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GRANTOR TRUSTS OVERVIEW

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RELAX!

You're here for an overview.

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Grantor Trusts

- **An exception to the rule**
- **Treated as the grantor's tax alter ego, in whole or in part**

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Results of Grantor Trust Status . . .

It's All Yours, Man . . .

Or at least part . . .

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Why That MIGHT Be Good!

- **Grantor (Mom? Dad?) Might Well Be at Lower Tax Bracket**
- **Preservation of IRC § 121 Exclusion**
- **Transfers of Nonqualified Annuities**

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How To Make a Grantor Trust

In a Nutshell . . .

Grantor (or Often a "Nonadverse Party") without an Adverse Party-Crasher

Retains Some Benefit or Control

Over ALL or SOME of the Trust Assets

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Who Is The Grantor?

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Who is ADVERSE?
Who is NONadverse?

Look at Attachment A

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IRC § 672 –
ADVERSE PARTY

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IRC § 672 - NONADVERSE

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IRC § 672 – NONADVERSE . . . AND INDEPENDENT

Neither a parent, issue, sibling, or corporate employee of grantor

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IRC § 671

"PORTION" CONTROL

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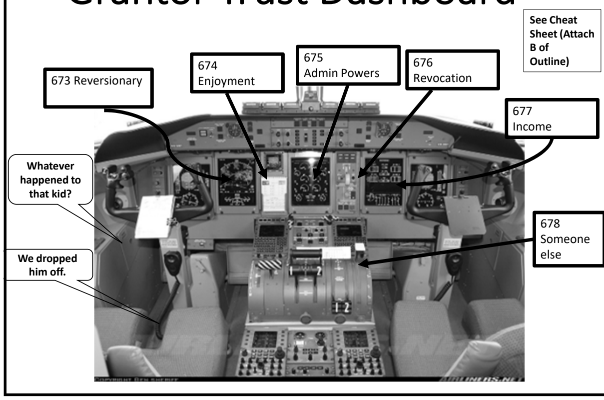
Grantor Trust Dashboard



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The Grantor Trust Dashboard:

- **IRC § 673 Reversionary Interest**
  - **Assume Trustee Will Exercise Max Discretion**
  - **D4A Trusts**
- **IRC § 674 Affect Beneficial Enjoyment**
  - **The Monster**
  - **Riddled with Exceptions**

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The Grantor Trust Dashboard:

- **IRC § 675 Administrative Powers**
  - **Home of the Power of Substitution**
- **IRC § 676 Power to Revoke**
- **IRC § 677 Income Rights**
  - **Distributed to or Accumulated for Later Distribution to**

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The Grantor Trust Dashboard:

- **IRC § 678 Person Other Than Grantor**
  - **Watch Out!**
  - **A Power Exercisable Solely in any Person to Vest Corpus or Income in Self WILL Create Grantor Trust Status in That Person UNLESS**
  - **It is <u>Already</u> a Grantor Trust**
  - **So Who Cares?**
    How About the Trustee/Beneficiary of a Nongrantor Trust?

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The Grantor Trust Dashboard:

- **IRC § 678 Person Other Than Grantor**
  - **UTC § 814(b): A nonsettlor/beneficiary/trustee subject to HEMS only; Cotrustee may act, though**
  - **Pa. Cons. Stat. § § 7504, 7505: Similar**

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ESTATE INCLUSION

STEPPED-UP BASIS

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Insuring Stepped Up Basis

- Stepped Up Basis Rules
- Grantor Trust Automatically Steps Up? (NOPE!)
- Inclusion in Gross Estate (Rev. Rul. 2023-2) (YEP!)

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Gross Estate Inclusion – Two Main Rules

- IRC § 2036(a)(1)
  - Retained an Interest
  - A Retained Income Interest Will Trigger
- IRC § 2036(a)(2)
  - Retained Right, Alone or With ANY Other Person
  - To Designate Possession, Enjoyment, Income

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Gross Estate Inclusion – Two Main Rules

- IRC § 2038
  - Retained Right to "Alter, amend, revoke, or terminate"
  - Alone or With ANY Other Person
  - A Testamentary Power of Appointment Will Trigger

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And So . . . ?

Trying to Avoid Grantor Trust Status BUT . . .

Trying to Trigger estate Inclusion, NOTE and COMPARE

Grantor Trust Rules: Adverse Party Crashers
Estate Inclusion Rules: ANY Party

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You MUST know these rules . . . .

- **Knowing the tax rules will enable you to counsel your clients as to an existing trust**
- **You cannot properly design a trust without knowing these rules**
- **If not, keep your malpractice carrier telephone number handy**

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