant impact on the IRS’s administration of tax law. Indeed, the IRS will now have a more difficult burden in defending the validity of its Treasury Regulations by having to convince a court that its interpretation of an ambiguous Code section is persuasive based on numerous *Skidmore* factors (the thoroughness evident in its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements). Gone are the days in which the IRS merely had to convince a court that its interpretation was a reasonable

one. The demise of *Chevron* raises numerous questions. Will we see a rise in litigation challenges (i.e., taxpayers invoking *Loper Bright* in challenging pro-IRS regulations and the IRS invoking *Loper Bright* in challenging pro-taxpayer regulations)? Will the IRS begin to incorporate its positions in Revenue Rulings rather than treasury regulations?

C. IRS Rulings and Procedures: Whispers from the Tower

1. Official Pronouncements: Revenue Rulings and Revenue Procedures

The Internal Revenue Service issues interpretative pronouncements, called Revenue Rulings, which indicate the Service's official position regarding the application of tax law to a certain set of facts. Revenue Rulings are official interpretations published by the Service for information and guidance to taxpayers. They arise from various sources. For example, a Revenue Ruling may represent the Service's position on issues arising in the audit of a taxpayer's return; a Revenue Ruling may also represent the Service's position on issues decided by various courts. Unlike treasury regulations, Revenue Rulings are not published in proposed form for taxpayer comment and are not approved by the Treasury Department. Accordingly, Revenue Rulings are not as authoritative as regulations. Nevertheless, a Revenue Ruling can be relied upon by any taxpayer whose circumstances are substantially the same as those described in the ruling. It is important to remember that a Revenue Ruling's conclusion is limited in scope to the material facts stated in the ruling. Revenue Rulings are published weekly in the Internal Revenue Bulletin and consolidated semi-annually in the Cumulative Bulletin (cited as C.B.), both of which are official publications of the Service.

For further guidance to taxpayers, the Service also issues Revenue Procedures, which typically are statements of its internal practices and procedures. Like Revenue Rulings, Revenue Procedures are first published in the Internal Revenue Bulletin and later consolidated in the Cumulative Bulletin. These can be very useful to taxpayers when structuring a transaction.

2. Private Letter Rulings: Reading the SNT Tea Leaves

Sometimes, for a fee, taxpayers can obtain Private Letter Rulings (PLRs) from the Service. Private letter rulings are issued by the IRS National Office. They interpret and apply tax laws to specific facts or proposed transactions set forth by taxpayers. Private letter rulings have no precedential value and cannot be relied upon by other taxpayers; however, they are highly instructive in the SNT space. *See, e.g.*, Priv. Ltr. Rul. 9437034 (Sept. 16, 1994) (addressing gift tax consequences of a transfer of the beneficiary's assets to a first-party SNT); Priv. Ltr. Rul. 200620025 (May 19, 2006) (holding that a first-party SNT was a grantor trust with respect to the beneficiary since the income of the trust was to be used, or accumulated, for the benefit of the grantor-beneficiary in the discretion of a trustee who was not an adverse party).

3. Other IRS Sources

Technical Advice Memoranda (TAMs) have several characteristics of PLRs; they are issued by the IRS National Office in response to IRS requests arising out of tax return audits and numbered in the same manner as PLRs.

A General Counsel Memorandum (GCM) is an internal National Office legal memo that may be requested by National Office technicians considering a PLR or TAM request or as legal background to analysis of a proposed published ruling. They indicate the reasoning and authority used in Revenue Rulings, PLRs, and TAMs.

D. Case Law: Picking Your Legal Battlefield

1. Trial Courts: Pay First or Fight First?

Three trial courts have original jurisdiction over tax cases: (1) the U.S. District Court; (2) the U.S. Claims Court; and (3) the U.S. Tax Court. The first two courts are known as “refund tribunals.” To litigate in these forums, a taxpayer must first pay the asserted tax deficiency and then file an administrative claim for refund. If the taxpayer’s administrative claim is denied, the taxpayer may then file an action in either a federal district court or the Claims Court for a refund.

2. The Tax Court Special: No Prepayment Required

The United States Tax Court is the only forum in which a taxpayer may litigate a disputed tax claim without first having to pay the asserted deficiency. If the Service asserts a deficiency, a taxpayer may refuse to pay and then petition the Tax Court for a redetermination of the deficiency. IRC § 6213. The Tax Court is based in Washington D.C.; however, the court hears cases in several locations throughout the United States. The Tax Court comprises nineteen judges appointed by the President and approximately twenty special trial judges and retired judges who assist with smaller tax cases. The Chief Judge has the responsibility of assigning each case to one member of the court. The judge deciding the case submits a proposed opinion to the Chief Judge, who then decides whether the decision should become the ruling of the court or whether the case should be reviewed by the entire court (this typically occurs if a case presents issues of first importance). If a proposed opinion is not reviewed by the entire court, the Chief Judge designates the opinion as a regular decision or a memorandum opinion. Regular decisions involve significant or novel legal issues and are regarded by the Tax Court as binding precedent on subsequent decisions. They are published officially in the United States Tax Court Reports (T.C.) and published unofficially by commercial sources, such as CCH Tax Court Reporter. Memorandum opinions are generally factual or apply established law to the facts of that case. They are unofficially published by commercial services.

3. Acquiescence Agony: When the IRS Refuses to Accept Defeat

In Tax Court cases that the Service loses, the Service will usually either acquiesce or nonacquiesce in the decision. A notice of acquiescence indicates that the Service accepts the decision of the court, whereas a notice of nonacquiescence indicates that the Service may continue to challenge other taxpayers with respect to the issue(s) presented in the case.

4. Strategic Choices: Navigating Forum Selection and Appeals

In sum, if the Service issues a notice of deficiency, the taxpayer can litigate the matter (1) by paying the tax, filing an administrative claim for a refund, and then filing a suit for a refund in

either the district court or the Claims Court; or (2) by filing a petition with the Tax Court for a redetermination of the proposed deficiency. There are several factors a taxpayer should consider in deciding which forum to choose. Factors to consider include: (1) whether the taxpayer has funds to pay the asserted deficiency, which is necessary to litigate in one of the refund tribunals; (2) whether the taxpayer wants a jury trial, which is available only in the district court; (3) the level of discovery required in each trial court; (4) the expertise of the Tax Court judges; and (5) the prior decisions of each of the three possible trial courts and the appellate courts to which an appeal can be taken. *See Golsen v. Commissioner*, 54 T.C. 742 (1970) (holding the Tax Court will follow a court of appeals decision on point from the circuit where an appeal from the Tax Court would lie (the circuit in which the taxpayer resides)).

Appeals from each of the trial courts vary. Federal district court decisions may be appealed to the federal court of appeals for the circuit where the district court is located. Decisions of the Claims Court may be appealed to the Court of Appeals for the Federal Circuit in Washington, D.C. Tax Court decisions may be appealed to the appropriate federal circuit in which the taxpayer resides.

E. Legislative History: How the Statutory Sausage Gets Made

1. Decoding Congressional Intent

Legislative history may prove helpful in understanding congressional intent behind a Code provision. For SNT practitioners, as example, legislative history was particularly useful when parsing modern changes, such as the SECURE Act's exceptions for "eligible designated beneficiaries" (which includes chronically ill and disabled individuals) and how retirement plans interact with SNTs.

2. From Bill to Law: The Legislative Gauntlet

The process of enacting tax legislation is similar to that used for other federal laws. In general, a bill is introduced and then referred to the appropriate committee. There are two committees that consider revenue bills -- the House Ways and Means Committee and the Senate Finance Committee -- although all revenue bills must originate in the House of Representatives. U.S. Cons. Art. I, § 7. These committees may completely ignore a tax bill and never consider it or consider it by substantially rewriting it. They also may hold hearings as well as issue a committee report if a bill is reported out of committee.

Committee reports often form important elements of the legislative history of a tax provision. The reports contain useful information, including statements regarding the bill's purpose, the reasons why the bill should be enacted, and the changes the bill would make to existing law. If the House and Senate versions of a bill differ, a conference committee made up of House and Senate members meets to resolve these differences. This committee generates a third committee report which explains the resolution of the inter-house differences. When an agreement is reached, the bill goes back to each house for passage in the newly agreed upon form.

II. Tax Research Caveats: Four Ways to Get Bitten

A. Don't Judge a Section by Its Cover

Code headings are not authoritative and can often be misleading. For example, Section 677 is titled “Income for benefit of grantor.” One might jump to the conclusion that section 677 applies only when trust income is distributed to the person who funded the trust. Upon further research, however, one would discover that section 677 also can trigger grantor trust status if income can be distributed to the grantor's *spouse*.

B. Time Travel Traps

When researching a particular Code provision, always make sure to use the version of the Code effective for the year(s) in issue. Although it is important to read the Code itself for effective dates and transition rules, it is often necessary to check the underlying legislative acts for such information.

C. Watch the Boundaries (Scope Creep)

When reading a particular Code provision, it is important to understand the scope of the provision. Some Code provisions apply to the entire Code, while others apply only to certain portions of the Code. For example, some income tax provisions start out “For purposes of this subtitle . . .” which indicates that the provision applies broadly to an entire subtitle such as Subtitle A of Title 26 of the U.S.C., and therefore applies to all the income tax provisions of the Internal Revenue Code. Other Code sections begin with “For purposes of this section . . .” which indicates that the provision is more limited and affects only the particular section at issue, a much smaller unit.

D. The Ghost of Regulations Past (and Missing)

There may be Code sections for which no regulations exist since Congress enacts new statutes quite frequently and it may take years for the Treasury Department to promulgate regulations. In addition, there may be regulations that fail to reflect the current law since Congress amends Code provisions quite frequently and the Treasury Department does not always react promptly with appropriate regulatory revisions.

III. Where to Find Tax Resources

A. Free Internet Sources

One of the most exciting advancements in tax research is the availability of tax information on the Internet. A number of websites give access to a wealth of tax information, including the Code, regulations, rulings, IRS forms and publications, and other materials. The Code and Regulations are freely available online. One online resource is the Government Publishing Office's online database, GovInfo. See <https://www.govinfo.gov/>. For another widely-used and frequently-updated online version of the Code and regulations, check out the following:

- Internal Revenue Code: Cornell Law School Legal Information Institute [LII]: <http://www.law.cornell.edu/uscode/text/26>.
- Treasury Regulations: Cornell Law School Legal Information Institute [LII]: <http://www.law.cornell.edu/cfr/text/26/chapter-I>.

The Internal Revenue Service provides through its website a wealth of tax research materials. Its website is the official government site for downloadable and printable IRS forms and publications. Its website also contains the IRS FOIA Library, which contains links to the Internal Revenue Bulletin (and thus Revenue Rulings), proposed and final regulations, IRS Notices, the Internal Revenue Manual, and many other items. Check out the following links:

- Forms, Instructions & Publications: <https://www.irs.gov/forms-instructions>.
- IRS FOIA Library: <https://www.irs.gov/privacy-disclosure/foia-library>.
- IRS Written Determinations: <https://apps.irs.gov/app/picklist/list/writtenDeterminations.html>.
- Basic Tools for Tax Professionals: <https://www.irs.gov/tax-professionals/serve-your-clients>.

Taxnotes.com offers many free resources including a curated selection of news, analysis, and special reports. Free resources include the Internal Revenue Code, treasury regulations, IRS private letter rulings, court documents, legislative documents, and the Internal Revenue Manual.

B. Commercial Databases

Two widely recognized computer research systems that have federal tax databases are LexisNexis and Westlaw. Bloomberg Law also offers primary and secondary tax materials. Perhaps the most important tax research tools offered by Bloomberg are the *BNA Tax Management Portfolios*. Tax Analysts / Tax Notes (taxnotes.com) also offers subscription based sources for tax information, including the valuable weekly *Tax Notes* and daily *Tax Notes Today*. As noted above, taxnotes.com also offers free resources.

IV. The Tax Constants (Basic Concepts That Never Change)

A. Income Shifting: Breaking Free from Compressed Brackets

1. The Brutal Reality of Trust Tax Brackets

In the case of individuals, the tax rates on ordinary income are progressive. Section 1 of the Code currently establishes seven tax rates on ordinary income: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. Even though Congress makes frequent changes in the actual tax rates, one basic principle does not change: as long as there are at least two brackets, taxpayers in higher brackets will be able to achieve tax savings if they can shift the incidence of taxation on their income to taxpayers in lower brackets. For SNT practitioners, this dynamic is amplified to an extreme degree: while individual taxpayers do not hit the top 37% tax bracket until their income exceeds \$640,600, a non-grantor SNT hits the top 37% rate at \$16,000 of retained trust income under the

hyper-compressed trust tax tables of § 1(e). Rev. Proc. 2025-32. Thus, the incentive to shift income out of a non-grantor trust is massive.

2. Keeping It in the Family: Related Parties in Trust Law

Income shifting occurs most often between related taxpayers. After all, there are very few taxpayers who hate paying taxes so badly that they would be willing to shift some of their income to a non-relative in order to receive tax benefits. It should be noted that the term relative has a broader meaning in the realm of taxation than it does in the common usage of everyday life. In tax language, the following are deemed related for loss disallowance purposes: a “grantor and a fiduciary of any trust”; a “fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts”; a “fiduciary of a trust and a beneficiary of such a trust”; and “a fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts.” See, e.g., IRC § 267(b)(4)-(7) (disallowing losses between fiduciaries, grantors, and beneficiaries).

3. The IRS Hunts the Assignment of Income

The assignment of income to a relative (for example, assignment of income from a high-bracket trust to a lower-bracket beneficiary, or from a high-bracket individual to a family trust) is a matter of great concern to the courts, as well as the legislature. A taxpayer’s ability to engage in this sort of “assignment of income” has been substantially curtailed. The evolution of the law in this area has been long, complex, and is continuing. By and large it has been the courts, rather than Congress, who have sorted out the tax treatment of assigned income.

4. The Fruit and the Tree: From *Lucas v. Earl* to *Helvering v. Horst*

There are many strands of the court-made “assignment of income doctrine:” (1) assignments of earned income; (2) assignments of income from property; and (3) assignments designed to convert ordinary income into capital gains. The foundational case on the assignment of income doctrine is *Lucas v. Earl*, 281 U.S. 111 (1930), in which the Supreme Court held that income is taxed to the person who earned it (coining the famous metaphor that the law will not prevent the tax from attaching to the tree on which the fruit grew). Another key case in this area is *Helvering v. Horst*, 311 U.S. 112 (1940), in which the Supreme Court held the owner of property cannot avoid the tax on the income generated by that piece of property unless he actually transfers the underlying interest that produces the income.

5. The SNT Income-Shifting Miracle: Grantor Trusts and DNI Rules

In the context of Special Needs Trusts, practitioners navigate these assignment of income doctrines through statutory safe harbors provided in Subchapter J. Rather than attempting informal income assignments, SNT planners utilize first-party grantor trusts (§§ 671–679)—where all trust income is legally attributed directly to the disabled grantor’s individual return, completely bypassing the compressed trust tax rates—or distributable net income (DNI) mechanisms (§§ 651/661 and 652/662) in third-party non-grantor SNTs. Under the DNI rules, when a non-grantor SNT distributes income to or for the benefit of a low-bracket disabled

beneficiary, the trust takes a distribution deduction under § 661, shifting the tax burden to the beneficiary under § 662, where it is taxed at the beneficiary's significantly lower individual marginal rate.

6. Should the Tax Tail Wag the Dog? The Lowest Income-Tax Result Isn't Necessarily the Best SNT Result

The trustee may have a substantial tax reason to distribute income rather than accumulate it—provided the distribution is otherwise appropriate under the trust and doesn't create adverse public-benefit consequences. That's an important qualification to a tax-focused discussion: the lowest income-tax result isn't necessarily the best SNT result. SSI, Medicaid, housing, support-and-maintenance rules, beneficiary circumstances, and the trust's distribution standard can outweigh the income-tax savings. Those benefits are very valuable and can be difficult to obtain and preserve. It would not be surprising for a trustee to elect to pay tax rather than risk losing benefits.

B. The Time Value of Money (a Question of When)

1. Clocking the IRS: Why Deferral is Your Best Friend

The income tax is imposed on an annual basis, the tax year. Thus, it is necessary to establish rules concerning *when* an item of income is included and *when* an item of expense is deducted. Taxpayers will nearly always be economically advantaged by the deferral of taxable income. Also there is often advantage in the acceleration of tax deductions. Both of these advantages will reduce the taxpayer's current tax liability thereby leaving him with the use of his money for a while longer. Since money makes money, the use of money has value. This is called "the time value of money."

2. SNT Planning Pointer: Mastering the 65-Day Rule

The time value of money is important in tax considerations; it is a concept that has an impact upon every consideration by the taxpayer relating to the question of "when." Any SNT trustee concerned about when to include an item of income, or when to take a deduction, should consider the effect of the changing value of money over time. The conventional wisdom leads to a basic tax planning maxim: accelerate deductions, defer income.

3. Planning Pointer

Other factors besides the time value of money will affect a trustee's decision concerning when an item should be deducted or included. Specifically, an SNT trustee should evaluate the trust's expected tax bracket and the beneficiary's income bracket for a given year. Under IRC § 663(b) (the 65-day rule), an SNT trustee can elect to treat distributions made within the first 65 days of a tax year as having been paid on the last day of the *preceding* tax year. This allows the trustee to retroactively optimize income shifting and DNI deductions after calculating the exact year-end tax liability.

Annual Trustee-Administration Reminder: Before preparing the IRS Form 1041 for a nongrantor SNT, evaluate whether a § 663(b) election and additional beneficiary distribution would improve the combined trust/beneficiary tax result. Again, the SNT/public-benefits consequences have to be analyzed before making the distribution.

C. Pre-Tax Versus After-Tax Dollars (the Benefits of Deductions)

1. The Math of After-Tax Living

The concept of pre-tax and after-tax dollars applies in any situation involving taxable income. That is, an individual or a non-grantor trust in the 37% tax bracket that earns \$1.58 of interest income will owe the government 58 cents in taxes. Therefore, we might say that the only kind of dollar any taxpayer has to spend are after-tax dollars, because a portion of the pre-tax dollars actually belongs to the government *ab initio*.

2. The Power of the SNT Deduction: Government-Subsidized Care

However, there are times when taxpayers are allowed, and even encouraged, to use the government's share of their earnings to help pay for expenses. In fact, that is the basic premise behind the very familiar and popular tax item known as a deduction. Whenever the government classifies an expenditure as being deductible, it is, in fact, helping to pay that expenditure. This benefit results from the simple truth that \$1.58 of income will be totally offset by \$1.58 of deduction, leaving no tax liability. Therefore, if a non-grantor SNT earning \$1.58 of taxable interest spends that money in a way that is non-deductible, it pays 58 cents in taxes, leaving \$1.00 for the beneficiary. On the other hand, if the trustee spends the money in a manner that gives rise to a deduction, the trust owes no tax, deriving \$1.58 in value.

3. Trustee Fees and Fiduciary Deductions: Maximize the Offsets

The above example explains why taxpayers will always attempt to characterize payments as deductible, if possible. Congress expands and limits the scope of deductible expenditures quite often. In the SNT context, trustees routinely look to deduct fiduciary administrative fees, legal expenses, tax preparation costs under IRC § 67(e), or qualifying medical care expenditures distributed for the disabled beneficiary under IRC § 213. [Note: A nongrantor SNT does not automatically get a § 213 deduction whenever it pays a beneficiary's medical expenses. The identity of the taxpayer claiming the deduction, the statutory requirements, how the expense is treated under Subchapter J, and the particular trust arrangement matter.] As long as there are deductions, trustees will try to take advantage of them to preserve trust principal for the beneficiary's care.

4. Qualified Disability Trusts: Legislative Mercy in Action

Of course, the government itself derives a benefit from many of the deductions and exemptions it allows. For example, under IRC § 642(b)(2)(C), Congress allows a Qualified Disability Trust (QDT) to claim a personal exemption equal to that of an individual taxpayer (rather than the paltry \$100 or \$300 exemption granted to standard complex or simple trusts). By

offering this elevated exemption, Congress encourages families to private-fund SNTs to care for individuals with severe disabilities, which in turn reduces the long-term, direct financial burden on government entitlement programs. In effect, the QDT exemption encourages families to do directly what the government would otherwise have to shoulder indirectly.

Planning Takeaway: QDT qualification has statutory requirements. When reviewing a third-party SNT, make QDT qualification a separate checklist item, rather than assuming special-needs language automatically gets you there.

5. The IRS Strikes Back: Disallowance Traps and § 265

The tax benefit of using pre-tax dollars to pay for expenses is of major concern to the government. Therefore, many Code sections have evolved that prevent deductions for certain expenses. SNT practitioners must beware of IRC § 265, which disallows deductions for administrative expenses (like trustee fees) to the extent those expenses are allocable to tax-exempt income (such as tax-exempt municipal bond interest held in the trust). That's practically important if an SNT holds a large municipal-bond portfolio.

D. Basis: Preserving Your After-Tax Capital

1. The Golden Shield of Basis

The only dollars a taxpayer has to spend are after-tax dollars. Therefore, when a trust buys property, it does so with money that has already been subject to tax. The trust or beneficiary should be able to sell that property and receive its investment back tax-free. The amount the taxpayer will be able to receive as a tax-free return of investment, or capital, is called **basis**. Basis is a foundational concept that will always be a part of the federal income tax system.

2. Cost Basis Under Section 1012

There are a number of Code sections that create, limit, or otherwise affect basis in property. *See, e.g.*, IRC §§ 1012 (cost basis), 1014 (date of death basis), 1015 (gift basis), and 1016 (adjusted basis). Section 1012 states that the basis of property acquired by purchase shall be its cost. That section does not, however, give a definition of cost. Yet, if you remember the purpose behind having basis in property in the first place -- guaranteeing that a taxpayer can recoup all after-tax dollars invested -- then you will have no problem understanding the definition of cost for tax purposes.

3. Adjusted Basis (§ 1016) and Step-Up at Death (§ 1014)

Section 1012 indicates what a taxpayer's basis will be at the time of purchase. However, as improvements are made or depreciation deductions taken, basis must be adjusted accordingly under § 1016 ("adjusted basis"). In SNT drafting, basis rules are paramount. Under IRC § 1014, assets held in a revocable trust or a properly drafted First-Party Grantor SNT (included in the beneficiary's gross estate under § 2036 or § 2038) receive a stepped-up basis to fair market value upon the individual's death, eliminating all pre-death capital gains. Conversely, property

transferred into an irrevocable Third-Party Non-Grantor SNT during the settlor's lifetime takes a carryover basis under IRC § 1015, preserving the embedded capital gains tax liability for the trust when the asset is sold.

E. Realization and Recognition: The Traps of Trust Transactions

1. When Does the Taxing Event Occur?

Basis is an important tax principle because it represents the amount of tax-free dollars a taxpayer can receive from the sale, exchange, or other disposition of property. By implication, therefore, any consideration received in excess of basis is taxable as economic gain. If consideration is less than basis, there is no economic gain, and the taxpayer may be entitled to a deduction for a loss. Increases and decreases in the value of property are not taken into account for tax purposes as they accrue, but only when they are realized by a taxable event. Realization usually does not occur until there has been a "sale or other disposition of property." IRC § 1001(a).

2. Realization Rules: Satisfying Bequests vs. In-Kind Distributions

Sometimes it is difficult to determine whether a trust transaction constitutes a "sale or other disposition." For SNT practitioners, this question arises constantly when distributing trust assets:

a. Funding a Pecuniary Bequest

If an SNT trustee satisfies a specific, fixed-dollar pecuniary bequest to a beneficiary by distributing appreciated non-cash assets, the IRS treats the distribution as a sale or exchange, triggering immediate gain realization to the trust under the long-standing rule of *Kenan v. Commissioner*, 114 F.2d 217 (2d Cir. 1940).

b. Ordinary In-Kind Distributions

Under IRC § 643(e), a standard discretionary distribution of appreciated property in-kind to an SNT beneficiary generally does *not* trigger realization at the trust level; instead, the trust's basis carries over to the beneficiary, unless the trustee affirmatively makes an election under § 643(e)(3) to realize the gain at the trust level.

Because of the tax difference between pecuniary distributions and in-kind distributions, there should be a checklist warning for trust administration: Before funding any fixed-dollar distribution with appreciated property, obtain tax advice regarding gain recognition.

3. Decanting and Cottage Savings: When Modifying a SNT Triggers a Sale

Another major realization trap for SNT planners involves trust decanting or trust modifications. Under the Supreme Court's decision in *Cottage Savings Ass'n v. Commissioner*, 499 U.S. 554 (1991), a realization event occurs if property is exchanged for other property

"differing materially either in kind or in extent." If an existing trust is decanted into a newly drafted SNT in a manner that fundamentally alters the beneficial interests of the beneficiaries, the IRS might argue under *Cottage Savings* that a taxable exchange of trust interests has occurred, triggering immediate gain realization.

The takeaway is not that decanting automatically causes capital gain. However, one should identify a potential federal income tax issue where restructuring materially changes beneficial interests. When moving a beneficiary's portion from an existing trust to a new or existing trust, don't analyze ONLY whether state trust law authorizes the trustee to do it. Separately analyze state-law authority, gift tax consequences, estate tax consequences, income tax realization, grantor trust status, public-benefit consequences, etc. A transaction can be perfectly permissible under a state decanting statute and still present a federal tax question.

4. Calculating Realized Gain and Loss

If a transaction is treated as a sale or other disposition, the transferor must determine the amount of the gain or loss realized. Gain realized is equal to the amount realized in the transaction minus the adjusted basis of the property sold. Loss realized is equal to the adjusted basis of the property sold minus the amount realized in the transaction.

5. Recognition vs. Non-Recognition: Escaping Immediate Taxation

Once a taxpayer has calculated gain or loss realized, they must determine whether the gain or loss is recognized (reportable on the tax return for the year of disposition). As a general rule, the entire gain or loss realized is recognized for tax purposes unless an exception is provided in the Code. IRC § 1001(c). The Code provides a number of exceptions commonly referred to as non-recognition provisions (such as § 1031 like-kind exchanges), which are based on the rationale that the taxpayer's economic position has not fundamentally changed.

F. The Taxable Year: The Calendar Trap for Trusts

1. Measuring Time One Year at a Time

The types of taxable year allowed to a particular taxpayer can differ from tax reform to tax reform, but each taxpayer will, nonetheless, have a taxable year. Simply stated, a taxable year provides a frame of reference for determining a taxpayer's income, expenses, and losses. Without a definite time period, it would be impossible for the government or the taxpayer to determine which losses should offset which income. Therefore, the government has decided that the most convenient time package for assessing tax consequences is one year.

2. The Calendar Year Chains: Section 644 Traps for Non-Grantor SNTs

There are only two types of taxable years: the calendar year, and the fiscal year. Under IRC § 644, virtually all non-grantor trusts—including non-grantor Special Needs Trusts—are required to use the calendar year as their taxable year. Calendar-year trusts start with a clean slate each January 1, and close their books each December 31. Thus, as a general rule, only those

items of income, deduction, loss, or credit actually occurring during the calendar year will affect the SNT's ultimate tax liability for that particular year.

3. The Fiscal Year Escape Hatch: Estates and Section 645 Elections

The Code defines "fiscal year" to be any year other than a calendar year. IRC § 441(e). While non-grantor trusts are bound to the calendar year by § 644, decedent's estates are permitted to adopt a fiscal year. For SNT practitioners, this creates a vital opportunity: under IRC § 645, an irrevocable qualified revocable trust (QRT) that created a testamentary SNT can elect to be treated as part of the decedent's estate for income tax purposes. This allows the trust to utilize a fiscal year, defer income reporting, and gain access to estate-specific tax perks for up to two years following the decedent's death.

G. Accounting Methods: Timing Is Everything

1. Cash vs. Accrual: The Eternal Tug-of-War

As noted above, the income tax is imposed on an annual basis, the tax year. Thus it is necessary to establish rules concerning *when* an item of income is included and *when* an item of expense is deducted. It is important to keep in mind where the "pressure" is. Taxpayers will nearly always be economically advantaged by the deferral of taxable income and the acceleration of tax deductions. The government has an opposing interest in the acceleration of income and deferral of deductions to maximize current tax revenues. An evenhanded set of rules should impartially navigate between these competing interests.

2. The Matching Principle: Accounting Meets Reality

The primary determinant of the timing of income and deductions is the taxpayer's accounting method. There are two main methods: the cash method and accrual method. IRC § 446(c). Both methods employ some version of the "matching" principle -- seeking to match expenses to the income they produce so that we get a fair and accurate picture of net income. The cash method is less effective at matching, but it is simple, intuitive, and the method almost universally employed by SNTs and individual disabled beneficiaries.

a. The Cash Method: Constructive Receipt and Prepaid Fees

The basic principle of the cash method is that income is reported when it is actually or constructively received. Treas. Reg. § 1.446-1(a). An item is constructively received when it is credited to the taxpayer's account or set aside for them without substantial restrictions. Treas. Reg. § 1.451-2(a). For SNT beneficiaries, if a trustee irrevocably sets aside funds that the beneficiary has an absolute, unrestricted legal right to demand, the IRS can deem those funds constructively received by the beneficiary, triggering immediate taxation even if the cash remains in the trust account.

The cash method operates with respect to deductions in much the same way: deductions are taken when the expense is paid. Treas. Reg. § 1.446-1(c)(1)(i). SNT trustees sometimes

attempt to manipulate the cash method by prepaying deductible trust administrative fees or care expenses in December to reduce the trust's taxable income for that calendar year. However, under Treasury Regulation § 1.263(a)-4, prepaid expenses must generally be capitalized unless they qualify under the narrow “12-month rule” exception (Treas. Reg. § 1.263(a)-4(f)(1)).

b. The Accrual Method: The All-Events Test and Advance Funding

Under the accrual method, income is generally included in the taxable year in which all events have occurred fixing the right to the income and in which the amount can be determined with reasonable accuracy (the “all events” test). Treas. Reg. § 1.446-1(c)(1)(ii)(A). For accrual taxpayers, income is reportable when earned, regardless of when cash is collected. Note that under *Schlude v. Commissioner*, 372 U.S. 128 (1963) and IRC § 451(c), advance cash payments received are generally taxable immediately upon receipt, even if the all-events test has not been met.

Under the accrual method, deductions are taken in the year in which all events have occurred establishing the fact of liability, the amount can be determined, and economic performance has occurred. IRC § 461(h). Economic performance occurs when the person to whom the liability is owed actually provides the services or property. For an accrual-method entity, prepaying a structured settlement or care provider for ten years of future care does not yield an immediate deduction; the deduction is unlocked only as the care services are actually rendered year by year.

STETSON UNIVERSITY COLLEGE OF LAW

2026 National Conference on Special Needs Planning & Special Needs Trusts

October 21, 2026

Tax Intensive (But Not Too Intense): Don't Fear the Tax Code

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1

Hierarchy of Authority for IRS Guidance & Sources

1. Internal Revenue Code (Title 26, U.S.C.)
Enacted Statutory Law of Congress

2. Treasury Regulations (TDs in C.F.R.)
Final & Temporary Regulations • Force & Effect of Law

3. Revenue Rulings & Revenue Procedures (RR / CR)
Notices & Announcements • Binding on IRS Personnel

4. Written Determinations (PRLs, TAMs)
Non-precedential (§ 6119(k)(3)) • Invaluable for IRS reasoning in SNTs

5. Other IRS Information: Forms, Publications, Instructions, FAQs & BLM
Helpful guidance, but NOT legal authority – cannot be cited as precedent in an audit or litigation

Adapted from GAO-10-720 Regulatory Guidance Processes | U.S. Government Accountability Office

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2

PERSPECTIVE & MINDSET

Common Phobias

Ophidiophobia



Evolutionary survival instinct against pit vipers and venom.

Arachnophobia



Anxiety triggered by webs, fangs, and unexpected crawl spaces.

Acrophobia



A physiological terror of losing footing along steep precipices.

Codaphobia



Fear of the Tax Code.

The Antidote: The Tax Code is not random chaos. Once you learn its statutory anatomy and architectural blueprint, the fear vanishes.

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1

EXPLAINING CODAPHOBIA

Tax Law is Constantly Changing

Major federal tax and statutory acts impacting SNTs, qualified disability planning, and trust taxation.

Major Tax & Legislative Acts Impacting SNTs

- Omnibus Budget Reconciliation Act of 1993.
- Small Business Job Protection Act of 1996.
- Deficit Reduction Act of 2005.
- Health Care and Education Reconciliation Act of 2010.
- American Taxpayer Relief Act of 2012.

Modern Era & Retirement Integration

- Achieving a Better Life Experience (ABLE) Act of 2014.
- Special Needs Trust Fairness Act of 2016.
- Tax Cuts and Jobs Act of 2017.
- SECURE Act of 2019.
- SECURE 2.0 Act of 2022.

Why???

- To encourage social and economic behavior—e.g., § 529A ABLE Accounts & SECURE Act § 401(a)(9) "Eligible Designated Beneficiary Rules".
- To close tax loopholes and eliminate tax avoidance gimmicks—e.g., § 1(e) compressed fiduciary tax brackets & grantor trust rules (§§ 671-678).
- To provide relief to taxpayers—e.g., § 642(b)(2)(C) QDT exemption.

Key Takeaway for SNT Practitioners: Subchapter J (§§ 641-692) in Subtitle A is your primary home base.

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4

STATUTORY ARCHITECTURE

Breaking Down the Beast: Subtitles & Priorities

Title 26 of the United States Code is divided logically into nine functional Subtitles.

Subtitle A Income Taxes

- §§ 1-1564: Individual & corporate income tax structures.
- Chapter 1: Normal taxes
 - Subchapter A (§§ 1-59A): Rate brackets, § 1(e) trust rates, and credits.
 - Subchapter B (§§ 61 et seq): Computation of taxable income
 - Subchapter J (§§ 641-692): The holy grail for trusts, estates, beneficiaries, and DNI.

Subtitle B Estate & Gift Taxes

- §§ 2001-2801: Transfer tax system.
- Crucial for 3rd-Party SNTs: Completed gift vs. incomplete gift structuring.
- §§ 2036 / 2038: Retained strings pulling 1st-party SNT assets into gross estate for § 1014 basis step-up.

Subtitle F Procedure & Administration

- §§ 6001-7874: Fiduciary compliance rules.
- Form 1041: Reporting filing deadlines and fiduciary responsibilities.
- § 6213: Deficiency notices and the 90-day ticket to the U.S. Tax Court.

Key Takeaway for SNT Practitioners: Subchapter J (§§ 641-692) in Subtitle A is your primary home base.

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5

CODE NAVIGATION

Deciphering the Hieroglyphics: Anatomical Breakdown

Case Study Example: The QDT Personal Exemption—Section 642(b)(2)(C)

Section § 642

Special rules for credits and deductions of estates & trusts.

Subsection (b)

Deduction for personal exemptions.

Paragraph (2)

Special rules for trusts (simple vs. complex vs. disability).

Subparagraph (C)

Qualified Disability Trusts (QDTs) receive individual-level exemption.

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2

CODE VOCABULARY

Statutory Magic Words: Congressional "Abracadabra"

Congress has absolute power over Code language; specific phrases alter the operation of law.

"For Purposes of . . ."

The Congressional Redefinition

Signals that a standard English term is being given a specialized, artificial statutory definition that applies strictly to that specific provision.

"Except as Provided . . ."

The Code Red Flag

Warns you that another Code section may override the general rule you are reading. Always stop and check the cross-reference.

"Notwithstanding Any Other Provision . . ."

The Trump Card

Congress tells you to ignore everything else in the Code on point; this specific rule reigns supreme over conflicting general provisions.

Reading the Code requires treating every modifier as an active navigational switch.

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7

CODE VOCABULARY

Legal Fictions: "Treated As" or "Considered"

When the Code requires practitioners to pretend a transaction is something else.

Retrospective Distribution Fiction

Distributions paid within the first 65 days of Year 2 "shall be considered" paid on December 31 of Year 1 at the trustee's election.

Ignoring the Trust Entity

The grantor is "treated as the owner" of trust assets; for income tax purposes, the IRS pretends the trust entity does not exist.

Trust Taxed as an Estate

A qualified revocable trust is "treated and taxed as part of an estate," unlocking fiscal tax years and charitable set-aside deductions.

In-Kind Distribution "Sale"

An in-kind distribution of appreciated property is "treated as a sale" at fair market value if the trustee elects to realize gain at the trust level.

8

ADMINISTRATIVE GUIDANCE

Treasury Regulations: Giving the Monster Fangs

Treasury Regulations carry the force and effect of law pursuant to IRC § 7805(a).

Identify the Tax Arena

- 1.xxx: Income Tax (e.g., Treas. Reg. § 1.671-4 for Grantor Trust reporting).
- 20.xxx: Estate Tax (e.g., Treas. Reg. § 20.2036-1).
- 25.xxx: Gift Tax (e.g., Treas. Reg. § 25.2511-2).

Proposed vs. Final

- Proposed: Published in Fed. Reg. for public notice & comment. No force of law, but can be applied retroactively.
- Temporary: Binding immediately upon issuance; expires after 3 years.
- Final: Published as Treasury Decisions (TDs) in C.F.R.

The Regulatory Lag

- Congress amends the Code frequently; Treasury can take years (or decades) to update regulations. Always verify whether a regulation reflects current statutory text!

Rule of Thumb: Regulations interpret the Code, but they cannot rewrite statutory text enacted by Congress.

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3

JUDICIAL REVIEW OF TAX GUIDANCE

Slaying *Chevron*: Post-Loper Bright Tax World

The Supreme Court's monumental 2024 shift from judicial deference to independent judgment.

Chevron / *Mayo* Foundation

- Courts deferred to Treasury Regulations if the statute was ambiguous and the regulation was a "permissible construction."
- IRS easily defended regulations by showing reasonableness.
- Gave executive agencies sweeping interpretive dominion over ambiguous tax statutes.

Loper Bright & *Skidmore* Deference

- Courts must exercise independent judgment under the APA; no reflex deference to IRS interpretation.
- Treasury regulations are evaluated under *Skidmore*: given weight only based on the power to persuade.
- Factors: Thoroughness of consideration, validity of reasoning, and consistency over time.

Litigation Impact: The IRS now bears a heavier burden defending pro-revenue regulatory interpretations in court.

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ADMINISTRATIVE GUIDANCE

IRS Pronouncements: Reading the SNT Tea Leaves

From official positions in the Internal Revenue Bulletin to non-precedential rulings.

Revenue Rulings & Rev. Procs

- Revenue Rulings: Official IRS Position. Published weekly in the Internal Revenue Bulletin (IRB). Binding on IRS Personnel: Can be relied upon by any taxpayer whose facts are substantially identical.
- Revenue Procedures: Outline internal IRS administrative practices, calculation formulas, and safe harbor procedures.

Private Letter Rulings (PLRs)

- Issued by IRS National Office: Written for a fee in response to specific taxpayer transactions.
- No Precedential Value: § 6110(k)(3) strictly prohibits citing PLRs as precedent in other cases.
- Invaluable SNT Guidance: Reveal IRS thinking on matters (e.g., first-party grantor trust triggers and completed gift transfers).

Other Sources: Technical Advice Memoranda (TAMs) and General Counsel Memoranda (GCMs) illuminate reasoning.

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LITIGATION STRATEGY

Picking Your Legal Battlefield: Pay First or Fight First?

Strategic forum selection when the IRS issues a Notice of Deficiency.

U.S. Tax Court

- No Prepayment: File within 90 days of deficiency notice.
- Expert Judges: 19 tax specialists; regular decisions create binding precedent.
- No Jury: Bench trial only.
- Golsen Rule: Follows court of appeals precedent for the taxpayer's circuit.

U.S. District Court

- Pay First: Pay deficiency, file administrative refund claim, sue upon denial.
- Jury Trial Available: The only tax forum offering a jury trial.
- Generalist Judges: Appeals go to local Federal Circuit Court of Appeals.

U.S. Court of Federal Claims

- Pay First: Full payment required prior to filing refund action.
- No Jury: Based in Washington, D.C.
- Appeals to Federal Circuit: Bypasses local regional circuit precedent.

Acquiescence Watch: Check whether the IRS acquiesced [signed] or non-acquiesced in adverse Tax Court rulings.

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4

CONGRESSIONAL INTENT

Legislative History: How Statutory Sausage Gets Made

Committee reports reveal the rationale, purpose, and mechanical operation behind ambiguous statutes.

The Legislative Gauntlet

- House Ways & Means: Revenue bills must originate in the House (U.S. Const. Art. I, § 7). Produces House Committee Report.
- Senate Finance Committee: Rewrites or amends bill. Produces Senate Report.
- Conference Committee: Resolves House/Senate differences. Generates Conference Committee Report (the gold standard of legislative intent).

When statutory language has multiple interpretations, courts look first to the Conference Report.

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RESEARCH CAUTIONS

Tax Research Caveats: Four Ways to Get Bitten

Common statutory traps where unseasoned estate planners make expensive miscalculations.

Don't Judge by Cover

Section headings are non-binding. E.g., § 677 heading is "Income for benefit of grantor," but the body also taxes the grantor if income is distributed to the grantor's spouse.

Time Travel Traps

Always verify the exact effective date for the tax year in issue. Grandfathered provisions and transition rules often hide in uncodified public laws.

Watch the Boundaries

Scope creep: "For purposes of this subtitle" governs all income taxes (§§ 1–5564), while "For purposes of this section" is strictly confined to that one unit.

Ghost Regulations

Beware regulations that fail to reflect recent statutory amendments, and statutes for which no regulations have ever been promulgated.

Litigation Golden Rule: Never cite a regulation without confirming the underlying Code section hasn't been amended since.

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RESEARCH TOOLKIT

Where to Find Tax Resources: Free & Commercial

High-quality primary and secondary federal tax authorities for trust practitioners.

Free Government & Academic Portals

- Govinfo (govinfo.gov): Official U.S. Government Publishing Office database for Title 26 and C.F.R.
- Cornell Law UI: Fast, hyperlinked Code and Treasury Regulations.
- IRS FOIA Library: Electronic reading room for IRB Bulletins, TAMs, and Chief Counsel Advice.
- IRS Written Determinations: Searchable database of all PLRs issued since 1999.

Commercial & Editorial Databases

- Bloomberg Tax / BNA Portfolios: The undisputed standard for in-depth Subchapter J portfolio analysis.
- Tax Analysts / Tax Notes (taxnotes.com): Real-time daily tax reporting, commentary, and full-text primary documents.
- Westlaw & LexisNexis: Comprehensive judicial citations (KeyCite/Shepard's) to track judicial treatment of rulings.

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5

THE TAX CONSTANTS (Basic Concepts That Never Change)

3. Pre-Tax vs. After-Tax Dollars: Deductions & QDTs

Tax deductions allow trustees to spend government dollars on the beneficiary's care.

The Math of Deductions

In the 37% bracket, \$1.58 of income yields only \$1.00 after tax. But if spent on a deductible item, the full \$1.58 is utilized—the IRS effectively subsidizes 50.58 of the expense.

QDT Exemption

Qualified Disability Trusts claim a personal exemption equal to an individual taxpayer, instead of the tiny \$100 or \$300 exemption granted to standard trusts!

Muni Bond Trap

Disallows administrative deductions (trustee fees, legal expenses) to the extent allocable to tax-exempt income. Dangerous for municipal bond portfolios!

Drafting Warning: Don't assume special-needs language automatically qualifies a trust as a QDT under § 642(b)(2)(C). Verify all statutory requirements.

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THE TAX CONSTANTS (Basic Concepts That Never Change)

4. Basis: Preserving Your After-Tax Capital

Basis represents the taxpayer's golden shield: the tax-free return of invested capital.

Cost Basis (§ 1012)

Basis starts at cost. Adjusted under § 1016 downward for depreciation and upward for capital improvements.

Step-Up at Death (§ 1014)

Assets included in the beneficiary's gross estate under § 2036 or § 2038 receive a stepped-up basis to fair market value, erasing all pre-death capital gains.

Carryover Basis (§ 1015)

Lifetime gifts into irrevocable trusts carry over the donor's historical basis. Built-in appreciation remains taxable to the trust when sold.

Estate Planning Pointer: Testamentary 3rd-party SNT funding receives a stepped-up basis; lifetime funding triggers carryover basis.

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THE TAX CONSTANTS (Basic Concepts That Never Change)

5. Realization and Recognition

Satisfying Fixed Pecuniary Bequests

- Distributing appreciated non-cash assets to fund a specific dollar amount bequest (e.g., "\$100,000 to the SNT").
- Tax Trap: Treated as a taxable sale or exchange.
- The trust or estate realizes immediate capital gain on the difference between basis and fair market value!

Discretionary In-Kind Distributions

- Standard discretionary distribution of appreciated property in-kind does not trigger gain realization.
- Trust's basis carries over to the beneficiary.
- Elective Sale (§ 643(e)(3)): Trustee can affirmatively elect to recognize gain at the trust level if beneficial.

Checklist Warning: Before funding any fixed-dollar bequest with appreciated assets, obtain tax advice regarding gain recognition.

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THE TAX CONSTANTS (Basic Concepts That Never Change)

6. Tax Accounting—The Taxable Year and Accounting Methods

Constructive receipt hazards and prepayment limitations under IRC § 446.

Cash Method Realities

- Income: Reported when actually or constructively received (Treas. Reg. § 1.451-2). If a beneficiary has an unfettered right to demand funds, income is taxable immediately.
- Deductions: Taken when paid.
- Prepayment Trap: Prepaying trustee fees or legal expenses in December must be capitalized unless within the narrow 12-month rule (Treas. Reg. § 1.263(a)-4(f)(1)).

Accrual Method & Performance

- All-Events Test: Income included when the right to receive is fixed and determinable (Treas. Reg. § 1.446-1(c)(1)(ii)).
- Economic Performance (§ 461(h)): Deductions unlocked only when services or property are actually provided.
- Prepaying a care provider for 5 years of future care unlocks deductions only year-by-year as care is rendered.

Fiduciary Rule: Almost all SNTs utilize the cash method. Beware constructive receipt when allocating trust accounts.

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Patient Status: Discharged & Fully Rehabilitated

Codaphobia: Full Recovery

Before



After



Diagnostic Findings: Anatomy of Title 26 decoded. Fluent in statutory magic words. Equipped with the 6 Tax Constants that never change!

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8



STETSON LAW

Tax Intensive

October 21, 2026

Must Know Individual Income Tax Issues for the Elder Law Practitioner



STETSON
LAW

*Center for
Elder Justice*

Access and Justice For All®

I. Introduction.

- A. Course Outline.
- B. Course Objectives.

II. Items of Gross Income (“GI”).

A. Items of GI Subject to Income Tax.

1. **General Rule: Internal Revenue Code Section (“IRCS”) 61**- Except as otherwise provided in the Internal Revenue Code (“IRC”), gross income includes all income from whatever source derived (i.e. Compensation, Business Income, Gain from sale of Property, Interest, Rents, Royalties, Dividends, Annuities, Pensions, Discharge Of Indebtedness, Distributive Share of Partnership Income, Income in Respect of a Decedent (“IRD”), Income from an Estate/Trust).

2. *Items of GI Subject to Favorable Income Tax Rules.*

- i. **Social Security (“SS”):** IRCS 86. In determining the taxable portion of SS benefits, the IRS uses **Combined Income (“CI”)** (CI equals the **sum of (A) Adjusted Gross Income (“AGI”) determined without regard to SS benefits and certain IRC Sections (Generally, Line 11b of Form 1040 without SS benefits), PLUS (B) nontaxable interest and ½ of SS benefits).***

a. *Single Filers.*

1. CI \$25,000 or less: All Nontaxable.
2. CI over \$25,000 to \$34,000: 50% of the portion of CI exceeding \$25,000 is taxable; however, the total taxable portion of SS benefits cannot exceed 50% of SS benefits.
3. CI over \$34,000: The lesser of (I) the sum of 85% of CI over \$34,000 PLUS the lesser of (A) the amount determined under paragraph a.2. or (B) \$4,500 or (II) 85% of SS benefits.

b. *Married Filing Jointly.*

1. CI \$32,000 or less: All Nontaxable.
2. CI over \$32,000 to \$44,000: 50% of the portion of CI exceeding \$32,000 is taxable; however, the total taxable portion of SS benefits cannot exceed 50% of SS benefits.
3. CI over \$44,000: The lesser of (I) the sum of 85% of CI over \$44,000 plus the lesser of (A) the amount determined under

paragraph b.2. or \$6,000 or (II) 85% of SS benefits.

- c. **State Income Taxation of SS Benefits.** In 2026, only 8 States (Colorado, Connecticut, Minnesota, Montana, New Mexico, Rhode Island, Utah, and Vermont) still tax some SS benefits (usually above income thresholds).

- ii. **Long Term Capital Gains (“LTCG”) & Qualifying Dividends (“QD”).**

- a. LTCG and QD Defined.

- 1. LTCG. A capital gain or loss results from the sale of a capital asset (i.e., stocks, bonds, mutual funds, and real estate). Gains from the sale of **capital assets held for more than one year (i.e., LT) are taxed at preferential rates.**
- 2. *Holding Period and Income Tax Basis of LTCG Assets.* **The holding period and income tax basis for purchased property:** the holding period of such property starts from the date following the day the property was acquired (i.e., the trade date) and its income tax basis equals the purchase price. **The holding**

period and income tax basis of property

acquired by gift: the holding period of such property equals the length of time the property was held by both the donee and the donor; and its income tax basis will equal the donor's adjusted basis (i.e., carryover basis). **The holding period and income tax basis for property acquired**

by death: the holding period of such property is automatically long-term, and its basis will equal the fair market value ("FMV") of such property at the time of death.

3. **QD.** QDs are paid by US Corporations, entities incorporated in US possession and certain foreign corporations to common and preferred shareholders provided such shareholders own their stock for certain period.

b. LTCG and QD Tax Rates (CY2026).

Income Tax Rates

<u>Filing Status</u>		<u>0%</u>	<u>15%</u>	<u>20%</u>
Married Joint	TI*	0- \$98,900	Over \$98,900 to \$613,700	Over \$613,700
Single	TI*	0- \$49,450	Over \$49,450 to \$545,500	Over \$545,500

*TI=Taxable Income

3.Items of Gross Income Exempt from Income Tax.

i. Certain Military and Government Disability Pensions. (See IRS Publication 525 and IRCS 104(a)(4)).

ii. Workers Compensation paid under the workers compensation act or similar law for an occupational sickness or injury. (See IRCS 104).

iii. Amounts received under a Long-Term Insurance Contract (other than policyholder dividends or premium refunds) are excludable in most cases from income as amounts received for personal injury or sickness. A long-term insurance contract is a guaranteed renewable insurance contract that only provides coverage for qualified long-term care services (i.e., necessary diagnostic, preventive, therapeutic, treating, mitigating, rehabilitative, maintenance and personal care services prescribed by a licensed health care provider who certifies applicant is (A) chronologically ill (i.e., cannot do at least 2 activities of

daily living for at least 90 days (or requires heavy supervision due to severe memory loss or brain impairment) and (B) requires a prescribed plan of care. (See IRCS 7702B and 104(a)(3)).

- iv. Compensatory (not punitive) damages received on account of physical injury/sickness. (See IRCS 104).
- v. Compensation for permanent loss, or loss of use of a part or function of your body, or for permanent disfigurement. (See IRCS 104).
- vi. Life Insurance Proceeds unless there was a violation of the Transfer for Value Rule. (See IRCS 101).
- vii. Gifts and Inheritances other than Income in Respect of a Decedent (“IRD”). (See IRCS 102 and 691).
- viii. Supplemental Security Income (SSI Benefits). (See IRS Publication 915). SSI is not reported on the taxpayer’s Form 1040.
- ix. ABLE Account distributions are completely tax-free if the money is used to pay for qualified disability expenses such as housing, education, transportation, employment training, or medical care of applicants. (See IRCS 529A and IRS Publication 907).
- x. Accelerated Death Benefits are generally excluded from GI if the insured is terminally ill (physician certifies person’s condition can reasonably be expected to result in death within 24 months of certification) or chronically ill (unable to perform at least 2 activities of daily living for a period of at least 90 days or person requires

substantial supervision to protect themselves from threats to health and safety due to severe cognitive impairment). (See Publication 554 and IRCS 101(g)).

4. *Partial/Total Exclusion of Gain on Sale of Principal Residence (IRCS 121).*

i. *General Rule.* Generally up to \$250,000(Single)/\$500,000(Married filing Joint) of the gain (other than gain allocated to periods of nonqualified use) on the sale of a principal residence can be excluded from GI if: (I) applicant married, applicant files a joint return for the year, (II) the **taxpayer (and/or spouse if married) owned the residence for at least 2 years** out of the last 5 years, (III) **the taxpayer (and spouse if married) lived in the residence for at least 2 years** out of the last 5 years, and (IV) **during the 2 year period ending on the date of sale, the taxpayer (and spouse if married) did not exclude gain from the sale of another residence.**

ii. *Exception to General Rule for individuals with disability.* If (I) the taxpayer becomes physically or mentally unable to care for herself, (II) the taxpayer owned the residence for at least 2 out the last 5 years, and (III) the taxpayer lived in its residence for at least 1 year out of the last 5 years—then the taxpayer is considered to have lived in its residence during any time that such taxpayer owned the home and lived in a facility that is licensed by a state or political subdivision to care for such taxpayer).

iii. *Sale of Residence by Surviving Spouse.* A surviving spouse can exclude up to \$500,000 of any gain from the sale of its principal residence if: (I) the sale

occurred no more than 2 years after the date of death of such taxpayer's spouse, (II) the surviving spouse has not remarried, (III) both the surviving spouse and deceased spouse met the use test at the time of the taxpayer's spouse death, (III) either the surviving spouse and/or the deceased spouse met the ownership test at the time of the taxpayer's spouse's death, and (IV) neither spouse excluded gain from the sale of another residence during the last 2 years.

iv. **Tax Issues** to be addressed when **Gifting Residence**.

- a. Loss of Section 121 Exclusion.
- b. Loss of FMV Adjustment if the Residence is not included in the taxpayer's estate. (See IRCS 2036).
- c. Planning Idea: Taxpayer gifts its Residence to an irrevocable Grantor Trust (with a use and occupancy agreement) retaining the right to appoint the assets in such trust to any one or more of the taxpayer's loved ones (limited power of appointment).

III. Deductions from GI.

A. Standard Deduction (CY 2026),

<i>Std. Deduction</i>		plus <i>Age 65 or over</i>	plus <i>Blind</i>
Single	\$16,100	\$2,050	\$2,050
Married/Jt.	\$32,200	\$1,650 per spouse	\$1,650 per spouse

B. Itemize Deductions if Greater than Standard Deduction.

- i. **Medical Deductions** (See IRS Publication 502). The taxpayer can deduct certain **unreimbursed medical and dental expenses** paid for themselves, their spouse and their dependents **that exceed 7.5% of such taxpayer's adjusted gross income** ("AGI").

1. Medical and Dental expenses include the cost of diagnosis, cure, mitigation, treatments, or prevention of disease, or any treatment that affects a part or function of your body. Expenses incurred solely for cosmetic purposes or to benefit your general health are not deductible.

a. *Medicine and drugs* other than insulin must be obtainable solely through a prescription by the doctor (but over the counter medicines and drugs are not deductible even if you have a doctor's prescription).

b. *Diagnostic tests and doctor's fee for annual physical.*

c. *Health Insurance Premiums including Medicare Premiums.*

d. *Nursing Homes.* The payment of medical services, meals, and lodging to a nursing home, convalescent home, home for the aged or similar facility is treated as a medical expense if the person confined is there for medical treatment. If obtaining medical care is not the

main reason for admission and you can show the part of the cost covering actual medical and nursing care, that amount is deductible. The same deductible treatment applies if an individual is resident in an assisted living facility because of chronic illness that requires assistance with at least 2 Activities of Daily Living (i.e., bathing, dressing, eating, incontinence, toileting and transferring) or requires supervision due to cognitive impairment (i.e., Alzheimer's disease).

e. *Equipment and Supplies* include but is not limited to back supports, crutches, eyeglasses, contact lenses and solutions, and hearing aids.

f. *Home Improvements for Medical Reasons.*

1. Structural Changes (adding ramps, modifying doorways and stairways, installing railings and support bars, and altering cabinets, outlets and fixtures and warning systems and lifts (not elevators) made to residence to accommodate disabled person's condition even if such change adds to the value of the residence.

2. *Other Structural Changes to Residence*

are deductible only to the extent they exceed the increased value to the Residence.

g. Premiums for a Qualified Long-Term Care Policy for the Chronically Ill, and Expenses for Qualifying Long-Term Care Services for a Chronically Ill Person. Depending on your age at the end of the year, all or part of your premiums for a qualified long-term care policy (i.e., policy meets the requirements set forth in IRCS 7702B) may be deductible. The deductible amount equals the actual premium paid subject to the following limits per person (CY 2026):

i. Age 40 or younger: \$500

ii. Over Age 40 to 50: \$930

iii. Over Age 50 to 60: \$1,860

iv. Over Age 60 to 70: \$4,960

v. Over age 70: \$6,200.

h. Transportation. The (I) cost of actual expenses for gas and oil or the IRS standard mileage rate (CY2026: 20.5 cents per mile for trips taken between 1/1 and 6/30 and 23.5 cents per mile for

trips taken between 7/1 and 12/31) can be deducted when a taxpayer uses their car (no deduction for depreciation, insurance and general repair) to travel to doctor offices, hospitals and other healthcare facilities PLUS parking fees or tolls or (II) the cost of transportation (bus, ambulance service, train, airfare) to doctor offices, hospitals and other healthcare facilities.

- i. *Nursing Services.* Wages and other amounts paid (i.e., cost of attendants' meals, extra rent and utilities if moving to larger apartment to provide space for attendants) for nursing services can be deducted as a medical expense. The services need not be performed by a nurse if the services are of the kind that are generally performed by a nurse (i.e., giving medication, changing dressings, bathing and grooming the patient. However, if the attendant also provides personal and household services, amounts paid to the attendant must be allocated between personal and medical services (Note: certain

personal care services provided for qualified long-term care can be included in medical expenses).

ii. ***State and Local Income Taxes and Real Estate Taxes.*** There is an overall limitation on the amount of State and Local Income and Real Estate Taxes (referred to as SALT Limitation) that can be claimed as an itemized deduction. From 2017 through 2024, you could not deduct more than \$10,000. From 2025 through 2029, this \$10,000 cap is now \$40,400 (CY 2026) and will increase for inflation for each year through 2029. The deduction is subject to a phaseout for taxpayers with modified adjusted gross income (“MAGI”) exceeding \$500,000 (cap reduced by 30 cents for every dollar over cap but it will not drop below \$10,000).

a. ***State and Local Income Taxes.*** Subject to the cap, a taxpayer can deduct (I) state and local income taxes withheld from their pay during the calendar year, (II) estimated state and local income taxes paid during the year (including the last installment paid in January of the subsequent calendar year for the prior calendar year) and (III) the balance of state and local tax due for the previous calendar year but paid in the current year

when you file the previous calendar year's income tax return.

- b. Generally, to deduct state and local real estate taxes, the taxpayer must have an ownership interest in the property.
- c. Tax Benefit Rule. If a taxpayer claimed an itemized deduction for state and local taxes in the prior year, then the taxpayer generally must include that refund in income to the extent that the refunded amount lowered such person's tax in the earlier calendar year.

C. **Enhanced Senior Deduction (IRCS 151).** An enhanced \$6,000 deduction (Form 1040 Line 13b (From Schedule 1-A (Part V) is available for taxpayers age 65 or over. This amount is reduced by 6% of the amount of MAGI that exceeds \$150,000(JT)/\$75,000(S). MAGI **starts with adjusted gross income** ("AGI"- Line 11 on Form 1040) **and adds back (1) certain deductions** (like student loan interest payments, IRA contributions, one-half of self-employment tax etc.) **and (2) any untaxed income** (like tax-exempt interest from municipal bonds).

IV. Income Tax Filing Requirements for IRS Form1040.

A. General Rule: Tax Filing Requirements for IRS Form 1040 (CY 2026).

<u>Filing Status</u>	<u>GI **for 2026 is at least</u>
Single Under 65	\$16,100
Single 65 or over	\$24,150 (16,100 +2,050+6,000*)
Married/JT and	
Both Spouses are under 65	\$32,200
One Souse Age 65 or over	\$39,850 (32,200 +1,650=6,000*)
Both Spouses Over Age 65	\$47,500 (32,200 + 3,300 + 12,000*)

- B. ** GI includes wages, tips, self-employment income, taxable interest and dividends, capital gains, taxable retirement income and annuities, taxable alimony, rents and taxable trust distributions. GI also includes gain from sale of residence even if partially or totally excluded from GI. SS benefits are excluded from GI unless 50% of SS benefits plus other GI and tax-exempt interest exceeds \$25,000(S)/\$32,000M and JT.) (but only include taxable part of SS benefits in GI).

*Assumes Taxpayers qualify for Enhanced Senior Deduction.

V. Miscellaneous Issues.

A. Qualified Plans (For Example: IRAs, 401(k)s, 403(b)s, 457 Plans).

1. Most States count them as a resource for Medicaid purposes, but many States will not count them as a countable asset if they are in payout status (i.e., the account owner is receiving regular, scheduled periodic distributions from the retirement account).
2. Distributions received from qualified plans count as income for Medicaid purposes.
3. If applicant has reached their Required Beginning Date (“RBD”), Minimum Required Distributions (“MRD”) must be taken annually. Your **RBD is April 1 of the calendar year following the calendar year the applicant turns:**
 - a. Born prior to 7/1/49: Age 70.5.
 - b. Born between 7/1/49 and 12/31/50: Age 72.
 - c. Born between 1/1/51 and 12/31/59: Age 73.
 - d. Born 1/1/60 or later: Age 75.

- B. Grantor Trusts.** A legal arrangement where the creator of the trust (i.e. Settlor) retains certain control or ownership of the trust assets. For Federal Income Tax purposes, the IRS disregards trust, and all income, deductions and credits are reported on the Settlor’s Form 1040.

C. Estate and Gift Tax.

1. Federal Estate Tax.

a. Basic Exclusion Amount (CY 2026): \$15,000,000 (indexed for inflation. If the taxable estate exceeds \$15,000,000, then the excess is taxed at 40%.

B. The income tax basis of an asset received at death is determined by the FMV of such asset at death (exception for IRD assets and appreciated property gifted to a person within one year of death and that same property passes back to the original donor or such donor's spouse). Furthermore, any property received from a decedent is considered as being held for more than one year.

2. Federal Gift Tax.

A. Basic Exclusion Amount (CY 2026): \$15,000,000 (indexed for inflation. If cumulative taxable gifts exceed \$15,000,000, then the excess is taxed at 40%.

B. Annual Exclusion (CY2026): \$19,000 (indexed for inflation).

C. Donee's income tax basis in an asset received by gift is determined by the donor's basis ("carryover basis") and the

holding period of such asset includes the time the donor owned that asset (“tacking”).

3. State Estate and Inheritance Taxes. As of 2026. A. State Estate

Taxes: 12 States and the District of Columbia assess estate taxes. Each State has its own exemption, deductions and tax rates.

State	Estate Tax Exemption (CY 2026)	Approximate Top Rate (%)
Conn	\$15,000,000	12
Hawaii	\$5,490,000	10-20
Illinois	\$4,000,000	.8-16
Maine	\$7,160,000	8-12
Maryland	\$5,000,000	.8-16
Massachusetts	\$2,000,000	.8-16
Minnesota	\$3,000,000	13-16
NY	\$7,350,000	3.06 -16
Oregon	\$1,000,000	10-16
Rhode Island	\$1,838,056	.8-16
Vermont	\$5,000,000	16
Washington	\$3,000,000 (after 6/30/26)	10-20

State	Estate Tax Exemption (CY2026)	Approximate Top Rate (%)
DC	\$4,988,400	11.2-16

B. Inheritance Taxes. Only 5 States impose an inheritance tax: Kentucky, Maryland, Nebraska, New Jersey and Pennsylvania.

C. Both Estate and Inheritance Taxes: Maryland.

VI. Conclusion.

Must Know Individual Income Tax Issues for the Elder Law Practitioner

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The material contained herein is for educational purposes only and is not intended as a substitute for the professional services an advisor would normally provide to a client, including up to the minute research.

(c) Uniform Lifetime Table. The following table, referred to as the Uniform Lifetime Table, sets forth the distribution period that applies for lifetime distributions to an employee in situations in which the employee's surviving spouse is not the sole designated beneficiary. This table is also used if the employee's surviving spouse is the sole designated beneficiary but is not more than 10 years younger than the employee.

TABLE 2 TO PARAGRAPH (C)

Age of employee	Distribution period
72	27.4
73	26.5
74	25.5
75	24.6
76	23.7
77	22.9
78	22.0
79	21.1
80	20.2
81	19.4
82	18.5
83	17.7
84	16.8
85	16.0
86	15.2
87	14.4
88	13.7
89	12.9
90	12.2
91	11.5
92	10.8
93	10.1
94	9.5
95	8.9
96	8.4
97	7.8
98	7.3
99	6.8
100	6.4
101	6.0
102	5.6
103	5.2
104	4.9
105	4.6
106	4.3
107	4.1
108	3.9
109	3.7
110	3.5
111	3.4
112	3.3
113	3.1
114	3.0
115	2.9
116	2.8
117	2.7
118	2.5
119	2.3
120+	2.0

NEW(11/12/20)

Single Life Table. The following table, referred to as the Single Life Table, sets forth the life expectancy of an individual at each age.

TABLE 1 TO PARAGRAPH (b)

Age	Life expectancy
0	84.6
1	83.7
2	82.8
3	81.8
4	80.8
5	79.8
6	78.8
7	77.9
8	76.9
9	75.9
10	74.9
11	73.9
12	72.9
13	71.9
14	70.9
15	69.9
16	69.0
17	68.0
18	67.0
19	66.0
20	65.0
21	64.1
22	63.1
23	62.1
24	61.1
25	60.2
26	59.2
27	58.2
28	57.3
29	56.3
30	55.3
31	54.4
32	53.4
33	52.5
34	51.5
35	50.5
36	49.6
37	48.6
38	47.7
39	46.7
40	45.7
41	44.8
42	43.8
43	42.9
44	41.9
45	41.0
46	40.0
47	39.0
48	38.1
49	37.1
50	36.2
51	35.3
52	34.3
53	33.4
54	32.5
55	31.6
56	30.6
57	29.8

58	28.9
59	28.0
60	27.1
61	26.2
62	25.4
63	24.5
64	23.7
65	22.9
66	22.0
67	21.2
68	20.4
69	19.6
70	18.8
71	18.0
72	17.2
73	16.4
74	15.6
75	14.8
76	14.1
77	13.3
78	12.6
79	11.9
80	11.2
81	10.5
82	9.9
83	9.3
84	8.7
85	8.1
86	7.6
87	7.1
88	6.6
89	6.1
90	5.7
91	5.3
92	4.9
93	4.6
94	4.3
95	4.0
96	3.7
97	3.4
98	3.2
99	3.0
100	2.8
101	2.6
102	2.5
103	2.3
104	2.2
105	2.1
106	2.1
107	2.1
108	2.0
109	2.0
110	2.0
111	2.0
112	1.9
113	1.9
114	1.8
115	1.8
116	1.6
117	1.4
118	1.1
119	1.0
120+	

JOINT TABLE (11/12/20) (1/2)

TABLE 3 TO PARAGRAPH (d)

Ages	54	55	56	57	58	59	60	61	62
8	77.1	77.1	77.1	77.0	77.0	77.0	77.0	77.0	77.0
9	76.1	76.1	76.1	76.1	76.1	76.0	76.0	76.0	76.0
10	75.1	75.1	75.1	75.1	75.1	75.1	75.0	75.0	75.0
11	74.2	74.2	74.1	74.1	74.1	74.1	74.1	74.1	74.0
12	73.2	73.2	73.2	73.1	73.1	73.1	73.1	73.1	73.1
13	72.2	72.2	72.2	72.2	72.1	72.1	72.1	72.1	72.1
14	71.3	71.2	71.2	71.2	71.2	71.2	71.1	71.1	71.1
15	70.3	70.3	70.2	70.2	70.2	70.2	70.2	70.1	70.1
16	69.3	69.3	69.3	69.3	69.2	69.2	69.2	69.2	69.2
17	68.4	68.3	68.3	68.3	68.3	68.2	68.2	68.2	68.2
18	67.4	67.4	67.4	67.3	67.3	67.3	67.3	67.2	67.2
19	66.5	66.4	66.4	66.4	66.3	66.3	66.3	66.3	66.2
20	65.5	65.5	65.4	65.4	65.4	65.4	65.3	65.3	65.3
21	64.6	64.5	64.5	64.5	64.4	64.4	64.4	64.3	64.3
22	63.6	63.6	63.5	63.5	63.5	63.4	63.4	63.4	63.4
23	62.7	62.6	62.6	62.5	62.5	62.5	62.4	62.4	62.4
24	61.7	61.7	61.6	61.6	61.6	61.5	61.5	61.5	61.4
25	60.8	60.8	60.7	60.7	60.6	60.6	60.5	60.5	60.5
26	59.9	59.8	59.8	59.7	59.7	59.6	59.6	59.6	59.5
27	59.0	58.9	58.8	58.8	58.7	58.7	58.7	58.6	58.6
28	58.0	58.0	57.9	57.9	57.8	57.8	57.7	57.7	57.6
29	57.1	57.1	57.0	56.9	56.9	56.8	56.8	56.7	56.7
30	56.2	56.2	56.1	56.0	56.0	55.9	55.9	55.8	55.8
31	55.3	55.3	55.2	55.1	55.0	55.0	54.9	54.9	54.8
32	54.5	54.4	54.3	54.2	54.1	54.1	54.0	54.0	53.9
33	53.6	53.5	53.4	53.3	53.2	53.2	53.1	53.0	53.0
34	52.7	52.6	52.5	52.4	52.3	52.2	52.2	52.1	52.1
35	51.8	51.7	51.6	51.5	51.4	51.3	51.3	51.2	51.1
36	51.0	50.9	50.7	50.6	50.5	50.5	50.4	50.3	50.2
37	50.1	50.0	49.9	49.8	49.7	49.6	49.5	49.4	49.3
38	49.3	49.1	49.0	48.9	48.8	48.7	48.6	48.5	48.4
39	48.5	48.3	48.2	48.0	47.9	47.8	47.7	47.6	47.5
40	47.7	47.5	47.3	47.2	47.1	46.9	46.8	46.7	46.6
41	46.9	46.7	46.5	46.3	46.2	46.1	46.0	45.8	45.7
42	46.1	45.9	45.7	45.5	45.4	45.2	45.1	45.0	44.9
43	45.3	45.1	44.9	44.7	44.5	44.4	44.3	44.1	44.0
44	44.6	44.3	44.1	43.9	43.7	43.6	43.4	43.3	43.1
45	43.8	43.6	43.4	43.1	42.9	42.8	42.6	42.4	42.3
46	43.1	42.9	42.6	42.4	42.2	42.0	41.8	41.6	41.5
47	42.5	42.2	41.9	41.6	41.4	41.2	41.0	40.8	40.6
48	41.8	41.5	41.2	40.9	40.7	40.4	40.2	40.0	39.8
49	41.2	40.8	40.5	40.2	39.9	39.7	39.5	39.2	39.0
50	40.6	40.2	39.8	39.5	39.2	39.0	38.7	38.5	38.3
51	40.0	39.6	39.2	38.9	38.6	38.3	38.0	37.7	37.5
52	39.4	39.0	38.6	38.2	37.9	37.6	37.3	37.0	36.8
53	38.9	38.4	38.0	37.6	37.3	36.9	36.6	36.3	36.1
54	38.4	37.9	37.5	37.1	36.7	36.3	36.0	35.7	35.4
55	37.9	37.4	36.9	36.5	36.1	35.7	35.3	35.0	34.7
56	37.5	36.9	36.5	36.0	35.5	35.1	34.8	34.4	34.1
57	37.1	36.5	36.0	35.5	35.0	34.6	34.2	33.8	33.4
58	36.7	36.1	35.5	35.0	34.5	34.1	33.6	33.2	32.8
59	36.3	35.7	35.1	34.6	34.1	33.6	33.1	32.7	32.3
60	36.0	35.3	34.8	34.2	33.6	33.1	32.6	32.2	31.7
61	35.7	35.0	34.4	33.8	33.2	32.7	32.2	31.7	31.2
62	35.4	34.7	34.1	33.4	32.8	32.3	31.7	31.2	30.8
63	35.1	34.4	33.8	33.1	32.5	31.9	31.3	30.8	30.3
64	34.9	34.2	33.5	32.8	32.2	31.5	31.0	30.4	29.9
65	34.6	33.9	33.2	32.5	31.9	31.2	30.6	30.0	29.5
66	34.4	33.7	33.0	32.3	31.6	30.9	30.3	29.7	29.1
67	34.2	33.5	32.7	32.0	31.3	30.6	30.0	29.4	28.7
68	34.1	33.3	32.5	31.8	31.1	30.4	29.7	29.1	28.4
69	33.9	33.1	32.3	31.6	30.9	30.1	29.4	28.8	28.1
70	33.8	33.0	32.2	31.4	30.7	29.9	29.2	28.5	27.9
71	33.6	32.8	32.0	31.2	30.5	29.7	29.0	28.3	27.6
72	33.5	32.7	31.9	31.1	30.3	29.5	28.8	28.1	27.4
73	33.4	32.6	31.7	30.9	30.1	29.4	28.6	27.9	27.2
74	33.3	32.4	31.6	30.8	30.0	29.2	28.4	27.7	27.0
75	33.2	32.4	31.5	30.7	29.9	29.1	28.3	27.5	26.8
76	33.1	32.3	31.4	30.6	29.8	29.0	28.2	27.4	26.6
77	33.0	32.2	31.3	30.5	29.7	28.8	28.0	27.3	26.5
78	33.0	32.1	31.2	30.4	29.6	28.7	27.9	27.1	26.4
79	32.9	32.0	31.2	30.3	29.5	28.7	27.8	27.0	26.2

TABLE 3 TO PARAGRAPH (d)

Ages	63	64	65	66	67	68	69	70	71
28	57.6	57.6	57.5	57.5	57.5	57.5	57.5	57.4	57.4
29	56.7	56.6	56.6	56.6	56.5	56.5	56.5	56.5	56.5
30	55.7	55.7	55.7	55.6	55.6	55.6	55.6	55.5	55.5
31	54.8	54.8	54.7	54.7	54.7	54.6	54.6	54.6	54.6
32	53.9	53.8	53.8	53.7	53.7	53.7	53.7	53.6	53.6
33	52.9	52.9	52.8	52.8	52.8	52.7	52.7	52.7	52.7
34	52.0	52.0	51.9	51.9	51.8	51.8	51.8	51.7	51.7
35	51.1	51.0	51.0	50.9	50.9	50.9	50.8	50.8	50.8
36	50.2	50.1	50.1	50.0	50.0	49.9	49.9	49.9	49.8
37	49.3	49.2	49.1	49.1	49.0	49.0	49.0	48.9	48.9
38	48.3	48.3	48.2	48.2	48.1	48.1	48.0	48.0	47.9
39	47.4	47.4	47.3	47.2	47.2	47.1	47.1	47.0	47.0
40	46.5	46.5	46.4	46.3	46.3	46.2	46.2	46.1	46.1
41	45.7	45.6	45.5	45.4	45.4	45.3	45.2	45.2	45.1
42	44.8	44.7	44.6	44.5	44.4	44.4	44.3	44.3	44.2
43	43.9	43.8	43.7	43.6	43.5	43.5	43.4	43.3	43.3
44	43.0	42.9	42.8	42.7	42.6	42.6	42.5	42.4	42.4
45	42.2	42.1	41.9	41.8	41.8	41.7	41.6	41.5	41.5
46	41.3	41.2	41.1	41.0	40.9	40.8	40.7	40.6	40.6
47	40.5	40.4	40.2	40.1	40.0	39.9	39.8	39.7	39.7
48	39.7	39.5	39.4	39.3	39.1	39.0	38.9	38.8	38.8
49	38.9	38.7	38.6	38.4	38.3	38.2	38.1	38.0	37.9
50	38.1	37.9	37.7	37.6	37.5	37.3	37.2	37.1	37.0
51	37.3	37.1	36.9	36.8	36.6	36.5	36.4	36.2	36.1
52	36.6	36.3	36.2	36.0	35.8	35.7	35.5	35.4	35.3
53	35.8	35.6	35.4	35.2	35.0	34.9	34.7	34.6	34.5
54	35.1	34.9	34.6	34.4	34.2	34.1	33.9	33.8	33.6
55	34.4	34.2	33.9	33.7	33.5	33.3	33.1	33.0	32.8
56	33.8	33.5	33.2	33.0	32.7	32.5	32.3	32.2	32.0
57	33.1	32.8	32.5	32.3	32.0	31.8	31.6	31.4	31.2
58	32.5	32.2	31.9	31.6	31.3	31.1	30.9	30.7	30.5
59	31.9	31.5	31.2	30.9	30.6	30.4	30.1	29.9	29.7
60	31.3	31.0	30.6	30.3	30.0	29.7	29.4	29.2	29.0
61	30.8	30.4	30.0	29.7	29.4	29.1	28.8	28.5	28.3
62	30.3	29.9	29.5	29.1	28.7	28.4	28.1	27.9	27.6
63	29.8	29.4	28.9	28.5	28.2	27.8	27.5	27.2	26.9
64	29.4	28.9	28.4	28.0	27.6	27.2	26.9	26.6	26.3
65	28.9	28.4	28.0	27.5	27.1	26.7	26.3	26.0	25.7
66	28.5	28.0	27.5	27.0	26.6	26.2	25.8	25.4	25.1
67	28.2	27.6	27.1	26.6	26.1	25.7	25.3	24.9	24.5
68	27.8	27.2	26.7	26.2	25.7	25.2	24.8	24.3	23.9
69	27.5	26.9	26.3	25.8	25.3	24.8	24.3	23.9	23.4
70	27.2	26.6	26.0	25.4	24.9	24.3	23.9	23.4	22.9
71	26.9	26.3	25.7	25.1	24.5	24.0	23.4	22.9	22.5
72	26.7	26.0	25.4	24.8	24.2	23.6	23.1	22.5	22.0
73	26.5	25.8	25.1	24.5	23.9	23.3	22.7	22.2	21.6
74	26.2	25.5	24.9	24.2	23.6	23.0	22.4	21.8	21.3
75	26.1	25.3	24.6	24.0	23.3	22.7	22.1	21.5	20.9
76	25.9	25.2	24.4	23.7	23.1	22.4	21.8	21.2	20.6
77	25.7	25.0	24.3	23.5	22.9	22.2	21.5	20.9	20.3
78	25.6	24.8	24.1	23.4	22.7	22.0	21.3	20.6	20.0
79	25.5	24.7	23.9	23.2	22.5	21.8	21.1	20.4	19.8
80	25.3	24.6	23.8	23.1	22.3	21.6	20.9	20.2	19.6
81	25.2	24.5	23.7	22.9	22.2	21.5	20.7	20.0	19.4
82	25.2	24.4	23.6	22.8	22.1	21.3	20.6	19.9	19.2
83	25.1	24.3	23.5	22.7	22.0	21.2	20.5	19.7	19.0
84	25.0	24.2	23.4	22.6	21.9	21.1	20.4	19.6	18.9
85	25.0	24.1	23.3	22.6	21.8	21.0	20.3	19.5	18.8
86	24.9	24.1	23.3	22.5	21.7	20.9	20.2	19.4	18.7
87	24.9	24.0	23.2	22.4	21.6	20.8	20.1	19.3	18.6
88	24.8	24.0	23.2	22.4	21.6	20.7	20.0	19.2	18.5
89	24.8	24.0	23.1	22.3	21.5	20.7	19.9	19.1	18.4
90	24.7	23.9	23.1	22.3	21.5	20.7	19.9	19.1	18.3
91	24.7	23.9	23.0	22.2	21.4	20.6	19.8	19.0	18.2
92	24.7	23.8	23.0	22.2	21.4	20.6	19.8	19.0	18.2
93	24.7	23.8	23.0	22.2	21.4	20.6	19.8	19.0	18.2
94	24.6	23.8	23.0	22.2	21.4	20.6	19.7	18.9	18.2
95	24.6	23.8	23.0	22.2	21.3	20.5	19.7	18.9	18.1
96	24.6	23.8	23.0	22.2	21.3	20.5	19.7	18.9	18.1
97	24.6	23.8	22.9	22.1	21.3	20.5	19.7	18.9	18.1
98	24.6	23.8	22.9	22.1	21.3	20.5	19.7	18.9	18.1
99	24.6	23.8	22.9	22.1	21.3	20.5	19.7	18.9	18.1

For the year Jan. 1–Dec. 31, 2025, or other tax year beginning , 2025, ending , 20 See separate instructions.

☐ Filed pursuant to section 301.9100-2 ☐ Combat zone ☐ Deceased MM / DD / YYYY Spouse MM / DD / YYYY

☐ Other

Your first name and middle initial Last name Your social security number

If joint return, spouse's first name and middle initial Last name Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. Check here if your main home, and your spouse's if filing a joint return, was in the U.S. for more than half of 2025. ☐

City, town, or post office. If you have a foreign address, also complete spaces below. State ZIP code Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Foreign country name Foreign province/state/county Foreign postal code

Filing Status ☐ Single ☐ Head of household (HOH) ☐ Married filing jointly (even if only one had income) ☐ Qualifying surviving spouse (QSS) ☐ Married filing separately (MFS). Enter spouse's SSN above and full name here: If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: ☐ If treating a nonresident alien or dual-status alien spouse as a U.S. resident for the entire tax year, check the box and enter their name (see instructions and attach statement if required):

Digital Assets At any time during 2025, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) ☐ Yes ☐ No

Dependents	Dependent 1	Dependent 2	Dependent 3	Dependent 4
(1) First name				
(2) Last name				
(3) SSN				
(4) Relationship				
(5) Check if lived with you more than half of 2025	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.
(6) Check if	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled
(7) Credits	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents

☐ Check if your filing status is MFS or HOH and you lived apart from your spouse for the last 6 months of 2025, or you are legally separated according to your state law under a written separation agreement or a decree of separate maintenance and you did not live in the same household as your spouse at the end of 2025.

Income Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If you did not get a Form W-2, see instructions.	1a	Total amount from Form(s) W-2, box 1 (see instructions)		1a
	b	Household employee wages not reported on Form(s) W-2		1b
	c	Tip income not reported on line 1a (see instructions)		1c
	d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)		1d
	e	Taxable dependent care benefits from Form 2441, line 26		1e
	f	Employer-provided adoption benefits from Form 8839, line 31		1f
	g	Wages from Form 8919, line 6		1g
	h	Other earned income (see instructions). Enter type and amount: _____		1h
	i	Nontaxable combat pay election (see instructions)	1i	
	z	Add lines 1a through 1h		1z
	Attach Sch. B if required.	2a	Tax-exempt interest	
3a		Qualified dividends		3b
c		Check if your child's dividends are included in 1 ☐ Line 3a 2 ☐ Line 3b		
4a		IRA distributions		4b
c		Check if (see instructions) 1 ☐ Rollover 2 ☐ QCD 3 ☐		
5a		Pensions and annuities		5b
c		Check if (see instructions) 1 ☐ Rollover 2 ☐ PSO 3 ☐		
6a		Social security benefits		6b
c		If you elect to use the lump-sum election method, check here (see instructions) ☐		
d		If you are married filing separately and lived apart from your spouse the entire year (see inst.), check here ☐		
7a		Capital gain or (loss). Attach Schedule D if required		7a
b		Check if: ☐ Schedule D not required ☐ Includes child's capital gain or (loss) _____		
8		Additional income from Schedule 1, line 10		8
9		Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7a, and 8. This is your total income		9
10		Adjustments to income from Schedule 1, line 26		10
11a		Subtract line 10 from line 9. This is your adjusted gross income		11a

Tax and Credits

11b	Amount from line 11a (adjusted gross income)	11b
12a	Someone can claim ☐ You as a dependent ☐ Your spouse as a dependent	
b	☐ Spouse itemizes on a separate return c ☐ You were a dual-status alien	
d	You: ☐ Were born before January 2, 1961 ☐ Are blind	
	Spouse: ☐ Was born before January 2, 1961 ☐ Is blind	
e	Standard deduction or itemized deductions (from Schedule A)	12e
13a	Qualified business income deduction from Form 8995 or Form 8995-A	13a
b	Additional deductions from Schedule 1-A, line 38	13b
14	Add lines 12e, 13a, and 13b	14
15	Subtract line 14 from line 11b. If zero or less, enter -0-. This is your taxable income	15
16	Tax (see instructions). Check if any from Form(s): 1 ☐ 8814 2 ☐ 4972 3 ☐	16
17	Amount from Schedule 2, line 3	17
18	Add lines 16 and 17	18
19	Child tax credit or credit for other dependents from Schedule 8812	19
20	Amount from Schedule 3, line 8	20
21	Add lines 19 and 20	21
22	Subtract line 21 from line 18. If zero or less, enter -0-	22
23	Other taxes, including self-employment tax, from Schedule 2, line 21	23
24	Add lines 22 and 23. This is your total tax	24

Standard deduction for—

- Single or Married filing separately, \$15,750
- Married filing jointly or Qualifying surviving spouse, \$31,500
- Head of household, \$23,625
- If you checked a box on line 12a, 12b, 12c, or 12d, see inst.

Payments and Refundable Credits

25	Federal income tax withheld from:	
a	Form(s) W-2	25a
b	Form(s) 1099	25b
c	Other forms (see instructions)	25c
d	Add lines 25a through 25c	25d
26	2025 estimated tax payments and amount applied from 2024 return	26
	If you made estimated tax payments with your former spouse in 2025, enter their SSN (see instructions):	
27a	Earned income credit (EIC)	27a
b	Clergy filing Schedule SE (see instructions)	☐
c	If you do not want to claim the EIC, check here	☐
28	Additional child tax credit (ACTC) from Schedule 8812. If you do not want to claim the ACTC, check here	☐ 28
29	American opportunity credit from Form 8863, line 8	29
30	Refundable adoption credit from Form 8839, line 13	30
31	Amount from Schedule 3, line 15	31
32	Add lines 27a, 28, 29, 30, and 31. These are your total other payments and refundable credits	32
33	Add lines 25d, 26, and 32. These are your total payments	33

Refund

Direct deposit? See instructions.

34	If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you overpaid	34
35a	Amount of line 34 you want refunded to you . If Form 8888 is attached, check here ☐	35a
b	Routing number	c Type: ☐ Checking ☐ Savings
d	Account number	
36	Amount of line 34 you want applied to your 2026 estimated tax	36

Amount You Owe

37	Subtract line 33 from line 24. This is the amount you owe . For details on how to pay, go to www.irs.gov/Payments or see instructions	37
38	Estimated tax penalty (see instructions)	38

Third Party Designee

Do you want to allow another person to discuss this return with the IRS? See instructions. ☐ Yes . Complete below. ☐ No		
Designee's name	Phone no.	Personal identification number (PIN)

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)
Phone no.	Email address		

Paid Preparer Use Only

Preparer's name	Preparer's signature	Date	PTIN	Check if: ☐ Self-employed
Firm's name	Phone no.			
Firm's address	Firm's EIN			

**SCHEDULE 1
(Form 1040)**

Department of the Treasury
Internal Revenue Service

Additional Income and Adjustments to Income

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1545-0074

2025

Attachment
Sequence No. **01**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Your social security number

For 2025, enter the amount reported to you on Form(s) 1099-K that was included in error or for personal items sold at a loss

Note: The remaining amounts reported to you on Form(s) 1099-K should be reported elsewhere on your return depending on the nature of the transaction. See www.irs.gov/1099k.

Part I Additional Income

1	Taxable refunds, credits, or offsets of state and local income taxes	1	
2a	Alimony received	2a	
b	Date of original divorce or separation agreement (see instructions): _____		
3	Business income or (loss). Attach Schedule C	3	
4	Other gains or (losses). Check if any from Form(s): ☐ 4797 ☐ 4684	4	
5	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	5	
6	Farm income or (loss). Attach Schedule F	6	
7	Unemployment compensation. If you repaid a 2025 overpayment (see instructions), check here ☐ and enter amount repaid: _____	7	
8	Other income:		
a	Net operating loss	8a	()
b	Gambling	8b	
c	Cancellation of debt	8c	
d	Foreign earned income exclusion from Form 2555	8d	()
e	Income from Form 8853	8e	
f	Income from Form 8889	8f	
g	Alaska Permanent Fund dividends	8g	
h	Jury duty pay	8h	
i	Prizes and awards	8i	
j	Activity not engaged in for profit income	8j	
k	Stock options	8k	
l	Income from the rental of personal property if you engaged in the rental for profit but were not in the business of renting such property	8l	
m	Olympic and Paralympic medals and USOC prize money (see instructions)	8m	
n	Section 951(a) inclusion (see instructions)	8n	
o	Section 951A(a) inclusion (see instructions)	8o	
p	Section 461(l) excess business loss adjustment	8p	
q	Taxable distributions from an ABLE account (see instructions)	8q	
r	Scholarship and fellowship grants not reported on Form W-2	8r	
s	Nontaxable amount of Medicaid waiver payments included on Form 1040, line 1a or 1d	8s	()
t	Pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan	8t	
u	Wages earned while incarcerated	8u	
v	Digital assets received as ordinary income not reported elsewhere. See instructions	8v	
z	Other income. List type and amount: _____	8z	
9	Total other income. Add lines 8a through 8z	9	
10	Combine lines 1 through 7 and 9. This is your additional income . Enter here and on Form 1040, 1040-SR, or 1040-NR, line 8	10	

Part II Adjustments to Income

11	Educator expenses		11
12	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106		12
13	Health savings account deduction. Attach Form 8889		13
14	Moving expenses for members of the Armed Forces. Attach Form 3903. If claiming only storage fees (see instructions), check here ☐		14
15	Deductible part of self-employment tax. Attach Schedule SE		15
16	Self-employed SEP, SIMPLE, and qualified plans		16
17	Self-employed health insurance deduction		17
18	Penalty on early withdrawal of savings		18
19a	Alimony paid		19a
b	Recipient's SSN		
c	Date of original divorce or separation agreement (see instructions):		
20	IRA deduction. If you are married filing separately and lived apart from your spouse for the entire year (see instructions), check here ☐		20
21	Student loan interest deduction		21
22	Reserved for future use		22
23	Archer MSA deduction		23
24	Other adjustments:		
a	Jury duty pay (see instructions)	24a	
b	Deductible expenses related to income reported on line 8l from the rental of personal property engaged in for profit	24b	
c	Nontaxable amount of the value of Olympic and Paralympic medals and USOC prize money reported on line 8m	24c	
d	Reforestation amortization and expenses	24d	
e	Repayment of supplemental unemployment benefits under the Trade Act of 1974	24e	
f	Contributions to section 501(c)(18)(D) pension plans	24f	
g	Contributions by certain chaplains to section 403(b) plans	24g	
h	Attorney fees and court costs for actions involving certain unlawful discrimination claims (see instructions)	24h	
i	Attorney fees and court costs you paid in connection with an award from the IRS for information you provided that helped the IRS detect tax law violations	24i	
j	Housing deduction from Form 2555	24j	
k	Excess deductions of section 67(e) expenses from Schedule K-1 (Form 1041)	24k	
z	Other adjustments. List type and amount:		
		24z	
25	Total other adjustments. Add lines 24a through 24z		25
26	Add lines 11 through 23 and 25. These are your adjustments to income . Enter here and on Form 1040, 1040-SR, or 1040-NR, line 10		26

**SCHEDULE 1-A
(Form 1040)**

Department of the Treasury
Internal Revenue Service

Additional Deductions

Attach to Form 1040, 1040-SR, or 1040-NR.

Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1545-0074

2025

Attachment
Sequence No. **1A**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Your social security number

Part I Modified Adjusted Gross Income (MAGI) Amount

1	Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 11b		1	
2a	Enter any income from Puerto Rico that you excluded	2a		
b	Enter the amount from Form 2555, line 45	2b		
c	Enter the amount from Form 2555, line 50	2c		
d	Enter the amount from Form 4563, line 15	2d		
e	Add lines 2a, 2b, 2c, and 2d		2e	
3	Add lines 1 and 2e		3	

Part II No Tax on Tips

Caution: Fill out Part II only if you received qualified tips. These tips must have been received in an occupation listed at IRS.gov/TippedOccupations. You and/or your spouse who received qualified tips must have a valid social security number to claim the deduction. If married, you must file jointly to claim this deduction. See instructions.

4	Qualified tips received as an employee. If you received tips as an employee with respect to employment with more than one employer, enter -0- on lines 4a and 4b and see the instructions to determine the amount to enter on line 4c. If you received tips as an employee in more than one occupation, see the instructions.			
a	Enter qualified tips included on Form W-2, box 7, but see the instructions if Form W-2, box 5 is more than \$176,100 or you received tips that are not subject to social security and Medicare taxes	4a		
b	Qualified tips included on Form 4137, line 1, row A, column (c). If Form 4137 is not filed, enter -0-	4b		
c	If you only received qualified tips as an employee with respect to employment with one employer, enter the larger of line 4a or line 4b. Otherwise, see the instructions to determine the amount to enter on line 4c. If you received tips as an employee in more than one occupation, see the instructions		4c	
5	Qualified tips received in the course of a trade or business. Qualified tip amount included in Form 1099-NEC, box 1; Form 1099-MISC, box 3; or Form 1099-K, box 1a. Do not enter more than the net profit from the trade or business. If you received qualified tips in the course of more than one trade or business or in more than one occupation, see instructions		5	
6	Add lines 4c and 5		6	
7	Enter the smaller of the amount on line 6 or \$25,000		7	
8	Enter the amount from line 3		8	
9	Enter \$150,000 (\$300,000 if married filing jointly)		9	
10	Subtract line 9 from line 8. If zero or less, enter the amount from line 7 on line 13		10	
11	Divide line 10 by \$1,000. If the resulting number isn't a whole number, decrease the result to the next lower whole number. (For example, decrease 1.5 to 1, and decrease 0.05 to 0.)		11	
12	Multiply line 11 by \$100		12	
13	Qualified tips deduction. Subtract line 12 from line 7. If zero or less, enter -0-		13	

Part III No Tax on Overtime

Caution: Fill out Part III only if you received qualified overtime compensation. You and/or your spouse who received the qualified overtime compensation must have a valid social security number to claim this deduction. If married, you must file jointly to claim this deduction. See instructions.

14a	Qualified overtime compensation included in Form W-2, box 1. If you received qualified overtime compensation not reported on Form W-2, box 1, see instructions	14a		
b	Qualified overtime compensation included in Form 1099-NEC, box 1, or Form 1099-MISC, box 3 (see instructions)	14b		
c	Add lines 14a and 14b		14c	
15	Enter the smaller of the amount on line 14c or \$12,500 (\$25,000 if married filing jointly)		15	
16	Enter the amount from line 3		16	
17	Enter \$150,000 (\$300,000 if married filing jointly)		17	
18	Subtract line 17 from line 16. If zero or less, enter the amount from line 15 on line 21		18	
19	Divide line 18 by \$1,000. If the resulting number isn't a whole number, decrease the result to the next lower whole number. (For example, decrease 1.5 to 1, and decrease 0.05 to 0.)		19	
20	Multiply line 19 by \$100		20	
21	Qualified overtime compensation deduction. Subtract line 20 from line 15. If zero or less, enter -0-		21	

Part IV No Tax on Car Loan Interest

Caution: Fill out Part IV only if you, or your spouse if married filing jointly, paid or accrued qualified passenger vehicle loan interest (QPVLI). Column (iii) is the total QPVLI paid in 2025 less the amounts reported in column (ii). See instructions.

22 Applicable passenger vehicle (see instructions). If more than two VINs, see instructions.

		Interest for this loan:	
(i) Vehicle identification number (VIN)		(ii) Deducted on Schedule C, Schedule E, or Schedule F	(iii) Schedule 1-A
a			
b			
23	Add lines 22a and 22b, column (iii)	23	
24	Enter the smaller of the amount on line 23 or \$10,000	24	
25	Enter the amount from line 3	25	
26	Enter \$100,000 (\$200,000 if married filing jointly)	26	
27	Subtract line 26 from line 25. If zero or less, enter the amount from line 24 on line 30	27	
28	Divide line 27 by \$1,000. If the resulting number isn't a whole number, increase the result to the next higher whole number. (For example, increase 1.5 to 2, and increase 0.05 to 1.)	28	
29	Multiply line 28 by \$200	29	
30	Qualified passenger vehicle loan interest deduction. Subtract line 29 from line 24. If zero or less, enter -0-	30	

Part V Enhanced Deduction for Seniors

Caution: You and/or your spouse must have a valid social security number. If married, you must file jointly to claim this deduction. See instructions.

31	Enter the amount from line 3	31	
32	Enter \$75,000 (\$150,000 if married filing jointly)	32	
33	Subtract line 32 from line 31. If zero or less, enter \$6,000 on line 35	33	
34	Multiply line 33 by 6% (0.06)	34	
35	Subtract line 34 from \$6,000. If zero or less, enter -0-	35	
36a	If you have a valid social security number (see instructions) and were born before January 2, 1961, enter the amount from line 35	36a	
b	If you are married filing jointly, your spouse has a valid social security number (see instructions), and your spouse was born before January 2, 1961, enter the amount from line 35	36b	
37	Enhanced deduction for seniors. Add lines 36a and 36b	37	

Part VI Total Additional Deductions

38	Add lines 13, 21, 30, and 37. Enter here and on Form 1040 or 1040-SR, line 13b, or on Form 1040-NR, line 13c	38	
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SCHEDULE 2
(Form 1040)

Department of the Treasury
Internal Revenue Service

Additional Taxes

Attach to Form 1040, 1040-SR, or 1040-NR.

Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1545-0074

2025

Attachment
Sequence No. **02**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Your social security number

Part I Tax

1 Additions to tax:

- a** Excess advance premium tax credit repayment. Attach Form 8962
- b** Repayment of new clean vehicle credit(s) transferred to a registered dealer from Schedule A (Form 8936), Part II. Attach Form 8936 and Schedule A (Form 8936)
- c** Repayment of previously owned clean vehicle credit(s) transferred to a registered dealer from Schedule A (Form 8936), Part IV. Attach Form 8936 and Schedule A (Form 8936)
- d** Recapture of net EPE from Form 4255, line 2a, column (I)
- e** Excessive payments (EPs) on gross EPE from Form 4255. Check applicable box and enter amount. See instructions.
(i) ☐ Line 1a (ii) ☐ Line 1c
(iii) ☐ Line 1d (iv) ☐ Line 2a
- f** 20% EP from Form 4255. Check applicable box and enter amount. See instructions.
(i) ☐ Line 1a (ii) ☐ Line 1c
(iii) ☐ Line 1d (iv) ☐ Line 2a
- y** Other additions to tax (see instructions): _____

1a

1b

1c

1d

1e

1f

1y

z Add lines 1a through 1y

2 Alternative minimum tax. Attach Form 6251

3 Add lines 1z and 2. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 17

Part II Other Taxes

4 Self-employment tax. Attach Schedule SE. Check if any exemption from (see instructions):

1 ☐ 4361 **2** ☐ 4029 **3** ☐ _____

5 Social security and Medicare tax on unreported tip income. Attach Form 4137

6 Uncollected social security and Medicare tax on wages. Attach Form 8919

7 Total additional social security and Medicare tax. Add lines 5 and 6

8 Additional tax on IRAs or other tax-favored accounts. Attach Form 5329 if required.

If not required, check here ☐

9 Household employment taxes. Attach Schedule H

10 Reserved for future use

11 Additional Medicare Tax. Attach Form 8959

12 Net investment income tax. Attach Form 8960

13 Uncollected social security and Medicare or RRTA tax on tips or group-term life insurance from Form W-2, box 12

14 Interest on tax due on installment income from the sale of certain residential lots and timeshares

15 Interest on the deferred tax on gain from certain installment sales with a sales price over \$150,000

16 Recapture of low-income housing credit. Attach Form 8611

4

5

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12

13

14

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16

(continued on page 2)

Part II Other Taxes (continued)

17	Other additional taxes:		
a	Recapture of other credits. List type, form number, and amount:	17a	
b	Recapture of federal mortgage subsidy. If you sold your home, see instructions	17b	
c	Additional tax on HSA distributions. Attach Form 8889	17c	
d	Additional tax on an HSA because you didn't remain an eligible individual. Attach Form 8889	17d	
e	Additional tax on Archer MSA distributions. Attach Form 8853	17e	
f	Additional tax on Medicare Advantage MSA distributions. Attach Form 8853	17f	
g	Recapture of a charitable contribution deduction related to a fractional interest in tangible personal property	17g	
h	Income you received from a nonqualified deferred compensation plan that fails to meet the requirements of section 409A	17h	
i	Compensation you received from a nonqualified deferred compensation plan described in section 457A	17i	
j	Section 72(m)(5) excess benefits tax	17j	
k	Golden parachute payments	17k	
l	Tax on accumulation distribution of trusts	17l	
m	Excise tax on insider stock compensation from an expatriated corporation	17m	
n	Look-back interest under section 167(g) or 460(b) from Form 8697 or 8866	17n	
o	Tax on non-effectively connected income for any part of the year you were a nonresident alien from Form 1040-NR	17o	
p	Any interest from Form 8621, line 16f, relating to distributions from, and dispositions of, stock of a section 1291 fund	17p	
q	Any interest from Form 8621, line 24	17q	
z	Any other taxes. List type and amount:	17z	
18	Total additional taxes. Add lines 17a through 17z		18
19	Recapture of net EPE from Form 4255, line 1d, column (l)		19
20	Section 965 net tax liability installment from Form 965-A	20	
21	Add lines 4, 7 through 16, 18, and 19. These are your total other taxes . Enter here and on Form 1040 or 1040-SR, line 23; or Form 1040-NR, line 23b		21

**SCHEDULE A
(Form 1040)**

Department of the Treasury
Internal Revenue Service

Itemized Deductions

Attach to Form 1040 or 1040-SR.

Go to www.irs.gov/ScheduleA for instructions and the latest information.

Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 16.

OMB No. 1545-0074

2025

Attachment
Sequence No. **07**

Name(s) shown on Form 1040 or 1040-SR

Your social security number

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others.		
1	Medical and dental expenses (see instructions)	1	
2	Enter amount from Form 1040 or 1040-SR, line 11b	2	
3	Multiply line 2 by 7.5% (0.075)	3	
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4	
Taxes You Paid	5 State and local taxes (SALT).		
	a State and local income taxes or general sales taxes. You may include either income taxes or general sales taxes on line 5a, but not both. If you elect to include general sales taxes instead of income taxes, check this box ☐	5a	
	b State and local real estate taxes (see instructions)	5b	
	c State and local personal property taxes	5c	
	d Add lines 5a through 5c	5d	
	e Enter the smaller of line 5d or \$40,000 (\$20,000 if married filing separately). If Form 1040 or 1040-SR, line 11b is more than \$500,000 (\$250,000 if married filing separately), or if you completed Form 2555, Form 4563, or excluded income from Puerto Rico, see instructions	5e	
	6 Other taxes. List type and amount:	6	
	7 Add lines 5e and 6	7	
Interest You Paid	8 Home mortgage interest and points. If you didn't use all of your home mortgage loan(s) to buy, build, or improve your home, see instructions and check this box ☐		
Caution: Your mortgage interest deduction may be limited. See instructions.	a Home mortgage interest and points reported to you on Form 1098. See instructions if limited	8a	
	b Home mortgage interest not reported to you on Form 1098. See instructions if limited. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address	8b	
	c Points not reported to you on Form 1098. See instructions for special rules	8c	
	d Reserved for future use	8d	
	e Add lines 8a through 8c	8e	
	9 Investment interest. Attach Form 4952 if required. See instructions	9	
	10 Add lines 8e and 9	10	
Gifts to Charity	11 Gifts by cash or check. If you made any gift of \$250 or more, see instructions	11	
Caution: If you made a gift and got a benefit for it, see instructions.	12 Other than by cash or check. If you made any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	12	
	13 Carryover from prior year	13	
	14 Add lines 11 through 13	14	
Casualty and Theft Losses	15 Casualty and theft loss(es) from a federally declared disaster (other than net qualified disaster losses). Attach Form 4684 and enter the amount from line 18 of that form. See instructions	15	
Other Itemized Deductions	16 Other—from list in instructions. List type and amount:	16	
Total Itemized Deductions	17 Add the amounts in the far right column for lines 4 through 16. Also, enter this amount on Form 1040 or 1040-SR, line 12e	17	
	18 If you elect to itemize deductions even though they are less than your standard deduction, check this box ☐		

Social Security Benefits Worksheet—Lines 6a and 6b

Keep for Your Records

Before you begin: ✓ If the instructions for Schedule 1, line 24z, have you enter a write-in adjustment on line 24z, figure that write-in before completing this worksheet (see the instructions for Schedule 1, line 24z).
 ✓ If you are married filing separately and you lived apart from your spouse for all of 2025, check the box on line 6d.
 ✓ Be sure you have read the **Exception** in the line 6a and 6b instructions to see if you can use this worksheet instead of a publication to find out if any of your benefits are taxable.

1. Enter the total amount from **box 5** of **all** your **Forms SSA-1099** and **RRB-1099**. Also enter this amount on Form 1040 or 1040-SR, line 6a **1.** _____
2. Multiply line 1 by 50% (0.50) **2.** _____
3. Combine the amounts from Form 1040 or 1040-SR, lines 1z, 2b, 3b, 4b, 5b, 7a, and 8 **3.** _____
4. Enter the amount, if any, from Form 1040 or 1040-SR, line 2a **4.** _____
5. Combine lines 2, 3, and 4 **5.** _____
6. Enter the total of the amounts from Schedule 1, lines 11 through 20, and 23 and 25 **6.** _____
7. Is the amount on line 6 less than the amount on line 5?
☐ **No.**  None of your social security benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b.
☐ **Yes.** Subtract line 6 from line 5 **7.** _____
8. If you are:
 - Married filing jointly, enter \$32,000
 - Single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2025, enter \$25,000
 - Married filing separately and you lived with your spouse at any time in 2025, skip lines 8 through 15; multiply line 7 by 85% (0.85) and enter the result on line 16. Then, go to line 17
 **8.** _____
9. Is the amount on line 8 less than the amount on line 7?
☐ **No.**  None of your social security benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b. If you are married filing separately and you **lived apart** from your spouse for all of 2025, be sure you checked the box on line 6d.
☐ **Yes.** Subtract line 8 from line 7 **9.** _____
10. Enter \$12,000 if married filing jointly; \$9,000 if single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2025 **10.** _____
11. Subtract line 10 from line 9. If zero or less, enter -0- **11.** _____
12. Enter the **smaller** of line 9 or line 10 **12.** _____
13. Enter one-half of line 12 **13.** _____
14. Enter the **smaller** of line 2 or line 13 **14.** _____
15. Multiply line 11 by 85% (0.85). If line 11 is zero, enter -0- **15.** _____
16. Add lines 14 and 15 **16.** _____
17. Multiply line 1 by 85% (0.85) **17.** _____
18. **Taxable social security benefits.** Enter the **smaller** of line 16 or line 17. Also enter this amount on Form 1040 or 1040-SR, line 6b **18.** _____



If any of your benefits are taxable for 2025 **and** they include a lump-sum benefit payment that was for an earlier year, you may be able to reduce the taxable amount. See Lump-Sum Election in Pub. 915 for details.

Qualified Dividends and Capital Gain Tax Worksheet—Line 16

Keep for Your Records

Before you begin:

- ✓ See the earlier instructions for line 16 to see if you can use this worksheet to figure your tax.
- ✓ Before completing this worksheet, complete Form 1040 or 1040-SR through line 15.
- ✓ If you don't have to file Schedule D and you received capital gain distributions, be sure you checked the box on Form 1040 or 1040-SR, line 7b.

1.	Enter the amount from Form 1040 or 1040-SR, line 15. However, if you are filing Form 2555 (relating to foreign earned income), enter the amount from line 3 of the Foreign Earned Income Tax Worksheet	1.	
2.	Enter the amount from Form 1040 or 1040-SR, line 3a*	2.	
3.	Are you filing Schedule D?*		
	☐ Yes. Enter the smaller of line 15 or line 16 of Schedule D. If either line 15 or line 16 is blank or a loss, enter -0-.	3.	
	☐ No. Enter the amount from Form 1040 or 1040-SR, line 7a.		
4.	Add lines 2 and 3	4.	
5.	Subtract line 4 from line 1. If zero or less, enter -0-	5.	
6.	Enter:		
	\$48,350 if single or married filing separately,		
	\$96,700 if married filing jointly or qualifying surviving spouse,		
	\$64,750 if head of household.	6.	
7.	Enter the smaller of line 1 or line 6	7.	
8.	Enter the smaller of line 5 or line 7	8.	
9.	Subtract line 8 from line 7. This amount is taxed at 0%	9.	
10.	Enter the smaller of line 1 or line 4	10.	
11.	Enter the amount from line 9	11.	
12.	Subtract line 11 from line 10	12.	
13.	Enter:		
	\$533,400 if single,		
	\$300,000 if married filing separately,		
	\$600,050 if married filing jointly or qualifying surviving spouse,		
	\$566,700 if head of household.	13.	
14.	Enter the smaller of line 1 or line 13	14.	
15.	Add lines 5 and 9	15.	
16.	Subtract line 15 from line 14. If zero or less, enter -0-	16.	
17.	Enter the smaller of line 12 or line 16	17.	
18.	Multiply line 17 by 15% (0.15)	18.	
19.	Add lines 9 and 17	19.	
20.	Subtract line 19 from line 10	20.	
21.	Multiply line 20 by 20% (0.20)	21.	
22.	Figure the tax on the amount on line 5. If the amount on line 5 is less than \$100,000, use the Tax Table to figure the tax. If the amount on line 5 is \$100,000 or more, use the Tax Computation Worksheet	22.	
23.	Add lines 18, 21, and 22	23.	
24.	Figure the tax on the amount on line 1. If the amount on line 1 is less than \$100,000, use the Tax Table to figure the tax. If the amount on line 1 is \$100,000 or more, use the Tax Computation Worksheet	24.	
25.	Tax on all taxable income. Enter the smaller of line 23 or line 24. Also include this amount on the entry space on Form 1040 or 1040-SR, line 16. If you are filing Form 2555, don't enter this amount on the entry space on Form 1040 or 1040-SR, line 16. Instead, enter it on line 4 of the Foreign Earned Income Tax Worksheet	25.	

* If you are filing Form 2555, see the footnote in the Foreign Earned Income Tax Worksheet before completing this line.

2025 Tax Computation Worksheet—Line 16



See the instructions for line 16 to see if you must use the worksheet below to figure your tax.

Note. If you are required to use this worksheet to figure the tax on an amount from another form or worksheet, such as the Qualified Dividends and Capital Gain Tax Worksheet, the Schedule D Tax Worksheet, Schedule J, Form 8615, or the Foreign Earned Income Tax Worksheet, enter the amount from that form or worksheet in column (a) of the row that applies to the amount you are looking up. Enter the result on the appropriate line of the form or worksheet that you are completing.

Section A—Use if your filing status is **Single**. Complete the row below that applies to you.

Taxable income. If line 15 is—	(a) Enter the amount from line 15.	(b) Multiplication amount.	(c) Multiply (a) by (b).	(d) Subtraction amount.	Tax. Subtract (d) from (c). Enter the result here and on the entry space on line 16.
At least \$100,000 but not over \$103,350	\$	× 22% (0.22)	\$	\$ 5,086.00	\$
Over \$103,350 but not over \$197,300	\$	× 24% (0.24)	\$	\$ 7,153.00	\$
Over \$197,300 but not over \$250,525	\$	× 32% (0.32)	\$	\$ 22,937.00	\$
Over \$250,525 but not over \$626,350	\$	× 35% (0.35)	\$	\$ 30,452.75	\$
Over \$626,350	\$	× 37% (0.37)	\$	\$ 42,979.75	\$

Section B—Use if your filing status is **Married filing jointly** or **Qualifying surviving spouse**. Complete the row below that applies to you.

Taxable income. If line 15 is—	(a) Enter the amount from line 15.	(b) Multiplication amount.	(c) Multiply (a) by (b).	(d) Subtraction amount.	Tax. Subtract (d) from (c). Enter the result here and on the entry space on line 16.
At least \$100,000 but not over \$206,700	\$	× 22% (0.22)	\$	\$ 10,172.00	\$
Over \$206,700 but not over \$394,600	\$	× 24% (0.24)	\$	\$ 14,306.00	\$
Over \$394,600 but not over \$501,050	\$	× 32% (0.32)	\$	\$ 45,874.00	\$
Over \$501,050 but not over \$751,600	\$	× 35% (0.35)	\$	\$ 60,905.50	\$
Over \$751,600	\$	× 37% (0.37)	\$	\$ 75,937.50	\$

Section C—Use if your filing status is **Married filing separately**. Complete the row below that applies to you.

Taxable income. If line 15 is—	(a) Enter the amount from line 15.	(b) Multiplication amount.	(c) Multiply (a) by (b).	(d) Subtraction amount.	Tax. Subtract (d) from (c). Enter the result here and on the entry space on line 16.
At least \$100,000 but not over \$103,350	\$	× 22% (0.22)	\$	\$ 5,086.00	\$
Over \$103,350 but not over \$197,300	\$	× 24% (0.24)	\$	\$ 7,153.00	\$
Over \$197,300 but not over \$250,525	\$	× 32% (0.32)	\$	\$ 22,937.00	\$
Over \$250,525 but not over \$375,800	\$	× 35% (0.35)	\$	\$ 30,452.75	\$
Over \$375,800	\$	× 37% (0.37)	\$	\$ 37,968.75	\$

Section D—Use if your filing status is **Head of household**. Complete the row below that applies to you.

Taxable income. If line 15 is—	(a) Enter the amount from line 15.	(b) Multiplication amount.	(c) Multiply (a) by (b).	(d) Subtraction amount.	Tax. Subtract (d) from (c). Enter the result here and on the entry space on line 16.
At least \$100,000 but not over \$103,350	\$	× 22% (0.22)	\$	\$ 6,825.00	\$
Over \$103,350 but not over \$197,300	\$	× 24% (0.24)	\$	\$ 8,892.00	\$
Over \$197,300 but not over \$250,500	\$	× 32% (0.32)	\$	\$ 24,676.00	\$
Over \$250,500 but not over \$626,350	\$	× 35% (0.35)	\$	\$ 32,191.00	\$
Over \$626,350	\$	× 37% (0.37)	\$	\$ 44,718.00	\$



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Trust Tax Overview



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Grantor and Nongrantor Trusts: Income Tax Rules, 2026 Developments, and Planning Strategies

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September 2026

This paper is educational material for attorneys and CPAs. It is not legal or tax advice for any particular situation. Dollar amounts are for 2026 unless otherwise stated and reflect law and guidance available as of September 23, 2026. Practitioners should verify all citations against primary sources before relying on them.

I. Introduction

Every irrevocable trust answers a threshold income tax question before any planning can begin: who pays the tax on the trust's income? Subpart E of Subchapter J (IRC Section 671 through Section 679) answers that question by asking whether the grantor, or in some cases a third party, has kept enough power or benefit to be treated as the owner of the trust property for income tax purposes. If so, the trust is a grantor trust and its income, deductions, and credits flow to the deemed owner.¹ If not, the trust is a separate taxpayer under Subparts A through D, taxed under a compressed rate schedule and a distribution regime built around distributable net income (DNI).

The choice between the two regimes is rarely neutral. Grantor trust status lets a client pay the trust's income tax with dollars that would otherwise be in the taxable estate, and it lets the client transact with the trust without recognizing gain. Nongrantor status creates a separate taxpayer that can claim its own deductions, exclusions, and state residency, but at the price of reaching the top federal bracket at only \$16,000 of taxable income in 2026.²

The One Big Beautiful Bill Act (OBBBA), enacted July 4, 2025, sharpened these trade-offs.³ It made the individual rate structure permanent, raised the basic exclusion amount to \$15 million, increased the state and local tax (SALT) deduction cap through 2029, expanded Section 1202, and replaced former Section 68 with a new limitation on itemized deductions that, on one reading, reaches the distribution deduction of every nongrantor trust. This paper reviews the core rules, the mechanics of nongrantor trust taxation, the 2026 developments, and the planning strategies that follow.

II. The Grantor Trust Rules

A. Who Is a Grantor

A grantor includes any person who creates a trust or who directly or indirectly makes a gratuitous transfer of property to a trust.⁴ A person who funds a trust for fair market value consideration is not a grantor as to that transfer, and a person who funds a trust indirectly (for example, through a third party acting as a nominal settlor) remains a grantor. A trust may itself be a grantor of another trust, with look-through rules that can treat the owner of the first trust as the grantor of the second.⁵

¹IRC § 671. All section references are to the Internal Revenue Code of 1986, as amended, and the Treasury Regulations under it, unless otherwise stated.

²Rev. Proc. 2025-32, § 4.01 (2026 rate table for estates and trusts under § 1(j)(2)(E)).

³Pub. L. No. 119-21 (July 4, 2025).

⁴Treas. Reg. § 1.671-2(e)(1).

⁵Treas. Reg. § 1.671-2(e)(5).

B. The Operative Triggers

Sections 673 through 677 describe the powers and interests that cause the grantor to be treated as owner. Section 672 supplies the definitions that make them work: an adverse party is a person with a substantial beneficial interest that would be adversely affected by the exercise or nonexercise of the power;⁶ a related or subordinate party includes the grantor's spouse (if living with the grantor), parents, issue, siblings, and employees, and certain employees of entities the grantor controls, and such a party is presumed subservient to the grantor unless shown otherwise.⁷ Under Section 672(e), the grantor is treated as holding any power or interest held by a person who was the grantor's spouse when the power or interest was created, or who became the spouse afterward, for periods after the marriage.

- **Reversionary interests (Section 673).** The grantor is treated as owner of any portion in which the grantor holds a reversionary interest in corpus or income whose value at inception exceeds 5% of that portion. A reversion that takes effect only on the death before age 21 of a lineal descendant beneficiary who holds all present interests is disregarded.
- **Power to control beneficial enjoyment (Section 674).** The general rule treats the grantor as owner when the grantor, a nonadverse party, or both can control beneficial enjoyment without the consent of an adverse party. The exceptions do most of the work: Section 674(b) protects eight categories of powers regardless of who holds them (including powers exercisable only by will, other than certain powers over accumulated income, and powers to distribute corpus limited by a reasonably definite standard); Section 674(c) protects broad sprinkle powers held by independent trustees, no more than half of whom are related or subordinate; and Section 674(d) protects powers to distribute income limited by a reasonably definite external standard held by trustees other than the grantor or spouse.
- **Administrative powers (Section 675).** Grantor status arises if the grantor or a nonadverse party can deal with trust property for less than adequate consideration (Section 675(1)); if the grantor can borrow without adequate interest or security, except from a trustee other than the grantor under a general lending power (Section 675(2)); if the grantor has actually borrowed trust funds and has not completely repaid the loan and interest before the beginning of the taxable year, unless the loan was adequately secured and bore adequate interest and was made by a trustee other than the grantor or a related or subordinate trustee (Section 675(3)); or if any person holds, in a nonfiduciary capacity and without the consent of a fiduciary, a power to vote closely held stock, control investments in closely held entities, or reacquire trust corpus by substituting property of equivalent value (Section 675(4)).
- **Power to revoke (Section 676).** A power in the grantor, a nonadverse party, or both to revest title in the grantor makes the grantor the owner. This is the rule that governs every revocable living trust.
- **Income for the grantor's benefit (Section 677).** The grantor is treated as owner of any portion whose income is, or in the discretion of the grantor or a nonadverse party may be, distributed to the grantor or the grantor's spouse, accumulated for them, or applied to pay premiums on insurance on the life of the grantor or spouse (other than policies irrevocably payable to charity). Section 677(b) excludes income that may be applied to support a beneficiary whom the grantor is legally obligated to support, except to the extent it is so applied.

⁶IRC § 672(a).

⁷IRC § 672(c).

- **Foreign trusts with U.S. beneficiaries** (Section 679). A U.S. person who transfers property to a foreign trust is treated as owner of the portion attributable to the transfer for any year in which the trust has a U.S. beneficiary, subject to statutory exceptions.

Two drafting points recur. First, because the Code treats a spouse's powers and interests as the grantor's, a spousal lifetime access trust (SLAT) is ordinarily a grantor trust under Section 677(a) for as long as the marriage lasts. Second, former Section 682, which shifted income from a grantor to a former spouse after divorce, was repealed for divorce or separation instruments executed after 2018.⁸ Under current law a divorced grantor can remain taxable on income from a SLAT that benefits the former spouse, which is a reason to include a mechanism to turn off grantor status or to provide for reimbursement.

C. Section 678: Third-Party Owners

Section 678(a) treats a person other than the grantor as owner of any portion over which that person has a power, exercisable solely by himself or herself, to vest corpus or income in himself or herself, or has partially released or modified such a power while retaining control that would make a grantor the owner under Sections 671 through 677. Section 678(b) gives priority to the grantor: if the grantor is treated as owner under Sections 671 through 677 with respect to income, Section 678(a) does not apply to a power over that income.⁹ These rules support the treatment of Crummey withdrawal powers, beneficiary defective inheritor's trusts (BDITs), and beneficiary deemed owner trusts (BDOTs). Because the application of Section 678 to lapsed powers and to post-lapse periods remains the subject of genuine practitioner disagreement, planners should treat those structures as a separate topic and document their analysis carefully.

D. Reporting

A grantor trust generally reports under one of the methods in Treas. Reg. § 1.671-4. A trust wholly owned by one grantor may furnish the grantor's taxpayer identification number to payors and avoid filing a Form 1041, or may file a Form 1041 with an attached grantor statement, or may use the Form 1099 method.¹⁰ The grantor then reports all items on his or her own return. A trust that is partly grantor and partly nongrantor must allocate items between the portions.

III. Consequences of Grantor Trust Status

A. Transactions Between Grantor and Trust

In Rev. Rul. 85-13, the Service ruled that a grantor who is treated as owner of a trust is treated as owner of its assets for federal income tax purposes, so that a transfer between the grantor and the trust is not a sale or exchange.¹¹ The ruling is the foundation of the installment sale to an intentionally defective grantor trust (IDGT): the grantor sells appreciated assets to the trust for a note, recognizes no gain, and receives interest that is not income to the grantor. The same ruling supports substitution of assets under a Section 675(4) swap power without gain recognition.

⁸Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11051(b)(1)(B) (2017); see id. § 11051(c) (effective date).

⁹IRC § 678(b).

¹⁰Treas. Reg. § 1.671-4(a), (b).

¹¹Rev. Rul. 85-13, 1985-1 C.B. 184.

B. Payment of the Trust's Income Tax

Rev. Rul. 2004-64 addresses three situations.¹² When the grantor pays income tax on trust income as required by law, the payment is not a gift to the trust beneficiaries, because the grantor is discharging his or her own liability. When the governing instrument or applicable state law requires the trustee to reimburse the grantor, the grantor is treated as having retained the right to have trust property applied to his or her legal obligation, and the trust is included in the grantor's gross estate under Section 2036. When the instrument gives an independent trustee discretion to reimburse, the discretion alone does not cause inclusion, provided there is no understanding or pre-arrangement regarding its exercise and state law does not allow the grantor's creditors to reach the trust. The practical result is the "tax burn": each year the grantor pays tax on income the trust keeps, the taxable estate shrinks without any use of exemption.

C. Swap Powers and Estate Tax

In Rev. Rul. 2008-22, the Service concluded that a grantor's nonfiduciary power to reacquire trust corpus by substituting property of equivalent value does not by itself cause inclusion under Section 2036 or Section 2038, provided the trustee has a fiduciary obligation to ensure that the substituted property is of equivalent value and the power cannot be exercised to shift benefits among beneficiaries.¹³ A companion ruling reached a similar conclusion for life insurance under Section 2042.¹⁴

D. No Basis Adjustment at Death Without Estate Inclusion

Rev. Rul. 2023-2, released March 29, 2023, concludes that assets of an irrevocable grantor trust that are not included in the grantor's gross estate do not receive a basis adjustment under Section 1014 when the grantor dies, because the assets were not acquired or passed from a decedent within any category of Section 1014(b).¹⁵ The ruling reframes the long-term economics of an IDGT: estate tax savings on appreciation come at the cost of carryover basis. The swap power becomes a basis management tool. A grantor can reacquire low-basis assets before death, replacing them with cash or high-basis assets, so that the low-basis assets are in the gross estate and receive a basis adjustment.

E. Turning Grantor Status Off, and Death

The termination of grantor trust status during the grantor's life is treated as a transfer of the trust's assets from the grantor to the trust. If the trust holds property subject to liabilities in excess of basis, the grantor recognizes gain.¹⁶ This matters most when an IDGT still owes the grantor on a note or holds leveraged partnership interests. By contrast, the Chief Counsel's office has concluded that converting a nongrantor trust into a grantor trust is not a transfer for income tax purposes, and it observed that the rule of *Madorin* and Rev. Rul. 77-402 addresses inter vivos lapses and not the termination of grantor status caused by the owner's death.¹⁷ The income tax treatment of an unpaid installment note at the grantor's death remains unsettled, and practitioners disagree about it. Planning to retire or restructure notes during life avoids the question.

¹²Rev. Rul. 2004-64, 2004-2 C.B. 7.

¹³Rev. Rul. 2008-22, 2008-16 I.R.B. 796.

¹⁴Rev. Rul. 2011-28, 2011-49 I.R.B. 830.

¹⁵Rev. Rul. 2023-2 (released Mar. 29, 2023).

¹⁶Treas. Reg. § 1.1001-2(c), Ex. 5; Rev. Rul. 77-402, 1977-2 C.B. 222; *Madorin v. Commissioner*, 84 T.C. 667 (1985).

¹⁷CCA 200923024 (Dec. 31, 2008); see also PLR 201730012 (conversion of nongrantor trust to grantor trust not a transfer under any income tax provision). Chief Counsel advice and letter rulings may not be cited as precedent. IRC § 6110(k)(3).

IV. Taxation of Nongrantor Trusts

A. The Trust as a Separate Taxpayer

A nongrantor trust computes taxable income in the same manner as an individual, except as Subchapter J provides otherwise.¹⁸ In place of a standard deduction, it receives a small exemption: \$300 for a trust required to distribute all income currently and \$100 for other trusts, with a larger inflation-adjusted amount for a qualified disability trust.¹⁹ Costs that are paid or incurred in connection with the administration of the trust and would not have been incurred if the property were not held in trust are deductible in arriving at adjusted gross income.²⁰ Final regulations confirm that Section 67(e) deductions, the Section 642(b) exemption, and the Sections 651 and 661 distribution deductions are not miscellaneous itemized deductions.²¹

B. The Compressed Rate Schedule

The rate schedule for estates and trusts reaches 37% at a fraction of the individual thresholds. Table 1 shows the 2026 schedule.²²

Table 1. 2026 federal ordinary income tax brackets, estates and trusts

Taxable income over	But not over	Marginal rate
\$0	\$3,300	10%
\$3,300	\$11,700	24%
\$11,700	\$16,000	35%
\$16,000	No limit	37%

By comparison, the 37% bracket begins above \$640,600 for a single individual and above \$768,700 for married individuals filing jointly.²³ For long-term capital gain and qualified dividends, a trust's 0% rate ends at \$3,300 and its 15% rate ends at \$16,250.²⁴ The 3.8% net investment income tax (NIIT) applies to a trust on the lesser of its undistributed net investment income or the excess of its adjusted gross income over the dollar amount at which the highest bracket begins, which is \$16,000 for 2026.²⁵

Table 2. 2026 federal ordinary income tax on \$100,000 of taxable income (illustrative; computed by the author from the Rev. Proc. 2025-32 tables)

Taxpayer	Regular tax	Top marginal rate reached
Nongrantor trust	\$34,931	37%
Single individual	\$16,712	22%

¹⁸IRC § 641(b).

¹⁹IRC § 642(b).

²⁰IRC § 67(e); *Knight v. Commissioner*, 552 U.S. 181 (2008); Treas. Reg. § 1.67-4.

²¹T.D. 9918, 85 Fed. Reg. 66,219 (Oct. 19, 2020); Treas. Reg. § 1.67-4(a)(1).

²²Rev. Proc. 2025-32, § 4.01.

²³Rev. Proc. 2025-32, § 4.01; IRS, IRS releases tax inflation adjustments for tax year 2026, including amendments from the One, Big, Beautiful Bill (Oct. 9, 2025).

²⁴Rev. Proc. 2025-32, § 4.03.

²⁵IRC § 1411(a)(2).

Taxpayer	Regular tax	Top marginal rate reached
Married filing jointly	\$11,504	12%

If the trust's \$100,000 were entirely undistributed net investment income, the NIIT would add \$3,192 (3.8% of the \$84,000 excess over \$16,000), while the individuals in Table 2 would owe none because their income is below the individual NIIT thresholds. The table explains why income that a trust accumulates is usually taxed at the highest available rate.

C. Distributable Net Income and the Distribution Deduction

DNI does three jobs. It caps the trust's distribution deduction, it caps the amount beneficiaries must include in income, and it carries the character of the trust's income (tax-exempt interest, qualified dividends, ordinary income) out to the beneficiaries.²⁶ DNI starts with taxable income, adds back the distribution deduction and the personal exemption, adds tax-exempt interest net of allocable expenses, and generally excludes capital gains allocated to corpus.

Capital gains are included in DNI only if they are allocated to income under the governing instrument or local law, or allocated to corpus but consistently treated as part of a distribution, actually distributed, or used to determine the amount distributed.²⁷ Because most instruments allocate gains to principal, a trust that sells a concentrated position will often pay tax on the gain at the trust level even if it makes large distributions, unless the instrument or a consistent practice brings gains into DNI. Drafting that grants the trustee discretion to allocate gains to income, and a documented exercise of that discretion, can move the gain to lower-bracket beneficiaries.

A simple trust (one that must distribute all income currently, makes no charitable distributions, and does not distribute corpus in the year) deducts the income required to be distributed, up to DNI, and its beneficiaries include that amount.²⁸ A complex trust deducts amounts required to be distributed and amounts properly paid, credited, or required to be distributed, up to DNI.²⁹ Its beneficiaries include distributions under a two-tier system: first-tier beneficiaries (those entitled to mandatory income) absorb DNI first, and second-tier beneficiaries share what remains in proportion to their distributions.³⁰ The separate share rule treats substantially separate and independent shares of different beneficiaries as separate trusts for DNI purposes, so that one beneficiary's distribution does not carry out income earned for another.³¹

D. Timing and In-Kind Distributions

The trustee of a complex trust may elect to treat a distribution made within the first 65 days of the taxable year as made on the last day of the preceding year.³² The election is the most useful tool a fiduciary has for fixing the tax result after the books close: it lets the trustee measure DNI and the beneficiaries' brackets before deciding how much to distribute. For distributions in kind, Section 643(e) generally limits the distribution deduction and the beneficiary's inclusion to the lesser of basis or fair market value, unless the

²⁶IRC § 643(a); IRC §§ 652(b), 662(b).

²⁷Treas. Reg. § 1.643(a)-3(b).

²⁸IRC §§ 651, 652.

²⁹IRC § 661(a).

³⁰IRC § 662(a).

³¹IRC § 663(c); Treas. Reg. § 1.663(c)-1.

³²IRC § 663(b); Treas. Reg. § 1.663(b)-2 (election made on the return, due date including extensions).

trustee elects to recognize gain as if the property had been sold. The election applies to all in-kind distributions for the year.³³

E. Passive Activity Rules and Material Participation

Trusts are subject to Section 469, and whether a trust materially participates affects both the passive loss limits and the NIIT. In *Frank Aragona Trust v. Commissioner*, the Tax Court held that a trust can qualify for the real estate professional exception of Section 469(c)(7) and that the work of individual trustees, including work performed as employees of an entity the trust owned, counts as personal services performed by the trust.³⁴ An earlier district court decision looked more broadly to the activities of the trust's agents and employees.³⁵ The Service has taken a narrower view in rulings, generally looking only to the fiduciary's own activities in that capacity. Trusts that hold operating businesses should document fiduciary involvement and consider naming active family members as special trustees for business matters.

F. Multiple Trusts

Two or more trusts are treated as one trust if they have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and a principal purpose of the trusts is the avoidance of income tax.³⁶ Section 643(f) applies for purposes of Subchapter J. Its reach to provisions outside Subchapter J, such as the Section 1202 exclusion, is debated. Distinct beneficiaries, distinct terms, and documented non-tax purposes are the ordinary defenses.

V. 2026 Developments

A. OBBBA's Permanent Framework

OBBBA made the individual rate structure permanent, so the seven-rate system and the trust rate schedule in Table 1 no longer carry a scheduled 2026 sunset. It set the basic exclusion amount at \$15 million per person for 2026, indexed after that. For most clients below twice that amount, the estate tax question has receded and the income tax question, including basis at death, has moved to the front. That shift favors grantor trusts with swap powers, powers to turn off grantor status, and in appropriate cases the ability to cause estate inclusion deliberately to obtain a basis adjustment.

B. New Section 68 and the Distribution Deduction

For taxable years beginning after December 31, 2025, OBBBA replaced the suspended Pease limitation with a new Section 68 that reduces a taxpayer's itemized deductions by 2/37 of the lesser of (i) those deductions or (ii) the amount by which taxable income, determined without regard to itemized deductions, exceeds the threshold for the 37% bracket. OBBBA also repealed former Section 68(e), which had said that Section 68 did not apply to any estate or trust.³⁷

The staff of the Joint Committee on Taxation, in its General Explanation of the legislation, reasoned in a footnote that Section 68 applies to trusts through Section 641(b); that Section 63(d) defines itemized deductions as all deductions other than those allowable in arriving at adjusted gross income and the items

³³IRC § 643(e)(3).

³⁴*Frank Aragona Trust v. Commissioner*, 142 T.C. 165 (2014).

³⁵*Mattie K. Carter Trust v. United States*, 256 F. Supp. 2d 536 (N.D. Tex. 2003).

³⁶IRC § 643(f). Spouses are treated as one person for this purpose.

³⁷IRC § 68, as amended by Pub. L. No. 119-21, § 70111. See Ed Zollars, *The Application of New Section 68 to Trusts and Estates: Analyzing JCT Footnote 102 and Unresolved Ambiguities*, Current Federal Tax Developments (June 6, 2026).

listed in Section 63(b); and that the Section 642(b) exemption and the Sections 651 and 661 distribution deductions are therefore itemized deductions for Section 68 purposes. It treated the statement in Treas. Reg. § 1.67-4(a)(1)(ii) that these deductions are not itemized deductions as limited to Section 67.³⁸ The consequence is striking. A trust that distributes all of its DNI could lose part of its distribution deduction and pay tax on income its beneficiaries also report.

A simple illustration follows commentary on the issue. A trust with \$116,000 of ordinary income distributes all of it. The excess over the \$16,000 threshold is \$100,000, and 2/37 of that is \$5,405. On the JCT reading, the distribution deduction falls to \$110,595, and the trust owes tax at 37% on \$5,405 (about \$2,000) while the beneficiary reports the full \$116,000.³⁹

The professional bodies have pushed back. The New York State Bar Association Tax Section described the double taxation and the circularity the reading creates in computing DNI.⁴⁰ The American College of Trust and Estate Counsel recommended a technical amendment limiting Section 68 to deductions computed in the same manner as for individuals and excepting the Section 642(c) charitable deduction.⁴¹ The AICPA asked Treasury and the IRS to provide that the limitation does not apply to the Sections 642(b), 651, and 661 deductions or to administration expenses, and to confine it to income that is not taxed at preferential rates.⁴² As of this writing, the author has not located IRS guidance or an enacted technical correction resolving the issue, and the General Explanation is not binding authority. Fiduciaries should model 2026 estimated tax payments under both readings and decide, with the return preparer, what position to take and whether disclosure is appropriate.

C. The SALT Cap and Nongrantor Trusts

OBBBA raised the Section 164(b) limitation on state and local tax deductions to \$40,000 for 2025 and \$40,400 for 2026, increasing by 1% annually through 2029, with a phase-down of 30% of modified adjusted gross income above \$505,000 for 2026 (never below \$10,000). The limitation returns to \$10,000 in 2030.⁴³ Because each nongrantor trust is a separate taxpayer, each can claim its own limitation, which has renewed interest in funding separate nongrantor trusts with real estate or pass-through interests that generate state and local tax. The strategy runs directly into Section 643(f), into Treas. Reg. § 1.643(f)-1 (the multiple-trust regulation finalized with the Section 199A regulations), and into the short window before 2030. For owners of pass-through businesses, a state pass-through entity tax election will often accomplish more with less complexity.⁴⁴

D. Section 1202 After OBBBA

For qualified small business stock issued after July 4, 2025, OBBBA raised the per-issuer cap to the greater of \$15 million (indexed) or 10 times basis, raised the gross asset test to \$75 million, and added partial

³⁸Staff of the Joint Committee on Taxation, General Explanation of Public Law 119-21, Part 11 (Limitation on Tax Benefit of Itemized Deductions), n.102, as described in Zollars, *supra*.

³⁹See Patricia Giarratano, Tax Law Changes in OBBBA May Require New Planning Strategies for Non-Grantor Trusts, Estates and Their Beneficiaries (2026); the tax figure is computed by the author.

⁴⁰N.Y. State Bar Ass'n Tax Section, Report No. 1517 (Dec. 1, 2025).

⁴¹ACTEC, Comments (Nov. 10, 2025).

⁴²AICPA Tax Executive Committee, comments on guidance for the limitation on itemized deductions (2025). See also Justin T. Miller, The Fate of a Trust or Estate Under New Section 68, Tax Notes Federal (June 2026).

⁴³IRC § 164(b)(6), (7), as amended by Pub. L. No. 119-21, § 70120.

⁴⁴See Notice 2020-75, 2020-49 I.R.B. 1453 (entity-level state taxes deductible by the partnership or S corporation); T.D. 9847, 84 Fed. Reg. 2952 (Feb. 8, 2019) (adopting Treas. Reg. § 1.643(f)-1).

exclusions of 50% after three years and 75% after four years, with a full exclusion after five.⁴⁵ Stock transferred by gift keeps its character and the donor's holding period.⁴⁶ Gifts to separate nongrantor trusts, each a separate taxpayer with its own cap, remain the most common stacking technique. Press reports in 2026 attributed to Treasury officials' skepticism of trust stacking, but the author has seen those remarks only secondhand, and no guidance had been issued as of this writing.⁴⁷ Section 1202(k) authorizes regulations to prevent avoidance of the purposes of the section, which is a more natural foundation for any future limit than Section 643(f).

E. The IRS No-Rule List

For 2026, the Service added to its no-rule list whether the distribution of property from one irrevocable trust to another (a decanting), or a modification of an irrevocable trust that results in a change in beneficial interests, is a taxable distribution or gift.⁴⁸ Planners who expected to decant or modify an older grantor trust to add a tax reimbursement clause or to change its grantor trust status can no longer obtain a letter ruling on those questions.

F. Modifications That Add Reimbursement Clauses

In CCA 202352018, the Chief Counsel's office concluded that a judicial modification of a grantor trust, with the beneficiaries' consent, to add a discretionary power in the trustee to reimburse the grantor for income tax is a taxable gift by the beneficiaries, because they relinquish part of their interests in favor of the grantor. The memorandum added that the result would be the same if the modification occurred under a statute that gives beneficiaries notice and a right to object and they do not object.⁴⁹ The memorandum distinguished Rev. Rul. 2004-64 on the ground that the reimbursement authority there was in the original instrument. The practical lesson is to include a reimbursement clause, and a power to toggle grantor status, in the original instrument rather than relying on later modification.

VI. Planning Strategies

A. Using Grantor Trust Status Deliberately

- **Installment sales to IDGTs.** The sale freezes the value of the transferred asset for estate tax purposes, and Rev. Rul. 85-13 prevents gain recognition. The grantor's payment of tax on trust income adds a further, gift-free transfer each year. Seed funding, valuation, the Section 7520 or applicable federal rate, and the risk of Section 2036 inclusion if the note looks like a retained interest are the recurring issues.
- **Swap powers for basis.** Because Rev. Rul. 2023-2 denies a basis adjustment for assets outside the estate, a grantor with a Section 675(4) power can substitute high-basis assets or cash for low-basis trust assets late in life. The trustee must confirm equivalent value to keep within Rev. Rul. 2008-22.

⁴⁵IRC § 1202, as amended by Pub. L. No. 119-21. See Venable LLP, *QSBS Stacking in the Crosshairs?* (May 28, 2026).

⁴⁶IRC § 1202(h).

⁴⁷See Venable LLP, *supra*. The officials' remarks were reported secondhand and should not be quoted without verification.

⁴⁸Rev. Proc. 2026-3, 2026-1 I.R.B. 143, as described in Ed Zollars, *Annual Procedural Updates: Analyzing the 2026 Revenue Procedures*, Current Federal Tax Developments (Dec. 30, 2025). The author has not reviewed the precise section numbering of the relevant items and recommends confirming them against the published revenue procedure.

⁴⁹CCA 202352018 (Nov. 28, 2023; released Dec. 29, 2023). Chief Counsel advice may not be cited as precedent. IRC § 6110(k)(3).

- **Tax reimbursement clauses.** A discretionary clause exercisable by an independent trustee, included at inception, gives flexibility if the grantor's liquidity weakens. Several states have enacted statutes providing that a discretionary reimbursement power does not expose the trust to the grantor's creditors, which bears directly on the third situation in Rev. Rul. 2004-64.
- **Toggle provisions.** A power held by a nonadverse party to add or release a grantor trust power (for example, a power to add charitable beneficiaries under Section 674 or a Section 675(4) power that the holder may release) lets the family end the tax burn. Before releasing, confirm that the trust does not hold property with liabilities exceeding basis, or an outstanding note from the grantor, to avoid the *Madorin* result.
- **Spousal trusts after divorce.** Because Section 682 no longer applies to post-2018 instruments, SLAT drafting should address what happens to grantor status and reimbursement if the marriage ends.

B. Using Nongrantor Status Deliberately

- **Distribution planning.** With the 65-day election, the trustee can measure DNI and each beneficiary's bracket and NIIT position before distributing. Distributing to a beneficiary in the 22 or 24% bracket rather than accumulating at 37% plus 3.8% NIIT is often the largest recurring saving available. Until the Section 68 question is resolved, part of that saving may be offset.
- **Capital gains in DNI.** Drafting that gives the trustee authority to allocate gains to income, and a consistent practice of doing so, can shift gain to beneficiaries in lower capital gains brackets.
- **State income tax.** The Supreme Court held that a state may not tax undistributed trust income based solely on the in-state residence of a beneficiary who has no right to demand income and is uncertain to receive it.⁵⁰ Trustee residence, place of administration, and source income then determine exposure.
- **Incomplete gift nongrantor (ING) trusts.** These trusts aim to avoid both grantor status and a completed gift, commonly by vesting distribution decisions in a committee of adverse parties. The Service has issued a series of letter rulings on the structure over the years. New York and California now treat ING trusts created by their residents as grantor trusts for state purposes, so the strategy is state specific.⁵¹ Practitioners should confirm the current ruling posture before planning around a ruling request.
- **Separate taxpayers.** Nongrantor trusts can each claim a Section 1202 exclusion and, through 2029, a SALT limitation. Each benefit must survive Section 643(f), Treas. Reg. § 1.643(f)-1 where applicable, and substance-over-form scrutiny, and each costs an annual Form 1041, compressed brackets on undistributed income, and possible Section 68 exposure.
- **Charitable deductions.** A nongrantor trust may deduct amounts of gross income paid for charitable purposes under the governing instrument without the percentage limits that apply to individuals. Whether new Section 68 reaches the Section 642(c) deduction is one of the open questions noted above.

⁵⁰*N.C. Dep't of Revenue v. Kimberley Rice Kaestner*, 1992 Family Trust, 588 U.S. 262 (2019).

⁵¹Cal. S.B. 131 (2023), adding Cal. Rev. & Tax. Code § 17082 (effective for taxable years beginning on or after Jan. 1, 2023).

C. A Decision Framework

The choice between regimes can be reduced to five questions.

1. Is the client's taxable estate large enough that shifting the income tax burden to the grantor produces a meaningful transfer tax saving, and can the client comfortably afford that burden for many years?
2. Will the trust hold assets that the grantor may want to buy back, swap for basis, or sell to the trust, all of which depend on grantor status?
3. Does the trust hold or expect to hold assets that benefit from a separate taxpayer (QSBS, state-taxed income in a high-tax state, property taxes) and can that separate taxpayer be defended under Section 643(f)?
4. Where will the trustee, the beneficiaries, and the trust's income be located, and does any state tax the trust on its own terms?
5. Does the instrument preserve flexibility: a power to toggle status, a reimbursement clause, authority to allocate gains to income, and a trust protector or decanting power, since later modification now carries gift risk and no prospect of a ruling?

VII. Conclusion

The grantor trust rules began as anti-abuse provisions and have become planning tools. In 2026 the calculus has shifted again. The permanent \$15 million exclusion reduces transfer tax pressure for many families, Rev. Rul. 2023-2 makes basis a central concern, and new Section 68 threatens the conduit treatment that has defined nongrantor trust taxation for decades. The durable lesson is to build flexibility into the original instrument, to model both the income tax and the transfer tax consequences of each regime, and to revisit the choice as the law, the family, and the assets change.



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October 21, 2026

Overview of Common SNTs and Tax Classification



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OVERVIEW OF COMMON SNTs AND TAX CLASSIFICATION



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**2026 NATIONAL CONFERENCE ON SPECIAL NEEDS PLANNING AND SPECIAL
NEEDS TRUSTS**

STETSON UNIVERSITY COLLEGE OF LAW

October 21, 2026

¹ Certified by the National Elder Law Foundation as a Certified Elder Law Attorney; Council of Advanced Practitioners of National Academy of Elder Law Attorneys; Fellow, American College of Trust and Estate Counsel.

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OVERVIEW OF COMMON SNTs AND TAX CLASSIFICATION

I. The Point of This Session

Christopher Steele has just given you the 30,000-foot view of grantor and nongrantor trust taxation. At 1:00, Amy O'Hara will drill down into the tax treatment of first-party and third-party special needs trusts, including estate inclusion, gift tax, qualified disability trusts, and the finer points of grantor status. I have the fifty minutes in between.

My job is to make sure you know the basic types of special needs trusts and how (and why) they are classified for income tax purposes. There will be some overlap with Steele's session and with O'Hara's session . . . and that is fine. We intentionally designed this day to be a "basics" approach and it can be useful for someone learning the basics to hear the same rules and considerations articulated in various ways by different presenters.

That sounds easier than it is because we special needs lawyers use several different sets of labels at the same time. "first-party," "third-party," "payback," "sole benefit," "revocable," "irrevocable," "grantor" and "nongrantor" describe different characteristics. By the end of this session you'll be able to sort through these labels and classify various trusts from both public benefits and tax standpoints.

A. Two Different Questions

Question One — benefits law: Whose assets went into the trust, who may benefit, and which Medicaid or SSI rule makes the trust useful (or troublesome)?

Question Two — income tax: Who is treated as the tax owner of the trust or of a portion of the trust? Is the activity reported on an individual Form 1040 under the grantor trust rules, or does the trust enter the Subchapter J world and report on Form 1041?

Do not answer Question Two by looking at the title on the first page of the document. A "special needs trust" is not a tax classification. Neither is an "asset protection trust." Even "irrevocable" does not tell you whether a trust is a grantor trust.

THE WORKING RULE

Classify the trust twice: first for public-benefits purposes, then for income-tax purposes. Keep the two analyses in separate mental boxes until you are ready to connect them.

B. Words That Cause Trouble

For tax purposes, the "grantor" is generally a person who creates a trust or makes a gratuitous transfer to it. But the person who signs the document, the person whose money funds it, the beneficiary, and the person treated as the tax owner can be different people. A parent can

physically establish a D4A trust using a disabled child's money; that does not make Mom the tax owner of the child's money.¹

One more warning: Medicaid and SSI materials sometimes use “grantor,” “settlor,” or “established by” in a benefits-law sense. Those words do not override Subpart E of Subchapter J. When the question is federal income tax ownership, come back to IRC §§ 671–678.

C. Seven Trust Families

We will apply that two-question approach to the six families of trusts you are most likely to encounter in an elder and special needs practice:

- The classic first-party payback trusts, which I call D4A trusts, sometimes referred to as “payback” trusts or “self-settled” trusts.²
- Spousal sole benefit trusts under 42 U.S.C. § 1396p(c)(2)(B)(i) and (ii) (which I call B1 and B2 trusts).
- Third-party sole benefit trusts under § 1396p(c)(2)(B)(iii) and (iv) (which I call B3 and B4 trusts).
- Third-party SNTs that are not B3 or B4 trusts.
- Irrevocable first-party asset protection trusts that are not D4A trusts.
- Revocable trusts.
- Testamentary trusts, including testamentary SNTs.

I'll go over each of these in more detail below.

II. The Sixty-Second Tax Refresher

A. Grantor Trusts: Tax Alter Egos

As you heard in the last session, a grantor trust is a trust (or a portion of a trust) whose income-tax activity is attributed to a person treated as the owner under IRC §§ 671–678. Usually that person is the settlor who funded the trust. In the common whole-trust case, income, deductions and credits flow through to the owner and end up on the owner's Form 1040. Rev. Rul. 85-13³ is the Service's long-standing ruling on this topic and essentially says that if it is a grantor trust, ignore it for all income tax purposes.

The rules in IRC §§ 673–678 are best viewed as a dashboard of switches. A reversionary interest, a power affecting beneficial enjoyment, certain administrative powers, a power to revoke, or rights to income can switch on grantor status. You do not need to memorize every switch today. You do need to know that the document controls, and sometimes only a portion

¹ Treas. Reg. § 1.671-2(e)(1); see also 42 U.S.C. § 1396p(d)(4)(A).

² 42 U.S.C. § 1396p(d)(4)(A) (Get it? D4A Trust).

³ Rev. Rul. 85-13, 1985-1 C.B. 184.

(say, principal or income) of the trust is switched on (often inadvertently).⁴ I have attached a one page “Grantor Trust Cheat Sheet” you may find useful as a quick reference.

B. Nongrantor Trusts: The Separate Taxpayer

If no person is treated as the owner under the grantor trust rules, the trust is a separate taxpayer. Form 1041 enters the picture. Very generally, income retained by the trust is taxed to the trust; taxable income carried out with distributions is ordinarily deducted by the trust and reported to beneficiaries on Schedule K-1, subject to the distributable net income rules. Christopher already did the heavy lifting on that. As I explain to clients, “When there is income on the table, the task with a nongrantor trust is to figure out who is going to pay the taxes. The trust, or the beneficiaries who received distributions?”

For today, remember only two practical points. First, trust income-tax brackets are compressed, so accumulation of income in the trust can be expensive. Second, “nongrantor” is not a synonym for “bad.” Sometimes a nongrantor trust is exactly the design you want; further, many trusts inevitably become nongrantor trusts after the person who was the grantor-tax owner dies.

C. Portions Matter

IRC § 671 repeatedly speaks in terms of ownership of “any portion” of a trust. A trust can be grantor as to income but not principal, grantor as to one fractional share but not another, or grantor as to a particular asset (say, a residence).

The classic trap is a reserved income interest. Section 677 can make the settlor the tax owner of ordinary income while leaving capital gains allocated to principal outside that grantor portion unless another rule reaches principal. If your tax objective involves the residence exclusion under IRC § 121 or capital-gain reporting, “grantor as to income” may not be enough. But that is as close to “moderate-to-advanced” as I will get here.

BEGINNER’S SHORTCUT

Whole-trust labels are convenient, but never let the shortcut make you forget the statute’s phrase “any portion.”

D. Three Things Grantor Status Does Not Automatically Mean

- Grantor trust does not automatically mean revocable. Many intentionally defective grantor trusts are irrevocable. There are financial industry people out there you may have to explain this to.
- Grantor trust does not automatically mean the trust is an available resource for Medicaid or SSI. Tax ownership and benefits availability arise under different bodies of law. There are public benefits caseworkers out there you may have to explain this to.

⁴ IRC §§ 671–678.

- Grantor trust does not automatically mean estate inclusion for basis purposes. Amy will take you farther down that road this afternoon. There is a big overlap between the grantor trust rules and the estate inclusion rules, but it is not a perfect or complete overlap.

III. D4A / Self-Settled Payback SNTs

A. The Benefits-Law Label

The classic D4A trust is the trust an SSI or Medicaid beneficiary uses after receiving money that would otherwise destroy means-tested eligibility: a personal-injury settlement, an inheritance that was not planned into a third-party SNT, or other windfall. The authority is 42 U.S.C. § 1396p(d)(4)(A).⁵

In broad terms, the trust must contain assets of a disabled individual who is under age 65 when the assets are placed in the trust; must be established through the permitted persons (now including the individual); must be for the beneficiary's sole benefit; and must contain the required Medicaid reimbursement provision. The 21st Century Cures Act removed the old requirement that a competent but disabled adult would nevertheless need to find a parent, grandparent, guardian, or court to establish the trust for her.⁶

The public-benefits bargain is straightforward: the beneficiary's own money can (i) fund the trust without penalty, and (ii) remain in a trust and, if properly administered, avoid resource counting; in exchange, amounts remaining at death are exposed to Medicaid reimbursement before the permitted remainder disposition.

B. The Tax Label: Follow the Money, Not the Signature Page

Suppose Dana receives a \$400,000 settlement. Dana's mother signs the trust as "settlor" because an old form still uses pre-Cures Act permissible settlors or perhaps Dana is incapacitated. Whose money funded the trust? Dana's. For tax purposes, the regulations treat a person who makes a gratuitous transfer as a grantor. Mom's role in creating the document does not make her the income-tax owner of Dana's \$400,000.

For a conventionally drafted, beneficiary-funded D4A trust, the practical classification is a grantor trust with respect to the disabled beneficiary. At a minimum, IRC § 677 is immediately relevant because trust income may be distributed to or accumulated for the grantor-beneficiary. The usual D4A structure also gives the trustee broad ability to use trust assets for that beneficiary (a "reversionary interest" and assuming maximum use of discretion of the trustee's part), and the grantor-trust rules under IRC § 673 will reach the trust as a whole.

⁵ Which provides an exception to the general OBRA '93 rule that any portion of an irrevocable self-funded trust that could under "any circumstances" be distributed to the settlor will be considered an available asset. 42 U.S.C. § 1396p(d)(3)(B). That is a harsh result if a Medicaid beneficiary directly inherits from Grandpa. D4A to the rescue.

⁶ 42 U.S.C. § 1396p(d)(4)(A); In the SSI context, *see* POMS SI 01120.203C (special needs trusts established on or after Dec. 13, 2016).

Bottom line: A truly self-funded D4A SNT is a grantor trust for the disabled beneficiary. The tax return follows the beneficiary even though someone else may have established the trust.

C. Example: The Settlement Trust

Facts. Sam, age 37, receives SSI and Medicaid and settles a claim for \$600,000. Sam establishes an irrevocable D4A trust. An independent trustee may make discretionary distributions solely for Sam. The document contains the required Medicaid payback language.

Benefits classification. First-party D4A/payback SNT under 42 U.S.C. § 1396p(d)(4)(A).

Tax classification. Treat Sam as the grantor-tax owner of the beneficiary-funded trust under the usual grantor-trust analysis. The fact that the trust is irrevocable and managed by someone else does not make it a nongrantor trust.

Beginner trap. “Irrevocable” limits Sam’s power to revoke or amend. It does not answer the income-tax ownership question. I end up explaining this to various financial professionals a number of times a year.

IV. Spousal Sole Benefit Trusts — B1 and B2 Exceptions

A. The Benefits-Law Label

I love these things! The first two trust-oriented transfer exceptions in 42 U.S.C. § 1396p(c)(2)(B) are marital. B1 protects a transfer to the individual’s spouse or to another for the sole benefit of that spouse. B2 protects a transfer from the individual’s spouse to another for the sole benefit of that spouse. They matter because the general transfer-penalty rule reaches transfers by both the institutionalized individual and the spouse during the look back period. But if these exceptions successfully apply, the assets conveyed to “another” (i.e., a trustee) “solely for the benefit of” the spouse do not trigger the transfer rules and render the assets non-countable.⁷

The statute does not define “solely for the benefit of.” Most of the rules under 42 U.S.C. § 1396p(c) and (d) involving trusts are a product of OBRA ’93. Shortly after the enactment, the Health Care Financing Authority (or HCFA, later to be CMS) released its interpretation of the statutory rules as “Part 3 – Eligibility” to the State Medicaid Manual (HCFA/CMS guidance to state Medicaid directors).⁸ In a nutshell, to be “solely for the benefit of” the spouse the trust must provide a distribution standard that will guarantee a complete distribution *within* (not *over*) the spouse’s actuarial life expectancy (“actuarial soundness”) or provide a D4A-like payback provision.⁹

⁷ 42 U.S.C. § 1396p(c)(2)(B)(i)-(ii).

⁸ The rest of this Outline refers to this as “Transmittal 64.”

⁹ See Transmittal 64 § 3258 B.6.

B. Sections 673 and 677 are your friends

Assume Husband transfers his property to an irrevocable trust solely for Wife (a B1 transfer). Or say wife transfers assets to the trust (a B2 transfer). The trustee can distribute trust income to Wife and may accumulate it for later distribution to her. Either husband or wife is the transferor and therefore a grantor for tax purposes. IRC § 677(a) says that the grantor is treated as the owner of any portion whose income may be distributed or accumulated for the grantor or the grantor's spouse, without the consent of an adverse party. Similarly, if a reversionary interest that exceeds 5% of the trust value exists (principal that could be distributed from the trust within the trustee's discretion -- assuming maximum discretion) could trigger grantor trust status under IRC § 673.

C. Tax Ownership Is Not Medicaid Availability

A tax conclusion that a spouse is the grantor-tax owner under either IRC §§ 673 or 677 does not, by itself, mean the SBT principal is an available Medicaid resource to the community spouse. Conversely, benefits-law restrictions that keep trust assets from being countable do not force nongrantor tax treatment.

These trusts are wonderful tools for transferring highly appreciated assets that pose great difficulties for standard Medicaid strategies to a B1 or B2 trust and getting them “off the benefits board” without triggering dire tax consequences.

D. Example: Institutionalized Husband, Community Spouse Wife

Facts. Henry is entering a nursing facility. His wife, Wilma, remains at home. Wilma transfers assets to an irrevocable trust for Wilma that is intended to satisfy the B2 sole-benefit exception. The trustee must make actuarially sound distributions for Wilma and may distribute additional amounts for her benefit (remember “within” not “over” her life expectancy).

Benefits classification. Spousal sole benefit trust under B2. Transfer not sanctionable and assets not countable.

Tax classification. Wilma is the funding grantor. Because income may be paid or accumulated for her, and because assets constitute a “reversionary interest” that could be distributed to her within trustee discretion, IRC §§ 673 and 677 point to grantor status for the income portion. Determine whole-trust status from the rest of the instrument.

The Beauty. What if the assets were highly appreciated gold coins or LLC membership interests? No need to liquidate and incur capital gains tax. Transfer in-kind. No taxes because it is a grantor trust.

Beginner trap. Again, do not call the trust “nongrantor” merely because it is irrevocable and designed to protect assets for Medicaid purposes.

V. Third-Party Sole Benefit Trusts — B3 and B4 Exceptions

A. The Benefits-Law Label

B3 and B4 trusts are the nonspousal sole-benefit trust exceptions. B3 covers a transfer to, or to a trust established solely for the benefit of, the individual's blind or disabled child. There is no age ceiling for the child. B4 covers a transfer to a trust established solely for the benefit of a disabled individual under age 65.¹⁰

Why do we care? Because the transferor may be the person planning for his or her own future Medicaid eligibility. A properly structured SBT can allow a sanction-free transfer for the protected beneficiary and, as we will see, can avoid a payback provision. That is what distinguishes it from a garden-variety third-party SNT funded by a parent who has no concern about the parent's own lookback period.

B. "Solely for the Benefit Of"

The statute does not provide any definition of "solely for the benefit of." Rather, Transmittal 64 supplies the administrative framework: no other person may benefit during the applicable period, and the distribution arrangement generally must be "actuarially sound." Transmittal 64 explains that "actuarial soundness" means a choice between either a D4A "pay back" provision *or* a distribution standard that will guarantee complete trust distribution *within*¹¹ the beneficiary's actuarially determined life expectancy.¹²

C. The Tax Label: Start With Nongrantor

For this Basics Level session, the safest working presumption (in my opinion) is that a true B3/B4 sole-benefit trust funded by a third party is a nongrantor trust. Why? The usual grantor-trust switches depend on retained benefits or powers in the transferor or a cooperative nonadverse person. The sole-benefit design makes me cautious about giving the *transferor* anything that might be viewed as a current benefit from or impermissible control over the transferred assets.

My own advanced outline takes the conservative position that a sole-benefit trust should not be designed as a grantor trust. There is a respectable practitioner counterpoint that a carefully drafted administrative power (most often a power of substitution under IRC § 675(4)(C)) may trigger grantor status without violating the benefits-law sole-benefit requirement. That is exactly the sort of issue that belongs in a Level II discussion.

Beginner rule: If the document says "B3/B4 Sole Benefit Trust," do not assume the donor is the tax owner. Begin with nongrantor treatment unless you can identify an actual grantor trust switch under IRC §§ 673-677.

¹⁰ 42 U.S.C. § 1396p(c)(2)(B)(iii)-(iv).

¹¹ Note: "Within" NOT "over."

¹² Transmittal 64 §§ 3257 B.6, 3258.9B.

D. Qualified Disability Trust: A Tax Consideration

A nongrantor trust established for disabled beneficiaries may potentially qualify for the special exemption under IRC § 642(b)(2)(C). The statute ties the definition to a disability trust described in 42 U.S.C. § 1396p(c)(2)(B)(iv) and imposes additional requirements. If the trust qualifies (and a B3 through B4 Trust should), the increased exemption may take much of the nongrantor trust tax sting out. Amy will likely address this in more detail after lunch.

E. Example: Mom's Medicaid Planning for Disabled Daughter

Facts. Mom is headed to the nursing home. Her adult daughter, Denise, has been disabled since childhood and receives SSDI but not SSI.¹³ Mom transfers \$250,000 to an irrevocable trust solely for Denise, with actuarially sound distribution provisions and no Medicaid payback provision. Denise's children are named as the remainder beneficiaries upon Denise's death.

What if Denise is on SSI? We cannot discuss SSI qualification rules in this session other than to say there are strict income limits and \$2,000 countable asset limits under SSI. Does this absolutely rule out a B3 or B4 Trust? Not necessarily. Look at how much is funding the trust and calculate how much an annual "actuarially sound" distribution would be, then consider whether there are distributions that could be made to or for the benefit of the beneficiary that would not jeopardize SSI eligibility. Medical expenses? Food? Transportation? Clothing?

For example, if Denise is 45, the Social Security Administration 2023 Life Table says she has a 38.01 year life expectancy. If the trust term is set at 38 years and the trust formula says the year one minimum distribution must be $1/38^{\text{th}}$ of the trust, that works out to around \$6,579. Can the trustee come up with some creative items to purchase or services to acquire for Denise?

Benefits classification. A B3 sole-benefit trust can fit the transfer exception for a disabled child. If Denise was not disabled, but rather her husband Don was the disabled individual, Mom could establish a B4 Trust for her son-in-law as long as he is under age 65. All the other B3 planning considerations apply.

Tax classification. Begin with nongrantor trust treatment. The trustee files Form 1041 and the usual Subchapter J rules determine whether taxable income stays in the trust or is carried out to Denise.

Beginner's Tip: Always ask if there are any disabled family members in an initial client meeting.

¹³ Because this is Basic Level: SSDI does not have the stringent Medicaid-like asset and income rules that SSI does, so distributions to disabled daughter are not too much of a planning concern.

VI. “Garden-Variety” Third-Party SNTs

A. Not Every Third-Party SNT Is a Sole Benefit Trust

Parents and grandparents routinely create discretionary SNTs for a disabled family member without any concern about the transferor qualifying for Medicaid. In that setting, the trust does not need the B3/B4 transfer exception. It simply needs to avoid making trust assets an available resource to the beneficiary and to coordinate distributions with SSI or Medicaid rules if those benefits matter.

This distinction is important. A parent who is 52 years old with ample retirement assets may have no reason to accept the actuarially sound distribution structure of a sole benefit trust. A purely discretionary third-party SNT may be the better benefits design.

B. Tax Classification Is a Design Choice

Unlike the B3/B4 SBT, a garden-variety third-party SNT can readily be drafted as either a grantor or nongrantor trust while the donor is alive. If Dad retains a non-excepted power to affect beneficial enjoyment, a substitution power, or another appropriate Subpart E grantor trust switch, Dad may be the tax owner. If the trust is drafted without a grantor-trust trigger, the trust is a nongrantor taxpayer.

The choice is strategic. Grantor treatment can simplify income-tax reporting and permit the donor to pay the tax — effectively allowing the trust to grow without using trust assets for income taxes. Nongrantor treatment can isolate income from the donor and may position the trust for the qualified disability trust exemption if the statutory requirements are met. Pick your design poison.

C. Be Careful of HEMS Distribution Standards

Whatever tax classification you choose, a third-party SNT for a means-tested-benefit recipient should not use an enforceable support or HEMS standard. An “ascertainable” or “health, education, maintenance, or support” standard imposes mandatory distribution standards on the trustee and will result in the trust being a countable asset to the beneficiary.¹⁴ If you see a trust intended to be a trust for a disabled beneficiary drafted with a HEMS distribution standard, you can reasonably assume the scrivener did not know what he or she was doing. By the way, this same concern applies to testamentary trusts.

D. After the Donor Dies

A grantor trust does not stay a grantor trust forever simply because it began that way. When Dad dies, there is no longer a living Dad to be the owner under IRC §§ 673–677. The continuing trust ordinarily becomes a nongrantor trust unless it was a joint trust with Mom or another person is treated as owner under a rule such as IRC § 678 (a topic for another day).

¹⁴ See POMS SI 01120.200.D.1.

That transition is one reason an attorney who drafts lifetime third-party SNTs needs at least a working understanding of both grantor and nongrantor tax schemes. You may be drafting a trust that uses Form 1040 for ten years and Form 1041 for the next forty.

VII. Irrevocable First-Party Asset Protection Trusts

A. Not a D4A Trust

Gloria, age 68, transfers her residence and investment assets to an irrevocable trust. She is not trying to preserve Medicaid at this time. The trust prohibits any distribution of principal to Gloria but may reserve income to her or permit distributions to children. She hopes to get through the Medicaid lookback period while protecting principal from future nursing-home spend-down.

That is a first-party irrevocable asset protection trust, but it is not a D4A trust because it is not necessarily solely for her benefit nor does it contain a payback provision. Because principal cannot be paid to Gloria, the principal will be unavailable under the self-settled trust rules; because she transferred assets for less than fair market value, the transfer rules and five-year lookback then become critical.

The statute says that “if there any circumstances” a distribution could be made to or for the benefit of Gloria, then that “portion” can be counted (in most cases the “portions” refers to either principal or income). If income could be distributed to Gloria, Medicaid will count the income; if there are no circumstances in which principal could be distributed to Gloria, the principal will not be countable, but the trust funding will be subject to Medicaid transfer sanctions review.

B. Tax Label: Pick Your Strategy

You can design the trust either way. Start with an irrevocable trust containing no retained tax powers, then deliberately add the switch you want — or leave all switches off.

Grantor design. A carefully selected IRC § 674 or § 675 power can produce grantor status without giving Gloria a property right to receive principal. A retained income interest under IRC § 677 produces grantor treatment as to the income portion, but that alone might not create a grantor trust with respect to principal (causing potentially painful capital gains problems at the trust level).

If you want grantor trust treatment at the principal level consider a power of substitution under IRC § 675(4)(C). Concerned this could cause Medicaid problems? Rationally it should not, but do state programs always act rationally? If it is a concern simply give the power to a nonadverse party (Maybe Gloria’s brother?).

Nongrantor design. If the trust avoids grantor trust status, then it becomes a separate taxpayer. That may be acceptable or desirable, but the compressed trust brackets and capital-gain rules deserve attention and will be addressed more fully in a later session.

Partial grantor design. The rules can be applied to portions. In a sophisticated design, the residence might be within a grantor portion while other assets are not, although added complexity should have a reason.

C. Why You Might Want Grantor Status

- Administrative simplicity: tax activity can continue on the settlor's Form 1040 instead of creating a full separate taxpayer during life.
- Preserving tax attributes tied to the owner, such as the potential IRC § 121 principal-residence capital gains exclusion when the regulations treat the grantor as owner of the residence.
- Allowing the settlor to bear the income-tax cost rather than depleting trust assets, assuming the overall planning design supports that result.

D. Why You Might Want Nongrantor Status

- The client may deliberately want income separated from the client's return or may not want to bear the trust's income tax.
- The nature of the assets and anticipated distributions may make the compressed brackets less important than expected.
- Avoiding a grantor switch can simplify the benefits-law drafting where a retained or delegated power might create an availability argument.

E. Example: Residence Plus Brokerage Account

Facts. Gloria transfers a \$500,000 residence and \$300,000 brokerage account to an irrevocable trust. She retains a mandatory right to accounting income but no right to principal. The trust gives an appropriate nonadverse person a separate power intended to cause grantor status as to principal.

Benefits classification. First-party irrevocable asset protection trust; not D4A. Principal availability and the transfer/lookback consequences must be analyzed under 42 U.S.C. § 1396p(c) and (d).

Tax classification. Do not stop at the IRC § 677 the reserved income right. Confirm that a separate power actually reaches principal if whole-trust grantor status is the objective.

Beginner trap. "The trust pays all income to the settlor, so it is a grantor trust" is not necessarily accurate. Ask: grantor as to what portion? I have seen trusts drafted with a retained income right only and with a residence in trust (good luck with the sale of the residence!).

VIII. Revocable Trusts

A. The Easy One

A conventional revocable living trust is a grantor trust while the person holding the power to revest title is alive. IRC § 676 supplies the answer: if the grantor or a nonadverse party can revest title to a portion of the trust in the grantor, the grantor is treated as the owner of that portion.¹⁵

Client establishes and funds a fully revocable living trust for herself? Grantor trust. The assets and income continue to be reported as the client's for all federal income-tax purposes.

B. Benefits Law Is Equally Unexciting

A revocable trust funded with the Medicaid applicant's own assets does not shelter those assets. If the applicant can revoke the trust and take the property back, the property is available. That is why a standard probate-avoidance revocable trust is not a Medicaid asset-protection trust.¹⁶

C. Death Changes the Taxpayer

I like that heading! It certainly does (change the taxpayer)! At the grantor's death, the power to revoke dies with the grantor. A continuing trust normally becomes a nongrantor trust and begins using Form 1041, subject to the terms of the post-death trust and any other owner rule that might apply. For a joint revocable trust, one spouse's death may produce a more complicated split between the survivor's grantor portion and a decedent's nongrantor portion. Spot the issue; do not assume the pre-death tax label survives unchanged.

IX. Testamentary SNTs

A. Tax Label: Nongrantor

A testamentary trust is created under a decedent's will. The person whose will created it is dead.¹⁷ Accordingly, there is no living settlor who can remain the tax owner under IRC §§ 673–677. The trust is a nongrantor trust and operates under the usual Subchapter J rules unless some beneficiary or other person is treated as owner under IRC § 678.

If you do estate planning, elder law, or anything having to do with testamentary trusts, you already deal with nongrantor trusts whether you think of yourself as a “trust tax lawyer” or

¹⁵ IRC § 676(a).

¹⁶ 42 U.S.C. § 1396p(d)(3)(A). Interesting point. As written, the statute says assets in a revocable trust are countable resources. Period. Many states (*e.g.*, North Carolina) take the “see-through” view and count assets in a revocable trust that would otherwise be countable and do not count otherwise noncountable assets. The literal wording of the statute would present a wonderful planning opportunity: Transfer the residence to the trust and make it countable. Apply for Medicaid. Remove the residence from trust as part of the spenddown strategy. I think the statute was poorly drafted.

¹⁷ I didn't even have to go to law school to figure that out.

not. The basic tax regime is really not that difficult to understand. Now if you want to be an expert

B. Benefits-Law Advantage for a Spouse

Testamentary trusts are an incredibly important tool in an elder law practice. The self-settled trust rules in 42 U.S.C. § 1396p(d)(2)(A)¹⁸ (remember the “under any circumstances” rule?) apply to trusts established by the individual or spouse “*other than by will*.” A trust created under the will of a deceased spouse is therefore outside that statutory definition and is analyzed more like a third-party trust (remember the “is the trustee under a legal obligation” rule?). This can be extraordinarily important when planning for a surviving spouse who may need means-tested benefits.

Tip: Do not ever let a community spouse and an institutionalized spouse get away from you with simple “I Love You” wills. In any event, the community spouse should at least have a will with a testamentary trust for the surviving institutionalized spouse in case the CS is hit by a school bus.

C. Testamentary SNT Example

Facts. Dad’s will leaves Daughter’s share in a purely discretionary SNT. Daughter receives SSI and Medicaid. Dad dies and the executor funds the trust.

Benefits classification. Third-party testamentary SNT; analyze the distribution standard under the third-party trust rules (if purely discretionary distribution standard, great).

Tax classification. Nongrantor trust. The trustee files Form 1041, and distributions may carry DNI to Daughter on Schedule K-1.

Tax issue to spot. Depending on the beneficiaries and terms, ask whether the trust may qualify as a qualified disability trust under IRC § 642(b)(2)(C). Amy will take it from there.

X. Putting the Labels Together

A. The Same Tax Label Can Sit on Very Different Benefits Trusts

A beneficiary-funded D4A trust and a revocable living trust can both be grantor trusts, even though one is irrevocable, contains Medicaid payback, and exists to preserve needs-based benefits while the other is fully revocable and offers no Medicaid protection at all. The shared tax label tells you only who reports the income.

Likewise, a testamentary SNT and a properly drafted B3 sole-benefit trust can both be nongrantor trusts even though one springs into existence at death and the other is created during life to fit a transfer-penalty exception. Again, the shared tax label does not erase their benefits-law differences.

¹⁸ See, also, Transmittal 64 § 3259.3.

B. The Same Benefits Label Can Carry Different Tax Results

“Third-party SNT” is a benefits-law description. During Dad’s life it can be intentionally grantor as to Dad; another family’s otherwise similar trust can be nongrantor from inception. After Dad’s death, the first trust can change tax classification even though its benefits-law purpose remains exactly the same.

XI. The Practitioner’s Four-Step Classification

- Identify the funding source. Whose assets actually went into the trust? Do not confuse the person signing the agreement with the person making the transfer.
- Identify the benefits-law rule. D4A exception? B1/B2 spousal sole-benefit exception? B3/B4 nonspousal sole-benefit exception? Ordinary third-party trust? Self-settled irrevocable trust? Revocable trust?
- Identify the tax-owner switch. Check IRC §§ 673–678 and determine whether the entire trust or only a portion is owned by a grantor or another person.
- Only then address the downstream tax consequences: Form 1040 versus Form 1041, DNI and distributions, QDT status, capital gains, basis and estate inclusion. Those are getting into more advanced topics.

QUICK CLASSIFICATION CHART

Trust type	Whose money?	Level I income-tax starting point	The trap to avoid
D4A / payback SNT	Disabled beneficiary's own assets	Grantor trust for beneficiary (conventional self-funded case)	"Someone else established it, so that person is the tax owner."
Spousal SBT — B1/B2	Either spouse's assets	Grantor	Calling the whole trust nongrantor because it is irrevocable.
Third-party SBT — B3/B4	Parent/other transferor's assets	Begin with nongrantor; identify an actual grantor switch before changing answer	Assuming "third-party" automatically means either grantor or nongrantor trust.
Garden-variety third-party SNT	Parent/grandparent/other third party	Can be grantor or nongrantor by design during donor's life	HEMS standard
First-party irrevocable asset-protection trust	Client's assets	Can be grantor, nongrantor, or partial grantor by design	Relying on an income-only § 677 trigger when the tax objective requires principal/capital-gain ownership.
Revocable living trust	Grantor's own assets	Grantor trust under § 676	Thinking probate avoidance equals Medicaid asset protection.
Testamentary SNT	Decedent's estate funds at death	Nongrantor trust	When planning, forgetting the spouse-by-will exception in § 1396p(d)(2)(A).

TEN THINGS TO REMEMBER BEFORE LUNCH

1. Classify twice: benefits law first, income tax second.
2. Follow the money. The person who signs or “establishes” the document is not necessarily the income-tax grantor.
3. A conventional beneficiary-funded D4A/payback trust is a grantor trust for the disabled beneficiary.
4. A spousal SBT commonly triggers §§ 673 and 677 grantor status.
5. For a B3/B4 third-party sole-benefit trust, begin with nongrantor treatment.
6. An irrevocable first-party asset-protection trust can be grantor or nongrantor. That is a design decision, not a consequence of the word “irrevocable.”
7. A revocable living trust is the easy one: § 676 makes it a grantor trust while the revocation power exists.
8. A testamentary trust is a nongrantor trust, and a spouse’s testamentary trust also gets a critical benefits-law advantage under § 1396p(d)(2)(A) if properly drafted as a purely discretionary trust.
9. Grantor status does not automatically mean Medicaid availability
10. Grantor status does not automatically guarantee estate inclusion. The rules are similar, but not identical.

GRANTOR TRUST CHEAT SHEET



Grantor Trust Powers (One Page Cheat Sheet)

673	Reversionary interest = 5% or more; Maximum trustee discretion assumed
674	
(b)(1)	Provision allowing income to legal support obligation OK; Actually do it – grantor trust
(b)(2)	Postponed power as long as less than 5%
(b)(3)	Testamentary power unless income accumulation
(b)(4)	Allocate among charitable beneficiaries
(b)(5)(A)*	Distribute <u>corpus</u> among beneficiaries if subject to reasonably definite standard
(b)(5)(B)*	Distribute <u>corpus</u> to income beneficiaries as long as chargeable to donee share
(b)(6)*	Power to distribute or accumulate <u>income</u> to any income beneficiary as long as: • Ultimately payable to THAT beneficiary or his assignees or estate, OR • Added to corpus and distributed to current income beneficiaries in irrevocably specified shares on termination
(b)(7)*	Withhold income during incapacity
(b)(8)	Reasonable allocations between principal and income
(c)*	Independent trustees can accumulate, distribute corpus or income among beneficiaries or class of beneficiaries
(d)*	Trustee (other than grantor or spouse) can accumulate/distribute income among beneficiaries if subject to reasonably definite standard
675	Admin Powers: Bargain dealing, great loans for grantor or nonadverse; grantor borrows and fails to repay before years end (unless trustee Independent); Power of Substitution
676	Power of revocation in grantor or nonadverse party
677	Income distributed or accumulated for grantor or grantor's spouse
678	Someone other than grantor

* No one may have the power to add to a beneficiary or class unless for after-born/after-adopted

masonlawpc

**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

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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
MEDICAIDESTATE
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

TAX STARTING POINT

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

BEGIN WITH
NONGRANTOR

“Solely for the benefit of”
Actuarial soundness
matters

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

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

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

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

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.

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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.

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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.

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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.

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The Whole Session in Three Lines

CLASSIFY TWICE

FOLLOW THE MONEY

CHECK THE POWER — §§ 673–678

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QUESTIONS?

Q #1: WHAT'S FOR LUNCH?



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Tax Intensive

October 21, 2026

Understanding Tax Treatment for SNTs



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Understanding Tax Treatment for SNTs

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Framework for Analyzing Taxation of SNTs

Tax planning is an important part of establishing and administering a special needs trust (SNT). While preserving public benefits is one of the main concerns, trustees must also consider how the trust's income is reported, whether funding the trust creates a completed gift, and whether the trust assets will be included in the donor's or beneficiary's gross estate for determining estate tax liability at death. These questions arise throughout the planning process and must be understood at the outset of when the SNT is established.

The starting point is identifying whose assets are funding the trust. A first-party SNT is funded with the beneficiary's own property. Common examples include personal injury settlement proceeds, an inheritance payable outright to the beneficiary, retroactive benefits, and child support. The ownership of the property controls this determination, even when someone else establishes the trust on the beneficiary's behalf. A third-party SNT, on the other hand, is funded with another person's property that never belonged to the beneficiary. The most common example is creating and funding this type of trust as part of a parent's estate plan. A properly structured third-party SNT is not subject to the federal Medicaid payback requirement applicable to a first-party SNT.

Four separate analyses are necessary: income tax, gift tax, estate tax, and public benefits. For income tax purposes, the trustee must identify the person treated as the owner under the grantor trust rules or determine how a nongrantor trust's income will be allocated between the trust and beneficiary. The gift tax analysis addresses whether the transfer is complete. The estate tax analysis addresses inclusion at death and the related consequences for basis, deductions, and filing obligations. Public benefits eligibility requires its own review of resource availability and distributions.

These rules can produce results that initially seem inconsistent. A trust may be disregarded as a separate taxpayer for income tax purposes while its assets remain fully includable in the beneficiary's gross estate. Similarly, income taxable to the beneficiary does not necessarily constitute income for SSI or Medicaid purposes.

First-Party SNTs

Grantor Trust Reporting

A first-party SNT established under 42 U.S.C. § 1396p(d)(4)(A) holds assets originally belonging to an individual with a disability. To qualify for this type of exception trust, the trust must be irrevocable and established for that individual's benefit by the individual, a parent, grandparent, legal guardian, or court. The individual must be disabled within the meaning of the Social Security Act and under age 65 when the trust is established and funded. The trust must also provide that, upon the beneficiary's death, any remaining assets will reimburse the state Medicaid agencies, up to the total Medicaid assistance paid on the beneficiary's behalf.

First-party SNTs are typically grantor trusts for federal income tax purposes because the grantor (i.e., the beneficiary) retains the right to the beneficial enjoyment of the trust assets, even though the distribution of the trust assets are not within the beneficiary's control. When the beneficiary is treated as the owner of the trust, the trust's income, deductions, and credits are reported as though earned or incurred directly by the beneficiary. The trust is not a separate taxpayer entity.

The beneficiary is taxed on the income whether it is distributed or retained in the trust. This treatment is often advantageous because individual income tax brackets are less compressed than those applicable to nongrantor trusts, although the actual result depends on the beneficiary's income and circumstances. For 2026, a trust reaches the top 37% federal income tax bracket once its taxable income exceeds \$16,000 whereas a single individual does not reach that bracket until taxable income exceeds \$640,600.

The trustee may pay the beneficiary's income tax liability attributable to trust income. The trustee should coordinate those payments with the beneficiary and maintain sufficient cash for estimated taxes and any balance due. Taxable income and countable income for public benefits remain separate questions; the fact that trust income appears on the beneficiary's tax return does not, by itself, establish that it is countable for SSI or Medicaid.

Income Tax Reporting

The reporting method should be determined when the trust is funded. Treasury Regulation § 1.671-4 permits different methods depending on the circumstances. The trustee may file Form 1041 with a grantor trust information statement, or an eligible trust

may use an alternative reporting method. Depending on the method selected, reporting may use either the beneficiary's Social Security number (SSN) or the trust's employer identification number (EIN). A separate EIN is therefore not required for the first-party SNT, although many trustees obtain one to keep the trust's accounts and tax reporting distinct from the beneficiary's personal accounts.

Because the beneficiary is treated as the owner of the first-party SNT, the trustee provides the beneficiary and tax preparer with a grantor trust statement showing the income, deductions, and credits to report on the beneficiary's individual return. The beneficiary does not receive a Schedule K-1, and distributions do not determine how much trust income the beneficiary reports. Grantor trust reporting and nongrantor trust DNI reporting are different systems. The trustee must provide the beneficiary and tax preparer with the necessary information and coordinate account registration, Forms 1099, and return preparation.

For example, assume a first-party SNT holds a \$1 million settlement, earns \$28,000 in taxable interest and dividends, realizes \$12,000 in capital gain, and pays \$15,000 for the beneficiary's expenses. The beneficiary reports the \$40,000 of income and gain, with each item retaining its tax character and subject to applicable individual income tax rules. The amount reported is not limited to the \$15,000 spent by the trustee. Retaining the remaining income or sale proceeds in the trust does not avoid the beneficiary's income tax obligation.

Gift Tax Considerations

Funding a first-party SNT with the beneficiary's own assets is an incomplete gift when the trust permits distributions only for the beneficiary during life and directs any assets remaining after Medicaid reimbursement to the beneficiary's estate. Although the trustee controls distributions, no other person other than the beneficiary receives a beneficial interest during the beneficiary's life. Because the beneficiary has not made a completed gift, funding the trust does not trigger gift tax nor filing of a gift tax return.

Estate Inclusion

The same retained lifetime benefit that leaves the gift incomplete also informs the estate tax analysis upon beneficiary's death. First-party SNT assets are included in the beneficiary's gross estate under IRC § 2036 because of the beneficiary's retained lifetime enjoyment of the transferred property. Income tax grantor status does not establish estate inclusion. Similarly, estate inclusion does not mean that the beneficiary could compel distributions during life or that the trust is an available resource for determining Medicaid eligibility.

Trust property included in the beneficiary's gross estate receives a basis adjustment under IRC § 1014, commonly called a "step-up in basis" when the property has appreciated. The adjustment can also reduce basis if the property has declined in value. For appreciated property that qualifies for a basis adjustment, the new basis is its date-of-death fair market value. This eliminates the gain from appreciation before death and if the property is sold for that value, no capital gains tax is due on the sale. Appreciation after death is taxable when the property is sold.

The trustee should obtain and retain date-of-death valuations even when no federal estate tax return is required. Each asset's tax character must also be identified. Income in respect of a decedent, including many retirement benefits, does not receive a basis adjustment under IRC § 1014 and requires separate treatment.

Medicaid Reimbursement and Administration at Death

At the beneficiary's death, the trustee must reimburse the state Medicaid agencies before distributing the remaining trust assets, if any, to the remainder beneficiaries, which is typically to the personal representative of the beneficiary's estate. Before reimbursement, the trust can pay taxes arising from the beneficiary's death and reasonable costs of closing the trust, including final trustee fees. Funeral expenses, the beneficiary's other debts, and distributions to the estate must wait until Medicaid has been reimbursed.

The Medicaid payback does not reduce the value of the SNT included in the beneficiary's gross estate. The gross estate reflects the full date-of-death value of the trust assets, even though part of those assets must be used to reimburse Medicaid. The Medicaid claim is then deducted under IRC § 2053 in calculating the taxable estate. The beneficiary's personal representative is responsible for preparing and filing a federal estate tax return if the gross estate, together with adjusted taxable gifts and any applicable specific exemption, exceeds the filing threshold for the year of death.

Estate Tax Filing Example

Assume a beneficiary who is a U.S. citizen dies in 2026 with \$17 million in a first-party SNT and a \$5 million Medicaid reimbursement obligation. For purposes of this

example, assume the entire trust is included in the beneficiary's gross estate, the full Medicaid obligation qualifies for deduction under IRC § 2053, the beneficiary has no other includable assets or prior taxable gifts, and the full \$15 million federal basic exclusion amount is available.

The gross estate includes the entire \$17 million trust. After deducting the \$5 million Medicaid obligation, the taxable estate is \$12 million, before any other allowable deductions. Under these assumptions, no federal estate tax is payable because the taxable estate is below the available \$15 million exclusion.

Form 706 is nevertheless required. The filing requirement is based on the gross estate, taking into account the applicable adjustments for lifetime gifts, rather than the taxable estate after deductions. Here, the \$17 million gross estate exceeds the \$15 million filing threshold even though the Medicaid deduction eliminates the federal estate tax liability. State estate tax filing requirements must also be considered separately.

Third-Party SNTs

Retained Powers

A third-party SNT funded by a parent or other donor can be either revocable or irrevocable. If the donor can revoke the trust and recover its property, the donor is treated as the income tax owner. The contribution is an incomplete gift, and the retained power causes estate inclusion at the donor's death. In practical terms, placing assets in a revocable SNT does not remove them from the donor's estate. The donor reports the trust's income on their individual tax return and pays any tax due. At the donor's death, the trustee and tax preparer should separate income reportable by the donor before

death from income earned by the trust afterward and determine the trust's filing and taxpayer identification number requirements.

An irrevocable SNT can be drafted as a grantor trust if the donor retains certain powers. For example, a parent can make a completed gift to an irrevocable third-party SNT while retaining a properly structured power to substitute trust assets for assets of equal value (IRC § 675(4)(C)). That power can make the parent responsible for income tax on the portion of the trust the parent funded. Paying the tax is not another gift to the beneficiary, and it can reduce the parent's estate over time without reducing the trust's assets. The trust therefore keeps its full investment returns while the parent pays the income tax from their personal funds. Whether the trust assets are included in the parent's estate is a separate question based on the rights and powers the parent retained. If the assets are outside the parent's estate, they do not receive a basis adjustment at the parent's death merely because the parent paid tax on the trust's income.

Completed Gifts and Annual Exclusion Planning

A gift is complete when the donor gives up the ability to take the property back or decide who ultimately receives it, often through a limited power of appointment. If the donor retains either power, the transfer remains incomplete to the extent the donor still controls the property or its disposition. Calling the trust "irrevocable" does not answer the gift tax question; the trust's actual terms control. The trustee should keep a clear record of who contributed each asset, when it was transferred, and its value at that time. Counsel should also identify any powers the donor retained and determine who is

responsible for filing a gift tax return. The gift tax annual exclusion is available only when the recipient has an immediate right to use or enjoy the gift. For 2026, the exclusion is \$19,000 per donor, per recipient, but it applies only to gifts the recipient has an immediate right to use or enjoy. A beneficiary of a third-party SNT has no right to demand a distribution, so a contribution to that trust does not qualify for the annual exclusion on the basis of the beneficiary's discretionary interest. A *Crummey* power gives the beneficiary a temporary right to withdraw a contribution. That right can turn the contribution into a present interest gift for tax purposes, but it conflicts with the central protection of an SNT: keeping trust funds beyond the beneficiary's control. During the withdrawal period, funds the beneficiary has a legal right to obtain can be treated as an available resource for SSI and can affect Medicaid eligibility. The problem exists even if the beneficiary never exercises the power. A third-party SNT for a beneficiary receiving means tested benefits should not give that beneficiary a *Crummey* withdrawal power. The donor can instead make a completed gift to the SNT, file a gift tax return, and apply available lifetime exclusion. That approach preserves the trustee's control over distributions without giving the beneficiary an enforceable right to trust funds.

Qualified Disability Trusts

A qualified disability trust (QDisT) receives a larger federal income tax exemption when it meets the requirements of IRC § 642(b)(2)(C). To qualify as a QDisT, the trust must be a nongrantor trust established solely for the benefit of a person with a disability who was under age 65 when the trust was established. The beneficiary at the close of the tax year must have been determined by the Social Security Administration to be disabled for at least part of that year. A remainder beneficiary who receives trust

property only after the trust no longer has a disabled beneficiary does not prevent qualification. The trustee should retain the disability determination.

A grantor trust cannot use the QDisT exemption because its income is reported by the grantor, not taxed to the trust as a separate taxpayer. For first-party SNTs, the beneficiary is treated as the income tax owner of the entire trust and reports the trust's income on the beneficiary's individual return. There is no trust level income against which to apply the QDisT exemption. The QDisT analysis is therefore unnecessary for a first-party SNT that is wholly a grantor trust.

For 2026, a QDisT receives a \$5,300 income tax exemption, which reduces the amount of trust income subject to tax. By comparison, a complex trust receives a \$100 exemption, while a simple trust required to distribute all its income currently receives a \$300 exemption (which should never be a SNT). The exemption reduces taxable income but does not change the trust tax brackets. The 37% federal rate applies to trust taxable income above \$16,000 in 2026.

For example, a mother's last will and testament bequests \$1.5 million to a third-party SNT for her 40-year-old daughter, who receives SSDI. The trust is funded with the mother's assets after her death, and the daughter is under age 65 when it is established. If the trust is solely for the daughter's benefit, is taxed as a nongrantor trust, and meets the QDisT disability requirements, the trustee claims the QDisT exemption on Form 1041. The trustee should retain the daughter's Social Security disability determination to support that filing position. The exemption reduces the income taxed to the trust. It does not determine whether distributions are taxable to the

daughter; the trustee and tax preparer must analyze those distributions under the separate DNI rules.

Distributable Net Income

Distributable net income, or DNI, determines how much of a nongrantor trust's income is taxed to the beneficiary when the trust makes a distribution. The trust receives a corresponding deduction for the income carried out to the beneficiary, subject to the applicable limits. (Note: Beginning in 2026, the new 2/37ths limitation under IRC § 68 raises a question about whether a trust in the top tax bracket must reduce its distribution deduction even though the beneficiary reports the distributed income. That issue is beyond the scope of this outline.)

DNI is a tax calculation, not the trust's bank balance or the amount labeled "income" in its accounting records. A payment from accounting principal can still carry out current taxable income to the beneficiary. If the payment exceeds DNI, the excess is not taxable to the beneficiary solely because it came from the trust.

The beneficiary does not have to receive cash for a payment to carry out DNI. When the trustee pays a caregiver, landlord, or other provider, or purchases an iPhone or clothes for the beneficiary's benefit, the payment can carry taxable income to the beneficiary. The trustee should distinguish these payments from the trust's own administration expenses, such as accounting or legal fees, and give the beneficiary's tax preparer the Schedule K-1 information needed for the individual return. If the trustee distributes property instead of cash, the trustee must also address the property's value, tax basis, and whether the transfer creates taxable gain.

For example, in 2026 a nongrantor third-party SNT that qualifies as a QDisT earns \$30,000 of taxable ordinary income. The trust pays \$20,000 for the beneficiary's caregiver and \$5,000 for the beneficiary's travel. The beneficiary receives a Schedule K-1 reporting \$25,000 of income. The trust retains \$5,000 of income, which is offset by the QDisT's \$5,300 exemption.

When a nongrantor third-party SNT sells an appreciated asset, the gain stays taxable to the trust if it is allocated to principal and is not treated as part of a distribution. The gain can instead be included in DNI when the trust terms, state law, and the trustee's administration support that treatment.

Coordinating Taxation with SSI and Medicaid

Tax reporting and benefits eligibility require separate analyses. A grantor trust can produce taxable income for its owner without a distribution, while a nongrantor trust can carry out DNI through a payment made directly to a vendor. Neither result, standing alone, determines the payment's treatment under SSI or Medicaid. The trustee should identify the beneficiary's actual programs and Medicaid eligibility category before advising on a distribution.

Since September 30, 2024, food is no longer counted as in-kind support and maintenance (ISM) for SSI, but shelter support can still affect the benefit. For example, rent paid directly to a landlord may carry out DNI from a nongrantor third-party SNT and, separately, create SSI shelter income. A direct payment for dental care, a laptop, or adaptive equipment may carry out DNI without becoming shelter income.

Understanding Tax Treatment for SNTs

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Program Overview

- First-party SNTs: income, gift and estate tax treatment, basis adjustment, and Medicaid payback.
- Third-party SNTs: revocable and irrevocable trusts; income, gift and estate tax treatment.
- Qualified Disability Trusts (QDisTs): requirements and tax treatment.
- Nongrantor trusts: Distributable Net Income (DNI), distributions, and the 65-day rule.
- Practical tax considerations for trustees and attorneys.

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2

Tax Classification Matters

- Income tax treatment and estate tax treatment are separate. Grantor trust status does not determine whether the trust assets are included in the grantor's gross estate.
- Tax ownership determines who reports income, who receives deductions and credits, and whether distributions carry out DNI.
- Transfer tax classification affects completed gifts, estate inclusion, basis adjustment, and planning flexibility.
- Public benefit "income" is a separate concept from taxable income and trustees must understand the difference.

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SNTs: Start with the Source of Funds

SNT Type	Whose Assets?	Tax Starting Point
First-party / self-settled	Beneficiary	Usually grantor trust to beneficiary
Pooled Trust	Beneficiary	Usually grantor trust to beneficiary
Third-party revocable	Parent / other donor	Grantor trust to donor
Third-party irrevocable	Parent / other donor	Grantor or nongrantor/QDisT (depends on powers)
Testamentary third-party	Decedent	Nongrantor/QDisT

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One SNT: Four Analyses

Question	Income Tax	Gift Tax	Estate Tax	Benefits
Who owns the trust's income?	Grantor, Trust or Beneficiary	N/A	N/A	N/A
Was trust funding a transfer?	N/A	Complete or incomplete gift	May affect inclusion	Must not create countable resource
What happens at beneficiary's death?	Final 1041 / K-1	N/A	Gross estate / basis	Payback / remainder rules
What does a distribution do?	DNI / K-1	Usually no new gift by trustee	N/A	SSI/Medicaid consequences

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First-Party SNTs: Legal Structure

- Funded with assets belonging to the individual with a disability.
- A (d)(4)(A) trust, beneficiary must be under age 65 when established and funded.
- Trust is irrevocable and for the beneficiary's sole benefit during life.
- At death, state Medicaid agencies are reimbursed before remainder distributions.
- Common funding: personal injury recoveries, inherited assets received outright, retroactive benefits, child support.

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First-Party SNTs: Grantor Trusts

- Grantor trust status is determined under IRC §§ 671–679 based on retained interests and powers, not by the trust's classification as a first-party SNT under the Medicaid rules.
- The beneficiary is treated as the grantor because the trust is funded with the beneficiary's own property and receives the benefit.
- Because trust income and principal remain available for the beneficiary's benefit, first-party SNTs generally are treated as grantor trusts under IRC § 677.
- As a result trust items of income, deduction and credit are reportable by the beneficiary as though earned or incurred directly by the beneficiary.

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First-Party SNTs: Why Grantor Trust Status Matters

- Beneficiary is responsible for income tax attributable to the trust's income.
- Beneficiary is taxed on the trust's income whether or not the income is distributed to beneficiary.
- This is advantageous because individual income tax brackets are less compressed than the brackets applicable to trusts.
- Income tax and public benefits rules are separate: income taxable to the beneficiary does not necessarily constitute income to the beneficiary for SSI or Medicaid purposes.

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First-Party SNTs: Income Tax Reporting

- Trust's items of income, deduction and credit are reported on beneficiary's individual income tax return.
- Trustee may file Form 1041 with a grantor trust information statement.
- Trustee must coordinate with beneficiary and provide necessary information (and at times assist with return).
- Trustee can pay beneficiary's income tax liability attributable to trust income.
- Grantor trust reporting and DNI distribution reporting are different regimes – beneficiary should not receive K-1 for income attributable to the beneficiary under the grantor trust rules.

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First-Party SNTs: Gift Tax Considerations

- Funding a first-party SNT with the beneficiary's own assets does not constitute a completed gift merely because the assets are transferred to the trust.
- The beneficiary is the sole lifetime beneficiary, and the trust assets remain available for the beneficiary's benefit.
- This is true even though the beneficiary cannot compel distributions and distributions are made in the trustee's sole discretion.
- Gift tax treatment depends on the beneficiary's retained interests and the terms governing disposition of the trust at death.

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First-Party SNTs: Estate Inclusion

- First-party SNT assets are generally included in beneficiary's gross estate for federal estate tax purposes.
- Beneficiary funded trust with their own assets and retains beneficial interest during lifetime.
- Estate inclusion does not mean estate tax will be due.
- Estate tax liability depends on the value of beneficiary's taxable estate after allowable deductions and the applicable estate tax exemption.
- Medicaid payback is an allowable deduction under IRC § 2053.

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First-Party SNTs: Basis Adjustment at Death

- When SNT assets are included in the beneficiary's gross estate, qualifying assets receive a basis adjustment to fair market value at death under IRC § 1014.
- For appreciated assets, the basis adjustment can reduce or eliminate capital gain when the assets are sold.
- Trustee should obtain and retain date-of-death values for trust assets, even if no estate tax return is required.
- Certain assets, such as retirement accounts are exceptions to the general basis adjustment rule.

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First-Party SNTs: Estate Inclusion Example

- First-party SNT value at beneficiary's death: \$17 million
- Assumed federal estate tax exemption: \$15 million
- Medicaid payback obligation: \$5 million
- The \$17 million SNT is included in the beneficiary's gross estate.
- Medicaid payback is deductible under IRC § 2053.
- After the \$5 million deduction, the amount attributable to the SNT for purposes of this taxable estate calculation is \$12 million.
- \$12 million is less than \$15 million estate tax exemption, no federal estate tax is due.
- No federal estate tax is due, but Form 706 is still required because the \$17 million gross estate exceeds the \$15 million filing threshold.
- Consider state estate tax obligations.

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First-Party SNTs: Trustee Tax Checklist

- Determine grantor trust reporting method and coordinate with the beneficiary's tax preparer.
- Provide the beneficiary with the information needed to report trust income, deductions and credits.
- Plan for payment of income taxes attributable to trust income.
- Maintain tax basis records for trust investments.
- At death, obtain date-of-death values for all trust assets.
- Determine Medicaid payback before final distributions.
- Determine whether a federal and/or state estate tax returns are required.
- Coordinate income tax, estate tax and final trust administration before distributing the remainder.

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Third-Party SNTs: Legal Structure

- Beneficiary never owned the contributed assets; common funding is parent estate planning.
- No Medicaid payback requirement.
- Lifetime trust may be revocable or irrevocable; testamentary trust is created at death.
- Tax treatment depends on structure:
 - Income tax owner may be the donor, the trust, or sometimes another person under the grantor-trust rules.
 - Transfer tax results depend on retained powers, beneficiary rights, and powers of appointment.

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Revocable Third-Party SNTs

- Grantor retains the power to revoke; grantor is the income tax owner under IRC § 676.
- Funding is an incomplete gift because the grantor can revoke the trust and take the trust assets back.
- Trust assets are includable in the grantor's estate under IRC § 2038.
- At grantor's death, trust becomes irrevocable and tax classification must be reassessed.
- Basis adjustment at grantor's death under IRC § 1014.

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Irrevocable Third-Party SNTs: Gift Tax

Completed Gift

- Donor has given up control over the transferred property.
- Donor cannot take the property back or change who will benefit from it.
- The transfer is treated as a gift when made and uses the donor's annual exclusion (with CAUTION) and/or lifetime gift tax exemption.

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Irrevocable Third-Party SNTs: Gift Tax

Incomplete Gift

- Donor retains enough control over the property or who will ultimately receive it so that the gift is not yet complete.
- The property is also included in the donor's estate at death.
- The gift can become complete later if the donor gives up or loses that retained power.

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Irrevocable Third-Party SNTs: Annual Exclusion & Crummey Powers

- The gift tax annual exclusion applies only to a gift of a present interest.
- A gift to an SNT is a gift of a future interest because the beneficiary cannot demand immediate distribution of the contributed property.
- In irrevocable trust planning, Crummey withdrawal powers are often used to give beneficiaries a temporary right to withdraw a contribution, creating a present interest that may qualify for the annual exclusion.
- Crummey powers are typically not granted to an SNT beneficiary receiving means-tested benefits because the beneficiary has a present right to access the contributed funds.
- As a result, contributions to an SNT often do not qualify for the annual exclusion and instead use a portion of the donor's lifetime gift and estate tax exemption.

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Example: Gift to Irrev. Third-Party SNT

Facts

- Parent contributes \$500,000 to an irrevocable third-party SNT for an adult child receiving SSI and Medicaid.
- Parent retains no right to revoke the trust or recover the property.
- Independent trustee has sole discretion over distributions.
- Beneficiary has no Crummey withdrawal power.

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Example: Gift to Irrev. Third-Party SNT

Gift Tax Result

- Parent has made a completed gift of \$500,000 to the trust.
- Because the beneficiary does not have a present interest in the contribution, assume the annual exclusion is unavailable.
- Parent reports the \$500,000 gift on Form 709.
- The gift uses \$500,000 of the parent's available lifetime gift and estate tax exemption.
- No current gift tax is due if the parent has sufficient exemption remaining.

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Irrevocable Third-Party SNTs: Estate Tax Treatment

- A completed gift to an irrevocable third-party SNT removes the transferred assets from the donor's gross estate.
- Future appreciation on those assets is also outside the donor's estate.
- The donor must not retain interests or powers that would cause the trust assets to be included in the donor's gross estate.
- If the trust assets are not included in the donor's gross estate, they do not receive a basis adjustment at the donor's death under IRC § 1014.
- Removing future appreciation from the donor's estate can be an important estate planning benefit for a donor with a taxable estate.
- Grantor trust status for income tax purposes does not, by itself, cause estate inclusion.

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Irrevocable Third-Party SNTs: What Happens When the Beneficiary Dies?

- Third-party SNT assets are not included in the beneficiary's estate simply because the beneficiary received discretionary benefits from the trust.
- The beneficiary never owned the trust assets.
- However, estate inclusion can result if the beneficiary holds certain powers over the trust, particularly a general power of appointment under IRC § 2041.
- A limited or special power of appointment granted to the beneficiary can provide flexibility without causing estate inclusion if properly drafted.
- Any assets remaining at the beneficiary's death pass to the remainder beneficiaries without a Medicaid payback requirement.

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Irrevocable Third-Party SNT – Income Tax

- An irrevocable third-party SNT can be structured as a grantor trust for income tax purposes.
- A common grantor trust trigger is the grantor's retained power to substitute assets of equivalent value under IRC § 675(4)(C).
- The grantor reports the trust's income, deductions and credits on the grantor's individual income tax return.
- The grantor's payment of the income tax allows the trust assets to grow without reduction for income taxes.
- The substitution power creates grantor trust status without causing the trust assets to be included in the grantor's gross estate.

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What is a Qualified Disability Trust (QDisT)?

- A QDisT is a nongrantor trust that meets the requirements of IRC § 642(b)(2)(C).
- It is a tax classification, not a separate type of special needs trust.
- A QDisT receives a larger personal exemption than an ordinary complex trust.
- A grantor trust cannot also be treated as a QDisT.

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QDisT Requirements

- The trust must be:
 - Irrevocable;
 - established solely for the benefit of an individual under age 65 who meets the Social Security definition of disability; and
 - a nongrantor trust for income tax purposes.

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QDisT: What Does Sole Benefit Mean?

- During the beneficiary's lifetime, the trust must be solely for the beneficiary's benefit.
- The trust should not permit distributions to other beneficiaries during that time.
- Other individuals or charities can be named to receive the trust assets after the beneficiary dies.
- Normal trust expenses, including trustee fees and administrative expenses, do not violate the sole benefit requirement.

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QDisT Exemption 2026

- A QDisT receives a **\$5,300 personal exemption for 2026**.
- By comparison, an ordinary complex trust receives only a **\$100 exemption**.
- The exemption reduces the trust's taxable income.
- It does not change the trust from a nongrantor trust to a grantor trust.
- The exemption amount is adjusted for inflation.

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QDisT Example

Facts

- Third-party SNT qualifies as a QDisT.
- Trust has **\$20,000 of taxable ordinary income**.
- Trustee makes **no distributions** during the year.
- Assume no other deductions.

Tax Result

- Taxable income before exemption: **\$20,000**
- Less QDisT exemption: **\$5,300**
- Trust taxable income: **\$14,700**

Compare to Complex Trust:

- \$20,000 income
- Less \$100 exemption
- Taxable income: **\$19,900**

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Nongrantor Trusts: DNI

- Nongrantor trusts reach the highest federal income tax rate at low levels of taxable income.
- For 2026, the 37% bracket begins when taxable income exceeds \$16,000.
- When the trustee makes a distribution, the trust receives a deduction and the beneficiary has taxable income.
- Distributable net income (DNI) determines how much taxable income passes from the trust to the beneficiary.
- A payment made directly to a third-party vendor for the beneficiary's benefit can also be treated as a distribution and carry out DNI, even though the beneficiary never receives the cash.

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Nongrantor Trusts: DNI

- The beneficiary is typically in a lower tax bracket.
- The beneficiary receives a Schedule K-1 reporting the taxable income carried out by the distribution.
- A distribution should not be made just to save taxes. The trustee must also consider the trust terms, beneficiary's needs, and effect on public benefits.
- Trustees should review income and anticipated distributions before yearend, while there is still time to plan.

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Nongrantor Trusts: DNI Example

Assume:

- SNT has \$20,000 of ordinary income, all of which is included in DNI.
- Trustee distributes \$10,000 for the beneficiary during the year.
- No other deductions.
- Beneficiary is in a lower income tax bracket than the trust.

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Nongrantor Trusts: DNI Example

	QDisT	Ordinary Complex Trust
Trust income	\$20,000	\$20,000
Distribution/DNI deduction	(\$10,000)	(\$10,000)
Exemption	(\$5,300)	(\$100)
Trust taxable income	\$4,700	\$9,900
K-1 to beneficiary	\$10,000	\$10,000

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The 65 Day Rule: A Year-End Planning Tool

- IRC § 663(b) allows a trustee to treat certain distributions made during the first 65 days of a new tax year as if they were made in the prior tax year.
- Gives trustee additional time after yearend to determine the trust's income and DNI for the prior year.
- The distribution can then carry out prior-year DNI to the beneficiary and reduce the income taxed to the trust.
- The beneficiary reports the distribution for the prior tax year, even though the payment was actually made in the following year.
- The election is made on the trust's Form 1041 and applies only to the amount that qualifies under the 65 day rule.

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SNTs Generally: A Primer on Income

What is Income?

- Benefits income is not the same as taxable income.
- This concept is often confused by Social Security and Medicaid workers; we often need to educate them about their own rules.

Taxable Income

- For purposes of trusts and taxable income, distribution of income is either distribution directly to or for the benefit of the beneficiary.

Benefits Income

- For purposes of "needs based" benefits, income is cash, or anything that can be used for shelter unless it is exempt.

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SNTs – Income Example

Benefits Income ≠ Taxable Income

- If the trustee of a SNT pays the beneficiary's telephone bill directly from the trust, the beneficiary has received a benefit and therefore has received taxable income to the extent it is made up of DNI.
- In this example, the beneficiary did not receive any income for benefits purposes because the beneficiary did not receive cash or shelter.

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SNTs – Income Example

Benefits Income ≠ Taxable Income

- If the trustee of a SNT pays the beneficiary's rent directly from the trust and the beneficiary receives SSI, the beneficiary has received a benefit and therefore has received taxable income to the extent it is made up of DNI.
- In this example, the beneficiary will lose 1/3 of her SSI benefit as the payment of shelter is considered income to the beneficiary.

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Trustee Annual Tax Checklist

- Confirm whether the trust is a grantor trust, nongrantor trust, or QDisT.
- Make sure all tax reporting documents, including 1099s, are provided to the accountant.
- Before yearend, review anticipated distributions and how much DNI may be carried out to the beneficiary.
- Make sure there is enough cash available to pay taxes and other trust expenses.
- Consider the SSI and Medicaid impact before making distributions.
- Determine whether the trust has income tax filing obligations in multiple states.

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Attorney Tax Drafting Checklist

- Determine at the outset whether the trust is intended to be a grantor or nongrantor trust.
- Review the powers retained by the grantor and how they affect income, gift, and estate tax treatment.
- Be careful with withdrawal rights and powers of appointment that could create tax or public benefits problems.
- If QDisT treatment is intended, make sure the trust meets the requirements for QDisT status.
- Consider the tax consequences before amending, decanting, or otherwise modifying the trust.
- Make sure the drafting is consistent with the intended tax treatment.

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Common Tax Mistakes with SNTs

- Assuming all SNTs are taxed the same way.
- Assuming every irrevocable SNT is a nongrantor trust.
- Assuming every nongrantor SNT qualifies as a QDisT.
- Using Crummey withdrawal powers without considering the impact on the beneficiary's SSI or Medicaid.
- Failing to plan for the income tax owed on trust income.

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Final Takeaways

- First-party SNTs are usually grantor trusts, with the beneficiary responsible for the income tax.
- Third-party SNTs can have very different income, gift, and estate tax consequences depending on how the trust is structured.
- An irrevocable third-party SNT can be a grantor or nongrantor trust.
- A QDisT is a special tax classification available to certain nongrantor trusts; it is not a separate type of SNT.
- For nongrantor trusts, distributions and DNI determine how taxable income is divided between the trust and the beneficiary.
- Tax planning should never be done without also considering the beneficiary's SSI, Medicaid, and other public benefits.

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Thank you!

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October 21, 2026

ABLE Accounts are in the Tax Code...



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ABLE Accounts are in the Tax Code...

A comparative framework for ABLE accounts, 529 plans, investment flexibility, and coordinated SNT tax planning

Stephen W. Dale, Esq., LL.M.

Stetson National Conference on Special Needs Planning and Special Needs Trusts

Tax Intensive | October 21, 2026

Introduction

ABLE accounts are valuable disability-planning tools. They can provide tax-free growth when distributions pay qualified disability expenses (QDEs), a practical beneficiary-directed spending channel, and favorable treatment under SSI and other means-tested programs. They can be especially useful for a working person with a disability, who may have access to the additional ABLE-to-Work contribution capacity if the statutory conditions are met. A beneficiary-owned account can also provide a supported setting in which to budget, save, make spending decisions, and use financial services.

At the same time, ABLE is a limited statutory account. Contributions are capped, investments are selected from a sponsoring program's menu, excess balances can affect SSI, and a state Medicaid claim may arise at death. These features make ABLE an important component of planning, but not a substitute for a well-designed and actively administered SNT.

This paper compares the actual tax results of ABLE accounts, 529 plans, and SNTs rather than assuming that one vehicle is always superior. ABLE accounts and 529 plans generally allow earnings to accumulate without current federal income tax, and distributions can be tax-free when each account's distinct qualified-expense requirements are met. An SNT does not have the same blanket account-level exclusion, but that does not mean its income is necessarily taxed at the highest trust rates. Depending on the trust's classification, deductions, and distributions, income may be taxed to the grantor, retained and taxed by the trust, or carried out as distributable net income (DNI) to the beneficiary. The comparison is what tax actually results—not merely whether a vehicle is described as “tax-free” or “taxable.” [IRC § 529\(c\)\(3\)](#); [IRC § 529A\(c\)\(1\)](#); [IRC § 661](#); [IRC § 662](#).

For each proposed transaction, the planner should ask three questions:

1. **Federal income tax—what is the actual result?** For an ABLE account or 529 plan, will earnings remain untaxed and will distributions satisfy that account's qualified-expense rules? For an SNT, who reports taxable income—the grantor, trust, or beneficiary—and what tax remains after applicable deductions and any DNI carryout?

2. **Public benefits—what is counted, and when?** For ABLE, are the contribution, account balance, and distribution excluded under the applicable program’s rules? An ABLE withdrawal is not SSI income, but funds retained for housing or a non-QDE can become an SSI resource, while retained nonhousing-QDE funds may qualify for a conditional exclusion. For a 529 plan, who owns the account? For an SNT, what rights does the beneficiary have, and how is the particular payment treated? [SSA POMS SI 01130.740](#); [SSA POMS SI 01140.150](#).
3. **Control and administration—who can act, and what remains available?** Who owns and directs the asset, what expenditures can it support, how flexible are its investments and distributions, and what happens to funds remaining at the beneficiary’s death?

The organizing question is which arrangement produces the best combined tax, benefits, and administrative result for a particular dollar.

This paper addresses federal income-tax and SSI principles as of September 2026. Medicaid rules beyond the federal ABLE death-claim provision, state taxes, plan terms, and governing trust law must be reviewed for each case. The examples simplify facts and do not calculate a client’s actual tax liability.

1. The Roles of ABLE, 529, and Special Needs Trusts

A. The ABLE account

A qualified ABLE program under [IRC § 529A](#) is a beneficiary-owned, tax-favored account. Contributions generally use after-tax dollars; earnings accumulate without current federal income tax; and distributions are excluded from gross income to the extent of QDEs for the taxable year.

The QDE definition is deliberately broad. A QDE is an expense related to the beneficiary’s blindness or disability and made for the beneficiary’s benefit in maintaining or improving health, independence, or quality of life. It need not be medically necessary and need not be an expense that only a person with a disability would incur. The statute and regulations identify education, housing, transportation, employment training and support, assistive technology, personal support services, health, financial management, legal fees, oversight and monitoring, funeral and burial expenses, and basic living expenses as included categories—not an exclusive list. [IRC § 529A\(e\)\(5\)](#); [Treas. Reg. § 1.529A-1\(b\)\(15\)](#).

As a practical matter, the breadth of this definition often makes it easier to identify expenses that are likely QDEs than expenses that clearly are not. The question is not whether the purchase is unusual or whether it appears on a narrow medical list; it is whether the expense has the required relationship to the beneficiary’s disability and serves the beneficiary’s health, independence, or quality of life. A straightforward non-QDE example is a personal gift from the beneficiary to a friend: the transfer ordinarily benefits the friend, rather than paying an expense for the beneficiary’s benefit. That example is used later in the tax illustration.

ABLE works well for planned expenses and beneficiary-directed spending. Eligibility depends on disability onset before age 46 beginning in 2026, whether established through qualifying benefits or a disability certification. The beneficiary owns the account even if another person has signature authority. A beneficiary may have only one ABLE account at a time. [IRC § 529A\(b\), \(e\)](#); [SSA POMS SI 01130.740\(B\)](#).

For 2026, the ordinary annual contribution limit is **\$20,000**, with a possible additional contribution by an eligible employed beneficiary under ABLE to Work. A 529-to-ABLE rollover counts toward the annual ABLE limit. [IRS Rev. Proc. 2025-32, § 3.34](#); [IRC § 529A\(b\)\(2\)\(B\)](#).

A new, distinct rollover pathway: Trump accounts. IRC § 530A permits a qualified rollover of the **entire balance** of a Trump account directly, trustee to trustee, to an ABLE account for the **same beneficiary**, but only during the calendar year in which that beneficiary turns **17**. A qualifying rollover is not included in the beneficiary's gross income. Because it is excepted from both the ordinary ABLE annual contribution limit and the contributions counted under the state aggregate-contribution safeguard, the entire balance need not fit within that year's ordinary ABLE contribution allowance. This is not the rule for a 529-plan-to-ABLE rollover, which generally counts toward the annual limit. The resulting ABLE balance is nevertheless subject to the separate SSI rule: amounts above \$100,000 may affect SSI cash benefits if the excess causes resource ineligibility. The Trump-account provision is a narrow future planning opportunity, not a general option to move money to ABLE at any age: the beneficiary must qualify for an ABLE account and the transfer must satisfy the age, same-beneficiary, entire-balance, and direct-transfer conditions. Benefits treatment while funds remain in the Trump account should be considered separately from the rules that apply after a completed ABLE rollover. [IRC § 530A\(d\)\(4\)](#); [IRC § 529A\(b\)\(2\)\(B\), \(b\)\(6\)](#); [IRS Notice 2025-68](#).

For SSI, up to \$100,000 in an ABLE account is excluded from resources. An excess can cause suspension of SSI cash payments while Medicaid continues if the excess ABLE balance is the cause of ineligibility and the recipient otherwise remains eligible. Other countable resources can change that result. [SSA POMS SI 01130.740\(C\)\(3\), \(D\)\(1\)](#).

ABLE under Medicaid and HUD rules

CMS provides detailed Medicaid guidance for ABLE accounts. Medicaid agencies must disregard the full ABLE balance and earnings for Medicaid eligibility; CMS does not import SSI's \$100,000 threshold into Medicaid. Third-party contributions, including qualifying contributions from an SNT or pooled trust, are disregarded. The beneficiary's own income does not lose its income character merely because it is deposited into ABLE. Qualified disability expense distributions, including housing QDE distributions, are disregarded for Medicaid eligibility. Non-QDE distributions require separate MAGI or non-MAGI analysis. [CMS SMD #17-002](#).

ABLE also receives express HUD protection. The value of a § 529A account is excluded from net family assets. HUD guidance further excludes amounts in the beneficiary's ABLE

account, account earnings, qualifying direct third-party contributions, and distributions from annual income, while continuing to count wages merely deposited into the account. [24 C.F.R. § 5.603\(b\)\(3\)\(vi\)](#); [HUD Notice PIH 2019-09 / H 2019-06](#).

At death, ABLE planning requires a separate Medicaid-recovery analysis. IRC § 529A(f) permits a state creditor claim against remaining ABLE funds for qualifying post-establishment Medicaid assistance, subject to statutory adjustments and outstanding QDEs. Federal Medicaid estate-recovery rules can independently require recovery in specified circumstances. State recovery practice, including whether a state pursues discretionary ABLE claims outside mandatory estate-recovery cases, should be confirmed. [CMS SMD #17-002](#); [CMS Estate Recovery Policy](#).

B. The special needs trust

The SNT ordinarily supplies the durable planning structure. It may hold substantial, illiquid, or complex assets; provide professional fiduciary oversight; integrate a care manager or advisory committee; hold investments and real property; and address long-term succession and remainder planning. The trust may also fund an ABLE account when a beneficiary has planned expenses or needs a practical spending account.

The investment comparison is material. An ABLE account offers its sponsoring program's options and generally permits only two changes in investment direction during a calendar year. The SNT can invest under its instrument and applicable fiduciary law. Broader authority can matter for real estate, concentrated positions, privately held assets, and an individualized long-term portfolio. [IRC § 529A\(b\)\(4\)](#).

Tax analysis begins with classification. Many first-party SNTs are grantor trusts whose income is taxed to the beneficiary as owner under Subpart E; a nongrantor SNT instead applies Subchapter J, including DNI, the distribution deduction, and beneficiary income inclusion. Some nongrantor trusts may qualify for the qualified disability trust (QDT) deduction. The label "special needs trust" alone establishes none of these outcomes.

C. Parent-owned and trust-owned 529 accounts after a disability diagnosis

A family need not abandon a 529 plan merely because it later learns that the child has a disability. A **qualified tuition program (529 plan)** under [IRC § 529](#) can remain a useful education vehicle when the beneficiary may pursue college, vocational training, apprenticeships, credentialing, or other qualifying education. The relevant question is who owns and controls the 529 plan: a parent, a third-party SNT, or the beneficiary.

1. Ownership and SSI resources

For SSI purposes, the critical fact is **ownership**, not the identity of the designated beneficiary. A parent who established and continues to own the 529 generally controls distributions, can ordinarily reclaim the funds, and may change the beneficiary within the program's rules. SSA therefore treats the account as the parent's resource. The child's designation as beneficiary, by itself, ordinarily gives the child no ownership right in the

account. A parent-owned 529 is consequently not ordinarily an adult disabled beneficiary's SSI resource. [SSA POMS SI 01140.150\(C\)–\(D\)](#).

The principal exception is **parent-to-child resource deeming**. If the beneficiary is under age 18 and lives with the parent, the parent's countable 529 may be deemed to the child to the extent the parent's total countable resources exceed the applicable deeming allowance. When deeming ends, the 529 remains the parent's resource but generally is not the adult beneficiary's resource. [SSA POMS SI 01140.150\(D\)](#); [SSA POMS SI 01330.200](#).

2. Other federal means-tested programs

The same 529 account may receive different treatment under other federal programs. Under HUD's current HOTMA rules, the value of a § 529 qualified tuition program is excluded from net family assets, and income and distributions from the program are excluded from annual income. Those are categorical HUD exclusions and do not turn on the SSI owner-versus-beneficiary analysis. [24 C.F.R. § 5.603\(b\)\(3\)\(vi\)](#); [24 C.F.R. § 5.609\(b\)\(10\)](#).

CMS has not adopted an equivalent current nationwide rule specifically addressing § 529 accounts for Medicaid eligibility. For MAGI Medicaid, there is no asset or resource test. For non-MAGI eligibility, the account's treatment generally depends on the applicable SSI-derived methodology, state eligibility rules, and any state-plan resource disregard. A planner should therefore confirm current state Medicaid policy rather than import the SSI or HUD result. [CMS Medicaid Eligibility Policy](#); [CMS Financial Verification Bulletin](#).

3. Retaining the 529 for education

A parent-owner may retain the account and use distributions for the beneficiary's qualified education expenses without including the allocable earnings in federal gross income, subject to the applicable § 529 requirements. These may include tuition, fees, books, supplies, required equipment, certain special-needs services incurred in connection with enrollment or attendance, and qualifying credentialing or apprenticeship costs. Room and board is qualified only within its separate half-time-student and dollar-limit rules. [IRC § 529\(c\)\(3\), \(e\)\(3\), \(f\)](#); [IRS Publication 970](#).

The education connection is essential. A disability-related service does not become a tax-free 529 expense merely because it benefits a person with a disability. For example, special-needs services qualify when incurred in connection with enrollment or attendance, and educational therapies qualify within the applicable education setting. Therapy, assistive technology, transportation, personal-care services, or other disability-related costs used outside the required education context generally do not qualify for tax-free 529 treatment. [IRS Publication 970](#); [IRS Topic No. 313](#).

This approach preserves parental control, keeps the account generally outside an adult beneficiary's SSI resources, and preserves tax-free treatment for qualified education spending. It may be particularly valuable for a beneficiary whose educational path is vocational, intermittent, or likely to require disability-related support services in connection with enrollment.

4. A trust-owned 529 plan: a possible alternative to the Crummey-power problem

Estate planners have long faced a difficult problem: how to obtain annual-exclusion treatment for gifts intended to benefit a beneficiary of an irrevocable third-party SNT without giving that beneficiary a withdrawal right that may complicate public-benefits planning.

A conventional Crummey power addresses the gift-tax issue by giving the beneficiary an enforceable, immediate withdrawal right. That right may allow a contribution to be treated as a present-interest gift for purposes of the annual exclusion. [*Crummey v. Commissioner*, 397 F.2d 82 \(9th Cir. 1968\)](#); [*Estate of Cristofani v. Commissioner*, 97 T.C. 74 \(1991\)](#).

For an SSI beneficiary, however, a genuine withdrawal right creates a separate concern. SSA's directly relevant trust opinion treats the amount subject to a presently exercisable limited withdrawal right as income when the right arises and, if the right remains exercisable on the first day of the following month, as a resource for that month. The same opinion treated the beneficiary's lapsed withdrawal right as ending that short-term resource treatment and did not classify the remaining third-party trust corpus as the beneficiary's continuing resource. [SSA POMS PS 01825.025](#).

The remaining concern is more subtle. If the beneficiary declines a withdrawal right, an agency could argue that the lapsed amount became the beneficiary's own asset and was thereafter retained in, or added to, the trust. SSA's national POMS does not expressly adopt that proposition for a lapsed Crummey power. But SSI rules separately provide that a portion of a trust funded with the beneficiary's own assets is analyzed under the beneficiary-funded-trust rules. [SSA POMS SI 01120.200](#); [SSA POMS SI 01120.201](#). Thus, a Crummey power may solve a gift-tax present-interest problem while introducing a benefits-planning issue that the planner must not dismiss.

A trust-owned 529 plan may provide a different path. Assume an irrevocable third-party SNT authorizes ownership of a 529 plan, an independent trustee is the account owner for the trust, and the person with a disability is the plan's designated beneficiary. If the grantor, spouse, grandparent, sibling, or other individual contributes personal funds **directly to the 529 plan**, § 529(c)(2) treats the contribution as a completed gift to the designated beneficiary and as a present-interest gift. The statutory language does not restrict the original contributor to a parent or other family member. [26 U.S.C. § 529\(c\)\(2\)](#).

The statutory annual-exclusion position is strongest when the individual donor contributes directly through the plan, the plan identifies the individual as contributor, the SNT is account owner, and the beneficiary is the designated beneficiary. Whether that position applies to a particular trust-owned account still requires review of the plan agreement, trust terms, and contribution path. If supportable, the donor's available annual exclusion must be measured against that donor's total gifts to the beneficiary for the year; a larger direct contribution may qualify for the five-year § 529 election, with appropriate Form 709 reporting. [IRS Form 709 Instructions](#).

The structure is not equivalent to a gift first made to the SNT. A cash gift to a discretionary third-party SNT is governed by ordinary gift-in-trust rules and may be a future-interest gift absent a valid present-interest mechanism. A trustee's later transfer of preexisting SNT corpus into a trust-owned 529 plan also raises a distinct, unresolved trust-contributor question; it should not be characterized automatically as a new annual-exclusion gift by the trustee, settlor, or trust beneficiary. [IRS Announcement 2008-17](#).

The potential advantage is significant. The trust retains ownership and trustee control of the account, while an individual donor may have a statutory present-interest gift to the designated beneficiary. This may allow multiple individual donors to make separate annual-exclusion contributions for the same designated beneficiary, subject to each donor's separate annual-exclusion limit and other gifts to that beneficiary.

ABLE accounts provide a useful comparison, but not a one-gift limitation. An eligible person may have only one ABLE account, while multiple people may contribute to it. All ABLE contributions, however, share one aggregate annual contribution limit. A 529 plan may instead allow each individual direct contributor to use that donor's own annual exclusion, subject to the contribution, reporting, and account-owner issues discussed here. [26 U.S.C. § 529A](#); [IRS Final ABLE Regulations](#).

The planner's Kobayashi Maru? A Crummey power seeks present-interest treatment by giving the beneficiary a real withdrawal right. A properly structured trust-owned 529 plan may rely instead on Congress's express present-interest rule for a direct 529 contribution—without placing a comparable withdrawal power in the beneficiary's hands.

The analogy should not obscure the caution. The Code does not fully resolve every transfer-tax consequence of an irrevocable trust serving as the 529 plan's account owner. In particular, the trust instrument, 529 plan agreement, contribution path, beneficiary-change authority, withdrawal authority, and intended Form 709 reporting position all require careful review. A planner should present this as a well-grounded statutory planning position, not as a settled answer to every trust-owned-529 issue.

5. Direct payments for noneducation needs

A 529 plan is not a general disability-expense account. The parent can direct a noneducation distribution, but the earnings portion is generally taxable. The 10% additional tax may be excepted when the designated beneficiary is disabled; the exception does **not** make the taxable earnings tax-free. [IRC § 529\(c\)\(6\)](#); [IRS Publication 970](#).

The SSI analysis is separate. A parent's direct vendor payment generally is not cash income to the beneficiary. But a vendor payment that provides shelter—such as rent or mortgage payments—requires separate SSI shelter analysis. The absence of cash income for SSI

purposes does not convert a noneducation 529 distribution into a federally tax-free distribution. [SSA POMS SI 00815.400](#); [20 C.F.R. § 416.1103\(g\)](#).

6. When a rollover to ABLE makes sense

A 529-to-ABLE rollover may be available for the 529 designated beneficiary or a qualifying family member, subject to the annual ABLE contribution limitation and other statutory and plan requirements. It can be useful where funds are needed for broad QDEs rather than for education. [IRC § 529\(c\)\(3\)\(C\)\(i\)\(III\)](#).

Before moving funds, compare the beneficiary's remaining education needs; the value of parental control; the ABLE contribution limit and investment menu; SSI resource and timing rules after withdrawal; plan procedures; and possible state-income-tax recapture. The key is that a disability diagnosis creates a planning choice—not a requirement to liquidate or roll over the 529.

2. ABLE Taxation and Nonqualified Distributions

A. Gift-tax treatment and the annual exclusion

An ABLE contribution is treated as a completed gift to the designated beneficiary and is not a future interest. Consequently, a donor may use the annual gift-tax exclusion for a qualifying contribution, subject to the ABLE contribution limit and the special rules for excess contributions. [IRC § 529A\(b\)\(2\)](#), [\(c\)\(2\)](#).

The annual-exclusion feature should be kept in perspective. It is most significant for a donor with a taxable estate, a donor intentionally using lifetime gift-and-estate-tax exemption, or a donor making gifts above the annual exclusion that would otherwise require reporting and use of exemption. For many families, a gift within the annual exclusion produces no current gift-tax payment. Its practical value is that the contribution is a completed gift while the beneficiary may use the account for permitted purposes; it does not by itself create an income-tax deduction for the donor.

B. Annual matching of distributions and QDEs

The comparison generally occurs over the taxable year. If annual ABLE distributions do not exceed annual QDEs, they are excluded from gross income. If distributions exceed QDEs, only the portion of distributed earnings allocable to the excess is included. [IRC § 529A\(c\)\(1\)](#). The program's information return identifies earnings; the beneficiary's records establish QDEs.

Thus, a non-QDE does not make the entire withdrawal taxable. Only the earnings portion allocable to the excess distribution is taxable. The beneficiary is not taxed again on contributed principal.

C. The 10% additional tax

The statute increases the income tax by 10% of the taxable amount of an ABLE distribution not used for QDEs. The additional tax does not apply to a distribution made to a beneficiary or the beneficiary's estate on or after the beneficiary's death. It also does not apply to a

timely return of a contribution made during the year if returned by the tax-return due date, including extensions, with attributable net income. [IRC § 529A\(c\)\(3\)](#).

At death, federal law permits a state to file a claim against the ABLE account balance for certain Medicaid assistance paid after the account was established, subject to statutory adjustments and outstanding QDEs. This differs from the remainder provisions of a third-party SNT. The particular state's claim procedure and any other applicable recovery rules require separate analysis. [IRC § 529A\(f\)](#).

The familiar 529 tax mechanics are similar but separate. This paper uses § 529A for ABLE accounts; 529 education accounts are governed by § 529.

D. Illustration

Assume the beneficiary receives \$10,000 in ABLE distributions during the year. The distributed amount contains \$2,000 of earnings and \$8,000 of contribution basis. The beneficiary incurs \$9,000 of QDEs and makes a \$1,000 gift to a friend. The gift is not a QDE in the ordinary case because a QDE must relate to the beneficiary's blindness or disability and be for the benefit of the designated beneficiary; a personal gift ordinarily benefits the friend, not the beneficiary. [Treas. Reg. § 1.529A-1\(b\)\(15\)](#).

The unmatched \$1,000 is 10% of annual distributions, so \$200 of the \$2,000 earnings component is included in income; the additional tax is \$20 unless an exception applies. The \$8,000 contribution basis is not taxed again. This assumes the account's reported earnings ratio matches the example and there are no other distributions or QDEs in the year.

This analysis matters in practice. An ABLE account funded and spent in close proximity may have little embedded gain, so the federal tax cost of a non-QDE may be comparatively limited. That observation is not permission to disregard the QDE standard. It is a reason to describe the actual statutory consequence accurately.

E. Reporting and substantiation

The program generally reports distributions and earnings on Form 1099-QA; it cannot determine whether the beneficiary's expenditures qualify. The beneficiary should retain statements, receipts, invoices, and a short explanation for unusual QDEs. Taxable excess and the additional tax may require Form 1040 and Form 5329. See [IRS Publication 907](#) and the instructions for Forms [1099-QA](#) and [5329](#).

The broad QDE definition is valuable, but it is not unlimited. The tax preparer should reconcile total annual distributions with QDEs and determine the taxable earnings and additional tax, if any.

3. SSI Treatment and the Timing of ABLE Distributions

A. The baseline SSI rule

For SSI, a distribution from an ABLE account is a conversion of a resource, not income, whether spent on a nonhousing QDE, housing, or a non-QDE. This is distinct from the federal income-tax QDE test. [SSA POMS SI 01130.740\(C\)\(4\)](#).

The SSI issue arises when a distribution is retained into a later month. Under SSI's first-of-the-month resource rule, a recipient's resources are measured as of the first moment of the month. [SSA POMS SI 01110.600](#).

B. SSA does not ordinarily audit the QDE classification

The POMS makes the institutional division of responsibility unusually clear. SSA generally develops an ABLE distribution only when the recipient or deemor alleges, or other evidence indicates, that all or part of the distribution was retained into later months. When development is appropriate, SSA verifies the amount, date, and recipient of the distribution, but obtains and accepts the individual's allegation that it was used or intended to be used for a nonhousing QDE, housing, or a non-QDE. [SSA POMS SI 01130.740\(F\)\(1\)-\(2\)](#).

Thus, SSA's administrative inquiry focuses on whether a retained withdrawal is a countable resource; it does not substitute for the beneficiary's federal income-tax analysis. The categorization matters most when withdrawn funds cross a month boundary.

C. Retained distributions for nonhousing QDEs

A distribution retained beyond the month of receipt is excluded from countable resources if it is for a QDE not related to housing and all required conditions continue: the funds remain unspent and identifiable, the beneficiary continues the requisite ABLE-account connection, and the beneficiary intends to use the funds for a nonhousing QDE. [SSA POMS SI 01130.740\(C\)\(5\)\(a\)](#).

This permits legitimate advance planning. Funds withdrawn for a health-related expense payable months later can remain in a checking account and stay excluded while they remain identifiable, unspent, and committed to the nonhousing QDE.

D. Retained distributions for housing or non-QDEs

A distribution intended for housing or a non-QDE becomes a countable resource if retained into the next month. Spending it in the month of withdrawal avoids that retained-resource issue; the beneficiary's other resources and the character of any item acquired still require ordinary SSI analysis. [SSA POMS SI 01130.740\(D\)\(2\)](#).

For example, withdrawal in May for June rent leaves the money countable on June 1 if it remains in checking, even if rent is paid June 3. A trustee planning an ABLE contribution for rent should coordinate the contribution, withdrawal, and payment with the calendar month.

E. Housing payments and in-kind support and maintenance

An ABLE distribution used by the beneficiary for housing is treated as a conversion of resources, not SSI income. A trust's direct payment of the beneficiary's shelter costs can raise a separate in-kind support and maintenance issue. Do not assume the same SSI result merely because the economic expenditure is rent in both cases. Review the trust-payment and ABLE rules separately before funding housing. [SSA POMS SI 01130.740\(C\)\(4\)](#); [SSA POMS SI 01120.200](#); [SSA POMS SI 00835.350](#).

F. The two change-of-purpose traps

The POMS contains two important exceptions for funds that were initially excluded because they were held for a nonhousing QDE.

First, if previously excluded funds are later used for housing or a non-QDE, SSA counts the amount used as a resource as of the first moment of the month in which it is spent. The result applies even though the funds were properly excluded in prior months. [SSA POMS SI 01130.740\(D\)\(3\)](#); [\(F\)\(3\)](#).

Second, if the beneficiary no longer intends to use the money for a nonhousing QDE but does not spend it, SSA counts the funds beginning the first day of the following month. The funds may avoid that result if, before the next month begins, the beneficiary redesignates them for another nonhousing QDE or returns them to the ABLE account. [SSA POMS SI 01130.740\(D\)\(3\)](#); [\(F\)\(3\)](#).

These rules are particularly important for advance withdrawals for education, assistive technology, or planned medical expenditures that are later cancelled or change materially.

4. The SNT as a Tax-Planning Device

A. Trust classification comes first

A first-party trust funded with the beneficiary's assets often is a grantor trust, but its income-tax status must be analyzed under the governing terms and Subpart E. For a nongrantor third-party trust, Subchapter J determines whether income is retained by the trust or carried out to the beneficiary. QDT status is a separate question and matters only when the trust itself computes taxable income.

The planner should resist broad statements that "trust income is taxed at trust rates" or that "the beneficiary is taxed at individual rates." Either can be true depending on classification, governing instrument, and annual administration.

B. DNI and the distribution deduction

For a complex trust, [IRC § 661](#) permits a deduction for income required to be distributed currently and other amounts properly paid, credited, or required to be distributed, limited by DNI. Under [IRC § 662](#), the beneficiary includes the corresponding amount in gross income. The distributed amount generally retains its character in the beneficiary's hands.

DNI is defined in [IRC § 643](#) and is not simply trust accounting income. Capital gains ordinarily are excluded from DNI to the extent allocated to corpus and not paid, credited, or required to be distributed, though governing-instrument provisions, state law, and administration can affect the result.

The practical tax question is therefore not whether a trust can distribute funds. It is whether the trustee should retain taxable income, carry out DNI, make a benefits-safe payment, or fund an ABLE account as part of an annual tax and distribution plan.

C. Qualified disability trust status

A nongrantor trust meeting the statutory definition of a qualified disability trust may claim the special deduction under [IRC § 642\(b\)\(2\)\(C\)](#). The 2026 amount is \$5,300. [IRS Rev. Proc. 2025-32, § 4.35](#). The deduction is not an automatic exemption of trust income, and a trust treated as owned by a grantor does not use it to offset income taxed directly to that owner.

QDT status requires a trust that meets the Code's disability-trust definition, including disability of the beneficiaries under the statutory test. The instrument and facts, including the remainder interests, deserve review before claiming the deduction. It does not replace DNI calculations or annual distribution planning.

Capital gains often remain with the trust when allocated to corpus, but the governing instrument, local law, and consistent fiduciary treatment can change DNI analysis under Treas. Reg. § 1.643(a)-3. A distribution of principal is not automatically a distribution of capital-gain DNI.

D. The annual administration meeting

A pre-year-end conference among the trustee, tax preparer, attorney, and benefits adviser can address classification, QDT eligibility, taxable income and DNI, the beneficiary's tax position, proposed distributions, ABLE contribution capacity, housing timing, and the possible 65-day election under IRC § 663(b). The election itself has requirements and should be evaluated by the return preparer.

5. Funding ABLE from an SNT

An SNT contribution to ABLE is a classic example of why the tax, benefits, and administration questions must be answered separately.

A. Benefits analysis

SSA excludes a qualifying third-party contribution to the beneficiary's ABLE account from SSI income when the funds do not already belong to or become due to the beneficiary. The trust payment must be analyzed on its facts; routing the beneficiary's own income through ABLE does not erase that income. [SSA POMS SI 01130.740\(C\)\(1\)\(b\)](#).

B. Tax analysis

SSI exclusion does not decide federal trust income tax. An authorized payment from a nongrantor SNT to the beneficiary's ABLE account may carry out DNI under [IRC §§ 661–662](#), depending on the trust terms, the nature of the payment, and the year's facts. For a

grantor trust, the owner generally bears income tax under the grantor-trust rules regardless of the contribution. An ABLE deposit does not itself make a trust distribution tax-free.

Thus, the planner should not say that a trust-to-ABLE contribution is “tax-free.” The ABLE account may later generate tax-free QDE distributions, but the trust’s current-year DNI and beneficiary K-1 analysis remains separate.

C. Administration analysis

The trustee should identify the intended use before contributing. A contribution plan should account for the annual ABLE limit, expected QDEs, housing timing, recordkeeping, investment horizon, beneficiary capacity and support, and the possible effect of ABLE ownership and end-of-life rules.

The ABLE account is often best used for planned expenses and a measured reserve. Keep trust-level investment and succession goals in view before transferring a large balance to a beneficiary-owned account.

6. Applied Examples

Example 1: The ABLE reflex

An SSI recipient has a \$600,000 nongrantor third-party SNT that earns \$18,000 of ordinary income and dividends. Assume, after reviewing its terms and beneficiaries, that it qualifies for the QDT deduction. The beneficiary has an ABLE account and expects \$8,000 of QDEs this year.

Funding \$8,000 of planned expenses through ABLE may be sensible, but the trustee should not move all \$18,000 simply because ABLE earnings can be tax-free. First calculate trust deductions and DNI, the beneficiary’s tax position, any K-1 inclusion, the ABLE annual limit, and the trust’s longer investment horizon. The \$5,300 QDT deduction applies at the trust level if available; it does not automatically shelter a distribution carried out to the beneficiary.

Example 2: Housing and retained money

An SNT makes an authorized ABLE contribution so the beneficiary can pay rent. The beneficiary withdraws the needed amount and pays rent in the same calendar month. The ABLE withdrawal is not SSI income, and nothing from that withdrawal remains as a resource on the next first of the month. Separately analyze the SNT contribution for trust income tax and verify that the contribution is excluded from SSI income.

If, however, the beneficiary withdraws ABLE funds in May to pay June rent and holds the money through May 31, it is a countable resource on June 1. The fact that the beneficiary pays rent on June 3 does not change the June resource result.

Example 3: Change of plan

A beneficiary withdraws \$7,000 from ABLE for a September nonhousing education expense and keeps the funds identifiable in checking. In August, the beneficiary accepts a job and decides not to enroll. If the beneficiary retains the money without redesignating it for another nonhousing QDE or returning it to ABLE, the funds are countable beginning September 1. If the beneficiary instead uses part of the previously excluded sum in August for advance rent, that amount is countable in August.

Example 4: The parent-owned 529 after a disability diagnosis

Before learning that their child had a disability, parents established a 529 plan and remain its owners. Their child is now 27, receives SSI, has completed a certificate program, and is the designated beneficiary. The child also has an SNT and an ABLE account.

The first question is not whether the parents should immediately roll the 529 into ABLE. Because they retain ownership and control, the 529 generally remains their resource rather than the adult child's SSI resource. They may retain it for future education, credentialing, or enrollment-related special-needs expenses and direct qualified payments to an eligible educational institution tax-free.

If the family anticipates broad QDEs that do not qualify as education expenses, a limited rollover to ABLE may be useful within the annual ABLE limit. If the parents instead use the 529 for an ordinary noneducation expense, they must determine the taxable earnings portion of the distribution—even if direct payment to a vendor does not constitute cash income to the SSI recipient. If education is a meaningful planning objective, the trustee of the third-party SNT might instead consider owning a separate 529 plan, subject to the trust instrument and program agreement. The SNT remains the preferred home for future third-party gifts intended for long-term fiduciary management; a 529 plan balance cannot simply be transferred to the SNT without separate tax analysis.

Conclusion

ABLE, 529, and SNT planning works best when each transaction is tested for federal tax, SSI, and practical control. The SNT may hold and manage long-term assets, while ABLE can pay planned QDEs and give the beneficiary a useful spending channel. A 529 plan can support education and, where permitted, supply limited funds to ABLE.

- The **SNT** often supplies the durable long-term fiduciary, investment, and distribution structure, together with investment authority not confined to a sponsoring ABLE program's menu.
- The **ABLE account** can serve as a tax-advantaged, beneficiary-facing spending pocket for planned QDEs and SSI-sensitive expenditures.
- The **529 account** remains an education and credentialing vehicle that can sometimes bridge to ABLE when statutory conditions are satisfied.

There is no categorical tax winner. Determine the trust's actual tax classification; estimate where income will be taxed; apply the annual ABLE contribution and QDE rules; and check

the month in which money leaves ABLE. These steps let the trustee select a transaction for the beneficiary's circumstances instead of relying on the shorthand that ABLE is always tax-free or SNT income is always taxed at compressed trust rates.

Selected Primary Authorities

- [26 U.S.C. § 529A — Qualified ABLE Programs](#)
- [26 U.S.C. § 530A — Trump Accounts](#)
- [IRS Notice 2025-68 — Trump-account rollover guidance](#)
- [26 U.S.C. § 529 — Qualified Tuition Programs](#)
- [26 U.S.C. § 642 — Special Rules for Credits and Deductions](#)
- [26 U.S.C. § 643 — Definitions Applicable to Trust Taxation](#)
- [26 U.S.C. § 661 — Trust Distribution Deduction](#)
- [26 U.S.C. § 662 — Beneficiary Inclusion](#)
- [IRS Rev. Proc. 2025-32](#)
- [IRS Publication 907](#)
- [IRS Publication 970](#)
- [IRS Topic No. 313 — Qualified Tuition Programs](#)
- [IRS Instructions for Forms 1099-QA and 5498-QA](#)
- [IRS Instructions for Form 5329](#)
- [SSA POMS SI 01130.740 — ABLE Accounts](#)
- [CMS SMD #17-002 — Implications of the ABLE Act for State Medicaid Programs](#)
- [CMS Estate Recovery Policy](#)
- [24 C.F.R. § 5.603 — Net Family Assets](#)
- [HUD Notice PIH 2019-09 / H 2019-06 — ABLE Account Treatment](#)
- [SSA POMS SI 01140.150 — Qualified Tuition Programs](#)
- [SSA POMS SI 01330.200 — Resource Deeming](#)
- [SSA POMS SI 00815.400 — Third-Party Payments](#)
- [SSA POMS SI 01110.600 — First-of-the-Month Resource Rule](#)
- [SSA POMS PS 01825.025 — Scott Trust Crummey-Style Withdrawal Right](#)
- [SSA POMS SI 01120.200 — Third-Party Trusts](#)
- [SSA POMS SI 01120.201 — Trusts Funded with an Individual's Assets](#)
- [Crummey v. Commissioner, 397 F.2d 82 \(9th Cir. 1968\)](#)
- [Estate of Cristofani v. Commissioner, 97 T.C. 74 \(1991\)](#)
- [IRS Announcement 2008-17 — Trust Contributions and Account Owners Under § 529](#)
- [Treas. Reg. § 1.529A-1 — ABLE definitions](#)
- [Treas. Reg. § 1.529A-2\(h\) — Qualified disability expenses](#)
- [Treas. Reg. § 1.643\(a\)-3 — Capital gains in DNI](#)
- [20 C.F.R. § 416.1103](#)

ABLE Accounts are in the Tax Code...

Practical tax rules, SNT coordination and basic SSI/ISM
Where ABLE fits in planning and where its limits matter

Stephen W. Dale, Esq., LL.M.

Stetson Tax Intensive
October 21, 2026

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ABLE in the distribution plan

ABLE tax rules and qualified spending

Coordination with special needs trusts

SSI income, resources and shelter



IRC § 529A; POMS SI 01130.740; Stetson Tax Intensive, October 21, 2026

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Three questions for every dollar

Income tax
Who reports income, and what tax remains?

Public benefits
What counts as income or a resource, and when?

Control and administration
Who can act, and what happens at death?



IRC §§ 529, 529A, 661-662; POMS SI 01130.740

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ABLE's federal tax framework

After-tax contributions

Earnings grow without current federal income tax.

Qualified withdrawals remain excluded.

Trust contributions have a separate tax analysis.

IRC § 529A(c), IRC §§ 661-662. Details and authorities in notes



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ABLE rules for 2026

Disability onset before age 46.

One ABLE account per eligible beneficiary.

General annual contribution limit: \$20,000 in aggregate.

Eligible workers may contribute more under ABLE to Work.

IRC § 529A(b), (e), Rev. Proc. 2025-32 § 3.34

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Qualified disability expenses

Related to the beneficiary's blindness or disability.

For the beneficiary's health, independence or quality of life.

Includes basic living expenses and housing.

Medical necessity is not required.

IRC § 529A(e)(5), Treas. Reg. § 1.529A-1(b)(15)

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Trump Accounts: rollover to ABLE

Only in the calendar year the beneficiary turns 17.

Entire balance moves directly, trustee to trustee.

The beneficiary must be the same and ABLE-eligible.

The qualifying rollover bypasses the ordinary ABLE contribution cap.

IRC §§ 530A(d)(4), 529A(b)(2)(B), (b)(6), Notice 2025-68

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Review: SNT tax classification

Trust type	Who reports income?
Grantor trust	The deemed owner
Nongrantor trust	The trust and/or beneficiary
Qualified disability trust	A qualifying nongrantor trust can claim a special deduction

IRC §§ 641-643, 671-679

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Review: QDT deduction and DNI

2026 QDT deduction: \$5,300, if the trust qualifies.

Distribution deduction: generally limited to DNI.

The beneficiary reports the DNI carried out.

Capital gains often remain taxable at the trust.

IRC §§ 642(b)(2)(C), 643, 661-662, Rev. Proc. 2025-32 § 3.35

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Comparison 1: \$80,000 in each vehicle

Same assets and earnings. No administrative expenses, fees or state taxes.

2026 ordinary interest: \$4,000	ABLE	Qualifying QDT
Retain all earnings	\$0 current tax	\$0 tax after \$5,300 deduction
Ending balance	\$84,000	\$84,000

IRC §§ 529A(c), 642(b)(2)(C). Rev. Proc. 2025-32 § 3.35

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Comparison 2: \$160,000 with \$10,000 spending

No administrative expenses, fees or state taxes.
ABLE balances above \$100,000 can affect SSI.

2026 result	ABLE	Nongrantor third-party SNT
Ordinary interest	\$8,000	\$8,000 DNI
Qualified spending	\$10,000	\$10,000 distribution
Federal tax at vehicle level	\$0	\$0 after \$8,000 distribution deduction
Beneficiary gross income	\$0 from QDE withdrawal	\$8,000 K-1 interest
Ending balance	\$158,000	\$158,000

IRC §§ 529A(c), 643(a)(2), 661-662. Assumptions and clarification in notes

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The beneficiary's return

\$8,000 K-1 interest, no other income	Full single deduction	Adult dependent
2026 standard deduction	\$16,100	\$1,350
Taxable income	\$0	\$6,650
Federal income tax	\$0	About \$665 before credits

Rev. Proc. 2025-32 §§ 3.01, 3.14. IRC § 63(c)(5)

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Annual ABLE reconciliation

Account statements establish contributions and withdrawals.

Receipts and invoices establish qualified spending.

Annual distributions and QDEs determine taxable earnings.

Monthly withdrawal timing determines separate SSI resource issues.

IRC § 529A(c), POMS SI 01130.740(C)-(F)

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SSA review of ABLE distributions

SSA develops withdrawals when funds appear retained into later months.

Staff verify amount, date and recipient.

Staff obtain and accept the person's allegation of intended use.

The IRS QDE analysis remains separate.

POMS SI 01130.740(F)(1)-(2)

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Retained withdrawals and SSI

Withdrawal use	During receipt month	If retained into next month
Housing	Not SSI income	Countable resource
Non-QDE	Not SSI income	Countable resource
Nonhousing QDE	Not SSI income	Conditional resource exclusion

POMS SI 01130.740(C)(4)-(5), (D)(2)

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Rent paid through ABLE

Housing is a QDE. The month boundary still matters.

Timing	SSI result for the withdrawn money
Withdraw May 10, pay May rent May 10	No retained withdrawal on June 1
Withdraw May 28, pay June rent June 3	Money held on June 1 counts as a resource

POMS SI 01130.740(C)(4), (D)(2), SI 01110.600

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Change of purpose: two different dates

Previously excluded nonhousing funds	Resource consequence
Later spent on housing or a non-QDE	Count amount spent in the spending month
Intent changes while funds remain unspent	Count beginning the following month

POMS SI 01130.740(D)(3), (F)(3)

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An SNT contribution to ABLE

SSI: a permissible third-party contribution can be excluded.

Tax: the trust payment may carry out DNI to the beneficiary.

Administration: annual contribution capacity and spending dates matter.

Beneficiary-owned income keeps its income character.

POMS SI 01130.740(C)(1), IRC §§ 661–662

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Audience exercise: the \$600,000 SNT

\$600,000 nongrantor third-party SNT

\$18,000 of income

\$8,000 of expected QDEs

Would you move all \$18,000 into ABLE?

IRC § 642(b)(2)(C), 661-663. Article example 1

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A parent-owned 529 after diagnosis

A disability diagnosis can create a planning choice.

Parents may retain the 529 for qualifying education.

An adult designated beneficiary generally does not own the parent’s account.

A limited rollover can fund broader ABLE spending.

IRC § 529, POMS SI 01140.150(C)-(D)

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529 ownership and SSI

Account ownership	SSI resource analysis
Parent owns, beneficiary age 18 or older	Generally the parent’s resource
Parent owns, beneficiary under 18	Parent-to-child deeming may apply
Beneficiary owns	Account may be the beneficiary’s resource
Third-party SNT owns	Review trust rights and account terms

POMS SI 01140.150, SI 01330.200, SI 01120.200

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529 qualified education spending

Tuition, fees and required books or equipment.

Qualifying apprenticeships and credentialing.

Special-needs services connected with enrollment or attendance.

Room and board has separate attendance and dollar limits.

IRC § 529(e), (f), IRS Publication 970

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Investment authority and remainder planning

Planning issue	ABLE	Third-party SNT
Ownership	Beneficiary owns	Trustee holds under trust terms
Investments	Sponsoring program menu	Instrument and fiduciary law
Remaining funds at death	Possible state Medicaid claim	Remainder provisions govern

IRC § 529A(b)(4), (f), CMS SMD #17-002

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Medicaid and HUD use different rules

Program	ABLE	529
SSI	\$100,000 account exclusion	Ownership and deeming matter
Medicaid	Full account disregard under CMS guidance	MAGI has no asset test. Non-MAGI requires state review
HUD	Express ABLE exclusions	HOTMA excludes account value and income/distributions

CMS SMD #17-002, 24 C.F.R. §§ 5.603, 5.609, HUD Notice 2019-09

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Annual trustee review

Compute the trust's taxable income and DNI.

Check beneficiary tax status and planned spending.

Confirm ABLE capacity, support and withdrawal timing.

Document the tax and benefits result for each payment.

IRC §§ 661-663, POMS SI 01130.740

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The combined planning result

The SNT can retain long-term assets and fiduciary control.

ABLE can support planned spending and beneficiary participation.

529 can preserve education options and donor planning.

The transaction determines the tax and benefits outcome.

IRC §§ 529, 529A, 661-662, POMS SI 01130.740

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Appendix: direct gifts to a trust-owned 529

An individual donor contributes directly to the 529 plan.

The third-party SNT serves as account owner.

The person with a disability is the designated beneficiary.

Section 529(c)(2) supplies a statutory present-interest rule.

IRC § 529(c)(2). Planning position requires account-specific review

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Appendix: noneducation 529 withdrawals

The earnings portion generally enters taxable income.

Disability can except the 10% additional tax.

The exception does not exclude the earnings from income.

Direct shelter payments still need an SSI analysis.

IRC § 529(c)(6), IRS Publication 970, POMS SI 00815.400

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Appendix: tax authorities

ABLE: IRC § 529A and Treas. Reg. §§ 1.529A-1 through -3.

529: IRC § 529 and IRS Publication 970.

Trust tax: IRC §§ 642–643 and 661–663.

2026 amounts: Rev. Proc. 2025-32 §§ 3.01, 3.14, 3.34–3.35.

Primary authorities and links in speaker notes

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Appendix: benefits authorities

SSI ABLE: POMS SI 01130.740.

SSI 529: POMS SI 01140.150 and SI 01330.200.

Medicaid: CMS SMD #17-002 and current state policy.

HUD: 24 C.F.R. §§ 5.603, 5.609 and Notice PIH 2019-09.

Primary authorities and links in speaker notes

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Appendix: developing planning positions

Direct donor gifts to a trust-owned 529 require plan and trust review.

Scott Trust analysis is fact-specific regional guidance.

Announcement 2008-17 does not settle all trust-contributor issues.

Trump-account rollover procedures require current guidance.

IRC §§ 529(c)(2), 530A(d)(4), POMS PS 01825.025

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