# DRAFTING IRREVOCABLE MEDICAID TRUSTS

**by**


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## DRAFTING IRREVOCABLE MEDICAID TRUSTS

Irrevocable Medicaid Trusts are a valuable tool in the estate and elder law planning arsenal. When properly drafted and administered, these trusts protect the assets while permitting the beneficiary to obtain and maintain qualification for public benefits.

Frequently, seniors will want to protect certain assets for their children or other intended beneficiaries through the use of an irrevocable trust, which would remove the assets placed into the trust from consideration as part of the senior's assets for Medicaid purposes, and would permit the senior to obtain public benefits after any disqualification period has passed.

If the trust provides the Trustee with the discretion or authority to provide principal for the Settlor, then the trust would be available for Medicaid purposes. To avoid having the principal of the trust fund being deemed an available resource, the basic Irrevocable Medicaid Trust usually contains a provision prohibiting the invasion of principal for the Settlor and stating that E.P.T.L. Section 7-1.6 shall not be applicable to the trust.

The advantage of the Irrevocable Medicaid Trust over an outright transfer of the underlying assets is that the funds are segregated and, during the lifetime of the Settlor, protected against the remainderperson's creditors. Moreover, the trust remains in effect during the Settlor's lifetime even if the remainderperson dies before the Settlor. Furthermore, if the trust provides that the income of the trust must be paid to the Settlor, the Settlor could receive a stream of income during his or her life, and the income would be taxable to the Settlor at the Settlor's income tax rates. Also, if assets in the trust, such as a home, are sold, the proceeds are placed back in the trust and do not revert back to the Settlor. If the Settlor retains the right to income for life, the beneficiaries could receive a step up in basis upon the Settlor's death. Income that is required to be payable to the Settlor or that could be paid to the Settlor, in the Trustee's discretion, is counted as available income for purposes of Medicaid eligibility.

Sometimes the transfer of the home for asset protection purposes is handled by transfer of the property to one's beneficiaries, for example, the children, while keeping a life estate. If a home in which there is a life estate is sold during the life tenant's lifetime, part of the proceeds (based on the life tenant's interest) go back to the life tenant, which could affect any Medicaid planning. Moreover, the children's interest in the home could be subject to claims by their creditors.

Section 369(6) of the Social Services Law was amended in 2011 to expand the list of assets which are considered to be in an individual's estate and upon which Medicaid could make a claim of recovery, to include, inter alia, retained life estates and interests in trusts. That amendment was later repealed.

## A. Trust Requirements

There are only a few basic requirements for a trust. The trust must be in writing, executed and acknowledged by the Settlor in the same manner as required for the conveyance of realty or in the presence of two witnesses, who must also sign. (See, EPTL Section 7-1.17[a]). The transfer of assets capable of registration, such as real estate, stocks and bonds, should be actually transferred to the trust by deed (in the case of real estate) and by change of ownership by registration (in the case of stocks and bonds).

If a Settlor establishes an inter vivos trust in favor of the Settlor or his or her spouse, which trust provides for certain payments or interests which would later cease if the Settlor or his or her spouse applies for medical assistance or requires medical, hospital or nursing care or long term custodial, nursing or medical care, that type of "trigger trust" would be considered void as against public policy under E.P.T.L. Section 7-3.1(c). However, this does not preclude the use of a testamentary trigger trust established for the benefit of the Settlor's spouse.

EPTL Section 7-3.1 (c) provides:

> (c) A provision in any trust, other than a testamentary trust or a trust which meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law and of the regulations implementing such clauses which provides directly or indirectly for the suspension, termination or diversion of the principal, income or beneficial interest of

> either the creator or the creator's spouse in the event that the creator or creator's spouse should apply for medical assistance or require medical, hospital or nursing care or long term custodial, nursing or medical care shall be void as against the public policy of the state of New York, without regard to the irrevocability of the trust or the purpose for which the trust was created.

When drafting an Irrevocable Medicaid Trust, the attorney draftsperson must consider several issues, including Medicaid eligibility rules, income tax, gift tax and estate tax.

## B. Medicaid Eligibility Rules

Eligibility for Medicaid benefits is based upon the Medicaid applicant's income and resources. Non-exempt transfers of assets which are without consideration are presumed to have been made for the purpose of qualifying for Medicaid benefits. Transfers are subject to a look-back period, which prior to February of 2006, had been thirty six (36) months for outright transfers and sixty (60) months for transfers to a trust. This was changed by the Deficit Reduction Act of 2005 ("DRA") to sixty (60) months for transfers made on or after February 8, 2006, as described below. The Department of Social Services or Human Resource Administration investigates the applicant's records for the "look-back" period, and the Medicaid case worker reviews the gift history in order to determine the penalty period.

Although there is currently no penalty period for regular Medicaid home care, there is a penalty period for non-exempt transfers when applying for nursing home care. The penalty period is determined by a mathematical calculation. The penalty period is determined by dividing the value of the assets transferred without consideration by the average monthly regional cost of a nursing home.

The present average monthly regional cost of nursing home care on Long Island (Nassau County and Suffolk County) in 2013 is $12,034.00 per month and for New York City it is $11,350.00 per month. The Department of Social Services or Human Resource Administration calculates the amount of non-exempt transfers made within the look-back period and divides that by the regional cost of a nursing home in order to calculate the disqualification period. Although prior to DRA the penalty period had begun on the first day of the first month following the transfer, DRA changed the start of the penalty period: The commencement of the penalty period is as follows:

> "In the case of a transfer of assets made on or after February 8, 2006, the begin date of the period of ineligibility is the first day of the month after which assets have been transferred for less than fair market value, or the date on which the otherwise eligible individual is receiving nursing facility services for which Medicaid coverage would be available but for the imposition of a transfer penalty, **whichever is later**, and which does not occur during any other penalty period.
>
> Multiple transfers made during the look-back period, including transfers that would otherwise result in a fractional penalty, are accumulated into one total amount to determine the penalty period.
>
> The exceptions to the transfer rules that apply under the OBRA '93 transfer provisions continue to apply to transfers made on or after February 8, 2006, in accordance with the DRA."

See, 06 OMM/ADM-5.

It is imperative that the attorney draftsperson consider the disqualification period when discussing with the client the amount to be placed into the Irrevocable Medicaid Trust, and how the Settlor is to manage financially during any disqualification period.

## C. Income Tax

The trustee may obtain a taxpayer identification number through the use of form SS-4, which may be processed over the web at www.irs.gov, through the mail or by fax.

An Irrevocable Medicaid Trust that requires distribution of all income to or for the benefit of the beneficiary each year is considered a “simple trust” for purposes of the federal income tax. The income of a simple trust is taxed to the beneficiary.

Even where the trust provisions do not require that the income be distributed to the grantor, all of the trust income can still be taxed to the grantor if the trust is structured as a “grantor trust.”

Although reporting the trust income on the beneficiary’s return seems as though it increases income taxes, and although it appears to be counterintuitive, reporting the trust income on the beneficiary’s return often reduces the amount of income tax because the maximum income tax rates for trusts may be reached at a much lower income level than the maximum rates for individuals. Therefore, depending on the income levels, having the trust income reported at the rates applicable to the individual taxpayer may lead to lower taxes.

Any income distributed to a beneficiary flows through the trust for tax purposes and is reported by the beneficiary on his or her own income tax return. The trust’s income tax return would show that the income was distributed, and the trust would issue a K-1 form to the beneficiary, who would then report the income.

In 2013, the federal income tax rate of 39.6% is applicable at $11,950.00 for trusts, whereas for a single taxpayer, such income would be taxed at a federal income tax rate of only 15%. The 39.6% tax rate would not apply to a single individual until the single taxpayer reached over $400,000.00 of income.

| **Single** | |
|---|---|
| **Taxable Income (federal tax)** | **Tax Rate** |
| $0 - $8,925 | 10% of the amount over $0 |
| Over $8,925 - $36,250 | $893 plus 15% of the amount over $8,925 |
| Over $36,250 - $87,850 | $4,991 plus 25% of the amount over $36,250 |
| Over $87,850 - $183,250 | $17,891 plus 28% of the amount over $87,850 |

| | |
|---|---|
| Over $183,250 - $398,350 | $44,603 plus 33% of the amount over $183,250 |
| Over $398,350 - $400,000 | $115,586 plus 35% of the amount over $398,350 |
| Over $400,000 | $116,164 plus 39.6% of the amount over $400,000 |

| **Estates and Trusts** | |
|---|---|
| **Taxable Income (federal tax)** | **Tax Rate** |
| $0 - $2,450 | 15% of the taxable income |
| Over $2,450 - $5,700 | $367.50 plus 25% of the excess over $2,450 |
| Over $5,700 - $8,750 | $1,180 plus 28% of the excess over $5,700 |
| Over $8,750 - $11,950 | $2,034 plus 33% of the excess over $8,750 |
| Over $11,950 | $3,090 plus 39.6% of the excess over $11,950 |

If income is retained by a trust and if the trust is not a grantor trust, the trust is taxed at the above rates.

Section 1411 of the Internal Revenue Code imposes an additional 3.8% tax on certain net investment income of individuals, estates and trusts that have income above a statutory amount for tax years beginning in 2013. As of 2013, estates and trusts are also subject to the Net Investment Income Tax if they have undistributed Net Investment Income and also have adjusted gross income over the dollar amount at which the highest tax bracket for an estate or trust begins for such taxable year. There are special rules for certain types of trusts such as charitable remainder trusts.

**Structuring Grantor Trusts**

A grantor trust is a type of trust under which the grantor keeps or retains a level of control in the trust which causes him or her to be considered the owner of the trust property for income tax purposes, so that the income would be taxed to the grantor. A list of the grantor trust provisions may be found in Internal Revenue Code Sections 673, 674, 675, 676 and 677. Some of these provisions, such as the power to revoke the trust under Section 675, would not be appropriate for a trust established for Medicaid planning. Some provisions that cause trusts to be considered grantor trusts are as follows:

a. The power to reacquire the trust corpus by substituting property of an equivalent value (Internal Revenue Code Section 675[4]);

b. Where income is distributed to the grantor or the grantor's spouse or held or accumulated for future distributions to the grantor or the grantor's spouse without the approval or consent of an adverse party. (Internal Revenue Code Section 677[a]); or

c. An unrestricted power to remove or substitute trustees and to designate any person, even one related to or subordinate to the grantor, as a replacement trustee. (Internal Revenue Code Section 1.674[d]-[2]).

**Capital Gains Exclusion**

IRC Section 121 provides that a single taxpayer may exclude up to $250,000.00, or in the case of a married couple, up to $500,000.00 of capital gain from the sale of a personal residence, provided that the taxpayer resided in the home as his or her personal residence for at least two of the preceding five years.

A trust can be structured to preserve the capital gains tax exclusion on the sale of the principal residence. Specifically, if a trust is treated as a grantor trust as to its income and principal under IRC Sections 671 through 679, the grantor will be treated as the continued owner of the residence for purposes of the capital gains tax exclusion.

IRC Regulation 1.121-1c (3) (ii) provides:

> If a residence is owned by a trust, for the period that a taxpayer is treated under sections 671 through 679 (relating to the treatment of grantors and others as substantial owners) as the owner of the trust or the portion of the trust that includes the residence, the taxpayer will be treated as owning the residence for purposes of satisfying the 2-year ownership requirement of section 121, and the sale or exchange by the trust will be treated as if made by the taxpayer.

One way for the grantor to be treated as the owner of the principal is for the grantor to retain certain administrative powers, such as the power to acquire the trust corpus by substituting other property of an equivalent value, as described in IRC Section 675 (4):

> A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term “power of administration” means any one or more of the following powers:
>
> (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control;
>
> (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or
>
> (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

The Net Investment Income Tax will not apply to any amount of gain that is excluded from gross income for regular income tax purposes, such as under Section 121.

**D. Gift Tax Consequences**

A transfer to the trust that is a completed gift is a transfer of assets for gift tax purposes, and a gift tax return would be filed. However, if the Settlor reserves certain powers to change the disposition, the gift may be incomplete for gift tax purposes.

Internal Revenue Code Regulation 25.2511-2 (c) provides:

> “A gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete if and to the

extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. Thus, if an estate for life is transferred but, by an exercise of power, the estate may be terminated or cut down by the donor to one of less value, and without restriction upon the extent to which the estate may be so cut down, the transfer constitutes an incomplete gift. If in this example the power was confined to the right to cut down the estate for life to one for a term of five years, the certainty of an estate for not less than that term results in a gift to that extent complete."

Chief Counsel Memorandum 201208026, released on February 24, 2012, dealt with the retention of a testamentary limited power of appointment by the Settlor of an irrevocable trust. The Settlor of that trust did not retain an inter vivos limited power of appointment. The Chief Counsel Memorandum concluded that the retention of the testamentary limited power of appointment did not render the gift incomplete as the trustees had the discretion to distribute all of the property during the trust term.

Prior to this Chief Counsel Memorandum, the IRS had ruled in Private Letter Ruling 9535008 that the donor's retention of a limited power of appointment made the entire transfer to the trust an incomplete gift.

For the treatment of special powers in the Medicaid context, see, *Verdow v. Sutkowsky*, 209 F.R.D. 309 (N.D. N.Y., 2002); *Ferrugia v. N.Y. State Dept. of Health*, 192 Misc. 2d 709, 747 N.Y.S. 2d 314 (Sup. Ct., Chautauqua County, 2002), appealed, 5 A.D. 3d 1116, 773 N.Y.S. 2d 628 (4th Dep't 2004); reversed, 3 N.Y. 3d 683, 785 N.Y.S. 2d 6 (2004); *Spetz v. New*

York State Dep't. of Health, 190 Misc. 2d 297, 737 N.Y.S. 2d 524 (Sup. Ct., Chautauqua County, 2002), app dism. 302 A.D. 2d 1019, 755 N.Y.S. 2d 674 (App Div 4th Dept 2003).

**E. Estate Tax**

Under Internal Revenue Code Sections 2036 and 1014, a decedent's gross estate includes the value of property or an interest in property transferred by the decedent, whether in trust or otherwise, if the decedent reserved or retained for his or her life the use, possession, right to income or other enjoyment of the property or the right alone to designate the people who shall possess or enjoy the transferred property or the income. With an Income Only Medicaid Trust, if the Settlor retained the right to income for life, the assets of the trust would be includable in the Settlor's estate for estate tax purposes, leading to the beneficiaries receiving a basis step up.

**F. Senior Citizen Tax Exemption**

The School Tax Relief (STAR) exemption is pursuant to Real Property Tax Law 425. The Basic STAR exemption provides a partial exemption from school taxes and is available for owner-occupied, primary residences where the combined income of the resident owner and spouse is $500,000.00 or less.

For the 2013-14 school year, the Enhanced STAR exemption is available to seniors, age 65 and older whose combined earnings were less than $79,050 in 2012.

If a Settlor transferred her property into a trust in which the Settlor homeowner retains the right to reside in the property, eligibility for the STAR exemption should not be impacted as long as all other requirements are also met. For STAR purposes, the trust beneficiary, is treated as the property owner and retains STAR eligibility [See, RPT § 425(3)(c)].

Similarly, a transfer of property to a trust in which the Settlor retains the right to reside in the property should not affect Veteran's property tax exemptions.

## G. Veteran's Benefits

If the client is or may be entitled to means-tested veteran's benefits, or Improved Pension, whether as a veteran or spouse of a veteran, then consideration as to veteran's benefits may also be applicable when drafting a trust.

A home in which an applicant resides is not counted in determining net worth [38 CFR § 3.275(b)]. A home in which an applicant has retained a life estate and actually resides also is not counted in determining the applicant's net worth for purposes of Improved Pension. [See, VAOPGCPREC 15 – 92, (O.G.C. Prec. 15 – 92)]. However, if the applicant owns a home and does not reside in such home, the value would be countable in determining the applicant's net worth.

If an applicant for Improved Pension is a beneficiary of an irrevocable trust, if no part of the principal can be used for the applicant, it is not considered available for purposes of determining the applicant's net worth for VA purposes. Notwithstanding that definition, there are General Counsel Opinions such as 72-90, (VAOPGCPREC 72 – 90) 1990, that have been ambiguous regarding the meaning of "funds allocated for the claimant's use." Therefore, one should consider making any distribution of income from an irrevocable trust discretionary, so that the income would not be countable unless actually distributed.

Where an applicant for Improved Pension places assets into a valid irrevocable trust for the benefit of a third party, for example, grandchildren, and where the applicant is not entitled to income or principal, the Veteran's Administration may still take the position that the assets should be considered in determining net worth if the assets indirectly benefit the veteran. The VA Counsel opined that where the veteran is trustee of an irrevocable trust for grandchildren who reside in the veteran's household, if the veteran may benefit from the trust expenditures indirectly, such as if the trust funds are used toward groceries or housing or other items that would be shared by the veteran (even if made on behalf of the grandchildren) a determination would have to be made as to whether those trust assets would be considered in determining net worth. [See, VAOPGCPREC 73 – 91 (Opinion of General Counsel Prec. 73 – 91)]

The VA also takes the position that assets transferred by an applicant to a supplemental needs trust for his or her benefit could be used for the applicant's care and therefore may be considered in determining net worth. See, VAOPGCPREC 33 – 97, which held:

> Assets transferred by a legally competent claimant, or by the fiduciary of a legally incompetent one, to an irrevocable "living trust" or an estate-planning vehicle of the same nature designed to preserve estate assets by restricting trust expenditures to the claimant's "special needs" which maximizing the use of governmental resources in the care and maintenance of the claimant, should be considered in calculating the claimant's net worth . . ."

If the veteran makes a transfer to supplemental needs trusts created for the benefit of household members, such as disabled children, the VA may take the position that such assets would be counted as part of the veteran's net worth.

Although there is currently no penalty period for transfers with regard to veterans who apply for Improved Pension, there is talk about imposing a penalty period, so any planning should keep that in mind.

# E.P.T.L. Section 7-1.9 Revocation of Trusts

**E.P.T.L. Section 7-1.9 Revocation of trusts**

(a) Upon the written consent, acknowledged or proved in the manner required by the laws of this state for the recording of a conveyance of real property, of all the persons beneficially interested in a trust of property, heretofore or hereafter created, the creator of such trust may revoke or amend the whole or any part thereof by an instrument in writing acknowledged or proved in like manner, and thereupon the estate of the trustee ceases with respect to any part of such trust property, the disposition of which has been revoked. If the conveyance or other instrument creating a trust of property was recorded in the office of the clerk or register of any county of this state, the instrument revoking or amending such trust, together with the consents thereto, shall be recorded in the same office of every county in which the conveyance or other instrument creating such trust was recorded.

(b) For the purposes of this Section, a disposition, contained in a trust created on or after September first, nineteen hundred fifty-one, in favor of a class or persons described only as the heirs, next of kin or distributees (or by any term of like import) of the creator of the trust does not create a beneficial interest in such persons.

# IRS Technical Advice Memorandum 9535008 (9/1/95)

**IRS Technical Advice Memorandum 9535008 (9/1/95)**

The Service has ruled in technical advice that the transfers made by an individual and his spouse to an irrevocable trust are not completed gifts under section 2501.

Date: May 8, 1995

Control No.: TR-32-55-95

**ISSUE 1:**

Were Taxpayer's and Spouse's transfers to the Trust completed gifts for purposes of section 2501 of the Internal Revenue Code?

**ISSUE 2:**

Is the Trust a grantor trust for purposes of sections 673 through 679?

**FACTS:**

In 1991, Taxpayer and Spouse created and funded the Trust. A and B (two individuals) and Foreign Trust Company were designated as the trustees. The Trust is irrevocable.

Article III, Paragraph A of the Trust provides that the trustees are to pay to Taxpayer and Spouse (and the survivor of them) so much of the income and principal of the Trust as the trustees, in their discretion, "think fit."

During his lifetime, Taxpayer has the power to appoint the property transferred by him to the Trust. The power is exercisable in favor of members of the "Appointed Class," which consists of family members. Taxpayer cannot appoint the property to himself, his creditors, his estate, or the creditors of his estate. Spouse has an identical lifetime power of appointment over the property transferred by her to the Trust.

Taxpayer also has a testamentary power to appoint the property transferred by him to the Trust. As with the lifetime power of appointment, Taxpayer can exercise the power in favor of anyone in the "Appointed Class." He cannot appoint the property to himself, his creditors, his estate, or the creditors of his estate. Spouse has an identical testamentary power of appointment over the property transferred by her to the Trust.

**THE TRUSTEES' POWERS**

The Trust provides the trustees with certain powers pursuant to which the trustees may change virtually every beneficial and administrative provision of the Trust. For example, these powers would permit the trustees to i) revise or terminate any and all of the beneficial interests in the Trust; ii) add new beneficiaries; iii) create new trusts and transfer the Trust property to the new trusts; and iv) form partnerships and companies and transfer the Trust property to those partnerships and companies.

Thus, the trustees' exercise of discretionary powers in administering the trust is virtually unrestricted. (The Trust instrument provides that the trustees are to ignore any court decree relating to the administration of the Trust.) Further, the trustees' discretionary powers extend to the investment of Trust assets and the determination of the country in which the Trust is to be administered.

The trustees are to give reasonable notice to Taxpayer and Spouse before exercising the above trustee powers. Upon exercise of a power by the trustees, Taxpayer and Spouse may each exercise a veto right. Taxpayer and Spouse will possess the veto rights until death, legal disability, or resignation.

**LAW AND ANALYSIS:**

**ISSUE 1:**

Section 2501 provides that a tax is imposed for on the transfer of property by gift.

Section 2511 provides that the gift tax shall apply whether the property is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2514(b) provides that the exercise or release of a general power of appointment shall be deemed a transfer of property by the individual possessing such power.

Section 2514(c) provides that the term “general power of appointment” means a power exercisable in favor of the individual possessing the power, the individual's estate, the individual's creditors, or the creditors of the individual's estate.

Section 25.2511-2(c) of the Gift Tax Regulations provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title in himself or herself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 25.2511-2(f) provides that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply.

Section 25.2514-3(c)(1) provides that the general principles set forth in section 25.2511-2 for determining whether a donor of property (or of a property right or interest) has divested himself or herself of all or any portion of an interest therein to the extent necessary to effect a completed gift are applicable in determining whether the release or exercise of a power of appointment is subject to the gift tax. Thus, if a general power of appointment is partially released so that thereafter the donor may still appoint among a limited class of persons not including himself or herself, the partial release does not effect a completed gift. Under these circumstances, the possessor of the power has retained the right to designate the ultimate beneficiaries of the property over which he or she holds the power. Since it is only the termination of such control which completes the gift under section 25.2511-2, the partial release is not subject to gift tax under section 2514.

In Estate of Sanford v. Commissioner, 308 U.S. 39 (1939), the taxpayer created a trust for the benefit of named beneficiaries and reserved the power to revoke the trust in whole or in part, and to designate new beneficiaries other than himself. Six years later, in 1919, the taxpayer relinguished his power to revoke the trust. However, the taxpayer continued to retain his right to change the beneficiaries. In 1924, the taxpayer relinquished his right to change the beneficiaries.

In Estate of Sanford, the issue presented to the Court was whether the taxpayer's gift was complete upon i) his creation of the trust, ii) his relinquishment, in 1919, of the right of revocation, or iii) his later relinquishment, in 1924, of the right to change the beneficiaries. The Court held that a donor's gift is not complete, for purposes of the gift tax, when the donor has reserved the power to determine those who would ultimately receive the property. Accordingly, the Court concluded that the taxpayer's gift was complete in 1924, when he relinquished his right to change the beneficiaries of the trust.

Thus, in Estate of Sanford, the Court inferentially found that, even though the taxpayer could not change the terms of the trust for his own benefit, the taxpayer nevertheless continued to possess dominion and control over the trust property by reason of his retained right to change the beneficiaries of the trust. See also, section 25.2511-2(c).

Under section 2514, only the exercise or release of a general power of appointment (rather than a limited power of appointment) is subject to gift tax. However, when a person transfers property and retains a limited power to appoint the property to others, the person's retention of the limited power of appointment is a retention of dominion and control over the transferred property, for purposes of the gift tax. Consequently, under those circumstances, the person's exercise or relinquishment of the limited power of appointment is subject to the gift tax under section 2511. Section 25.2511-2(f).

In the present case, Taxpayer and Spouse irrevocably transferred property to the Trust. Because all distributions of income and principle are discretionary, Taxpayer and Spouse have not retained a RIGHT to receive the Trust income or principle, (assuming the property is not subject to the rights of their creditors). However, Taxpayer and Spouse have retained limited powers to appoint the Trust property (and accumulated income) to other family members.

By reason of their limited powers of appointment, Taxpayer and Spouse have retained the power to change the beneficiaries of the Trust. Therefore, for purposes of the gift tax, Taxpayer and Spouse continue to possess dominion and control over the property transferred to the Trust, and their irrevocable transfers to the Trust were not completed gifts. Estate of Sanford v. Commissioner, supra; section 25.2511-2(f). Compare, Commissioner v. Vander Weele, 254 F.2d 895 (6th Cir. 1958) and Outwin v. Commissioner, 76 T.C. 153 (1981), in which taxpayers transferred property in trust and, as in the present case, retained the right to discretionary distributions of income and principal. Because, in Vander Weele and Outwin, the taxpayers' creditors could reach the transferred property, the respective courts found that the taxpayers had retained dominion and control over the property and, therefore, the transfers to the trusts were not completed gifts.

Consequently, in the present case, as in Estate of Sanford, a taxable gift will occur at the moment that Taxpayer's power or Spouse's power to change the Trust interests is released or extinguished. For this purpose, it is not necessary for us to determine whether the retained veto rights are viable in light of the Trust requirement that the trustees ignore any court decree. As soon as

Taxpayer or Spouse exercise, relinquish, or otherwise lose the power to change the beneficiaries, there will be a completed gift.

For example, the gift will be complete (and hence taxable) upon the occurrence of any one of the following events: 1) Taxpayer's or Spouse's exercise (to any extent) or relinquishment of (to any extent) his or her power of appointment; 2) any action by the trustees that would effectively terminate Taxpayer's or Spouse's power of appointment with respect to any part of the Trust property (including the trustees' distribution of income or principle to anyone other than Taxpayer and Spouse); and 3) any action or failure to act by the trustees with respect to any part of the Trust property whereupon it is no longer accounted for in the Trust. [1]

**CONCLUSION ISSUE 1:**

Taxpayer's and Spouse's transfers to the Trust were not completed gifts, for purposes of section 2501, at the time of the transfers to the Trust.

**ISSUE 2:**

Sections 673 through 679 specify the circumstances under which a grantor of a trust is the owner of a portion of the trust, which may include the entire trust, for federal income tax purposes. When a grantor is the owner of an entire trust, section 1.671-3(a)(1) of the Income Tax Regulations includes in the grantor's income those items of income, deduction, and credits to which the grantor would have been entitled had the trust not been in existence during the period the grantor is the owner of the trust.

Section 677(a) provides that a grantor is the owner of any portion of a trust whose income without the approval or consent of any adverse party is or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse, (2) held or accumulated for future distribution to the grantor or the grantor's spouse, or (3) applied to the payment of premiums of policies of insurance on the life of the grantor or the grantor's spouse.

The income distribution power of the trustees in Article III, Paragraph A of the Trust falls within the scope of section 677(a)(1) because the trustees may distribute the Trust income and principal to the grantors (i.e., Taxpayer and Spouse). The exception in section 677(b) does not apply to the Trust because the trustees' power to distribute the Trust income is not limited to satisfying the grantors' legal obligations of support. Further, although either grantor spouse has a veto power over a distribution of the trust income or principal by the trustees, the grantor's spouse is not an “adverse party” under section 677. Section 1.677(a)-1(b)(2) provides:

> [T]he grantor is treated, under section 677, in any taxable year as the owner (whether or not he is treated as an owner under section 674) of a portion of a trust of which the income for the taxable year or for a period not within the exception described in paragraph (e) of this section is, or in the discretion of the grantor, or [the grantor's] spouse, or a nonadverse party, or any combination thereof (without the approval or consent of any adverse party OTHER THAN THE GRANTOR'S SPOUSE), may be:
>
> (i) Distributed to the grantor or the grantor's spouse ... [Emphasis added.]

Therefore, neither grantor spouse is an adverse party when applying section 677(a) to the Trust provision that allows the distribution of the income and principal of the Trust to a spouse of the grantor. Moreover, under section 1.672(a)-1(a), neither the trustees nor the beneficiaries other than the grantors are adverse parties.

Because Article III, Paragraph A of the trust allows the trustees to distribute, without the approval or consent of any adverse party, the trust income and capital to the grantors, the grantors are the owners of the Trust under section 677.

**CONCLUSION ISSUE 2:**

The Trust is a grantor trust for income tax purposes.

A copy of this Technical Advice Memorandum should be given to the taxpayer. Section 6110(j) provides that it may not be used or cited as precedent.

[1]

We note that this is NOT intended to be an exclusive list of the occurrences that will result in a completed gift.

# IRS Chief Counsel Memorandum 201208026 (9/28/11 released 2/24/12)

**IRS Chief Counsel Memorandum 201208026 (9/28/11 released 2/24/12)**

***Reference(s):*** IRC Sec(s). 2511 IRC Sec(s). 2503

Number: **201208026**

**ISSUES**

1. Whether the Donors made completed gifts on transferring property to the Trust.

2. Whether annual exclusions are allowable under I.R.C. § 2503(b) for the withdrawal rights provided in the Trust.

**CONCLUSIONS**

1. On transferring the property to the Trust, the Donors made completed gifts of the beneficial term interests.

2. The withdrawal rights are unenforceable and illusory. No annual exclusion is allowable under I.R.C. § 2503(b) for the purported withdrawal rights.

**FACTS**

Donor A and Donor B (Donors) gratuitously transferred property to a trust (Trust) on Date and designated their adult child, Child A, as the sole trustee. The Trust beneficiaries are the Donors' children, other lineal descendants, and their spouses. The Trust will terminate when both Donors have died.

<u>The Trust provisions</u>

The Trust states that it is irrevocable, and that the Donors renounce any power to determine or control the beneficial enjoyment of Trust income or principal. However, the Trust provides the Donors with testamentary limited powers of appointment. If the Donors do not exercise their testamentary powers, the property remaining in the Trust at termination will be distributed to Child A and Child B.

The trustee, Child A, has absolute and unreviewable discretion in administering the Trust for the benefit of the Donors' children, other lineal descendants, and their spouses (beneficial term interests). Income and principal may be distributed at any time for a beneficiary's health, education, maintenance, support, wedding costs, purchase of a primary residence or business, or for any other purpose. Income and principal may also be distributed to a charitable organization.

Each beneficiary may withdraw an amount of property (based on the § 2503(b) annual exclusion amount) in any year in which a transfer is made to the Trust. However, this may be voided by the trustee for additions made to the Trust.

The Trust provides that the construction, validity, and administration of the Trust are to be determined by State law, but provision is made for Other Forum Rules. Specifically, all questions and disputes concerning the Trust must be submitted to the Other Forum that is charged with enforcing the Trust. A beneficiary filing or participating in a civil proceeding to enforce the Trust will be excluded from any further participation in the Trust.

**LAW AND ANALYSIS**

<u>ISSUE 1:</u>

The Donors' representative contends that, because the Donors retained testamentary limited powers of appointment over the Trust, they retained dominion and control over the transferred property. Therefore, they did not make any completed gifts.

Section 2501 of the Internal Revenue Code imposes a tax on the transfer of property by gift by any individual. Under § 2502(c), the gift tax imposed under § 2501 is the liability of the donor.

Section 2511 provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-2(a) provides, in part, that the gift tax is an excise upon the donor's act of making the transfer and is measured by the value of the property passing from the donor.

Section 25.2511-2(b) provides, in part, that as to any property or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, the gift is complete.

Section 25.2511-2(b) further provides, in part, that, if upon a transfer of property the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Section 25.2511-2(c) provides, in part, that a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves (unless the power is a fiduciary power limited by a fixed or ascertainable standard). The relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event that completes the gift and causes the tax to apply.

In Chanler v. Kelsey, 205 U.S. 466 (1907), the Supreme Court considered, in part, the legal interest that is subject to a testamentary power of appointment. In that case, a grantor created a trust providing a lifetime income interest for his daughter. The trust also provided the daughter with a testamentary limited power to appoint the trust property. If she failed to exercise the power when she died, the trust property was to be distributed to designated persons. The

Court held that, for New York inheritance tax purposes, the daughter's execution of her testamentary power was considered "the source of title" to the remainder. As the holder of a testamentary power of appointment, she controlled the remainder passing at her death. See 205 U.S. at 474.

Though it predates the enactment of the gift tax, the Chanler opinion supports the proposition that a testamentary power of appointment relates to the remainder of a trust, not the preceding beneficial term interests. The testamentary power does not (and cannot) affect the trust beneficiaries' rights and interests in the property during the trust term. Rather, a trustee with complete discretion to distribute income and principal to the term beneficiaries may, in exercising his discretion, distribute some or all of the trust property during the trust term. The holder of a testamentary power has no authority to control or alter these distributions because his power relates only to the remainder, i.e., the property that will still be in the trust when the beneficial term interests are terminated. See Bowe-Parker, Page on the Law of Wills § 45.12 (1962). See also Bittker and Lokken, Federal Taxation of Income, Estate and Gifts ¶ 226.6.7 (2011); Howard M. Zaritsky, Tax Planning for Family Wealth Transfers (4 ed. 2011 Cum. Supp. No. 2) ¶ 3.03[1].

From the time the gift tax was enacted, taxpayers have contested the issue of when a donor parts with dominion and control so as to make a completed gift. For example, in Sanford's Estate v. Commissioner, 308 U.S. 39 (1939), the grantor, in 1913, transferred property to a trust for others. He reserved (i) a revocation power exercisable at any time during his life to retrieve the property and thereby terminate every beneficial interest; and (ii) a modification power exercisable at any time during his life to terminate or change every beneficial interest. In 1919, the grantor relinquished his revocation power, but he retained his modification power. In 1924, he relinquished his modification power. The Court held that notwithstanding the grantor's creation of the trust and relinquishment of his revocation power, he retained dominion and control over the disposition of the trust property until he renounced his power to modify the trust. Consequently, the grantor made a taxable gift in 1924 when he relinquished his modification power. See Burnett v. Guggenheim, 288 U.S. 280 (1933).

Following Sanford's Estate, the Supreme Court considered various situations in which a trust instrument purported to divest the respective grantor of all dominion and control over property to the extent that the property could not be returned to the grantor except by reason of contingencies beyond his control. In these cases, the Court noted that the respective grantor lost all economic control upon making the transfer, which he would not regain unless certain contingencies occurred. The Court concluded that the respective gifts were complete except for the value of the retained rights. Smith v. Shaughnessy, 318 U.S. 176 (1943); Robinette v. Helvering, 318 U.S. 184 (1943); Estate of Kolb v. Commissioner, 5 T.C. 588 (1945). See § 25.2511-2(c).

Consistent with Chanler v. Kelsey, the Service has maintained in litigation that a power holder's testamentary limited power of appointment relates only to the remainder of the respective trust. See Poinier v. Commissioner, 858 F.2d 917 (3d Cir. 1988) (testamentary power holder's renunciation of her power relates to the remainder), aff'g 86 T.C. 478 (1986). See also Robinson v. Commissioner, 675 F.2d 774 (5 Cir. 1982) (grantor's power to change the beneficiaries who would receive trust property when her lifetime income interest terminated constituted a gift of the remainder), aff'g 75 T.C. 346 (1980). See Smith v. Shaughnessy, supra (right to receive income during the trust term and testamentary power to appoint the remainder are separate and severable interests).

In the case at hand, when each Donor transferred property to the Trust on Date, he or she retained a testamentary limited power to appoint so much of it as would still be in the Trust at his or her death.[1] The Trust emphasizes that the Donors do not retain any powers or rights to affect the beneficial term interests of their children, other issue, and their spouses (and charities) during the Trust term. With respect to those interests, the Donors fully divested themselves of dominion and control of the property when they transferred the property to the

Trust on Date. Indeed, during the period extending from the creation of the Trust until the Donors' deaths, the trustee, Child A, has sole and unquestionable discretion to distribute income and principal to the beneficial term interests. He may even terminate the Trust by distributing all of the property.

Accordingly, for gift tax purposes, the Donors' transfers to the Trust constituted a completed gift of the beneficial term interests. The Donors' testamentary limited powers of appointment relate only to the Trust remainder. Their relinquishment of their testamentary powers during the Trust term would affect only the ultimate disposition of the remainder and, as such, would constitute a transfer of the remainder. Bittker and Lokken, <u>Federal Taxation of Income, Estates and Gifts</u> ¶ 126.6.7 (2011).

<u>ISSUE 2:</u>

The Donors' representative contends that, if the Donors made completed gifts on Date, the gifts were of minority interests to the beneficiaries equal in value to their respective withdrawal rights (Crummey Powers). Therefore, the gift tax exclusions allowable under § 2503(b) effectively reduced the amount of taxable gifts to zero.

<u>The withdrawal rights are not legally enforceable and thus are not present interests</u>

Section 2503(a) provides, in part, that the term “taxable gifts” means the total amount of gifts made during the calendar year.

Section 2503(b) provides, in part, that in the case of gifts (other than gifts of future interests in property) made to any person during the calendar year, the first $10,000 of such gifts to such person shall not, for purposes of § 2503(a), be included in the total amount of gifts made during such year.

Section 25.2503-3(a) provides, in part, that no part of the value of a gift of a future interest may be excluded in determining the total amount of gifts. An unrestricted right to the immediate use, possession, or enjoyment of property or the income from property is a present interest in property.

To be a present interest, a withdrawal right must be legally enforceable. For example, if a trust provides for withdrawal rights, and the trustee refuses to comply with a beneficiary's withdrawal demand, the beneficiary must be able to go before a state court to enforce it. See Cristofani v. Commissioner, 97 T.C. 74 (1991); Restatement of the Law of Trusts § 197 (Nature of Remedies of Beneficiary); Bogert, Trusts and Trustees Vol. 41, § 861 (Remedies of the Beneficiary and Trustee).

As a matter of public policy, the federal courts are the proper venue for determining an individual's federal tax status, and the federal courts are not bound by the determinations of a private forum (such as Other Forum) concerning such status. Alford v. United States, 116 F.3d 334 (8 Cir. 1997). Likewise, as a matter of public policy, a State court will not take judicial notice of a private forum's (or group's or sect's) construction and determination of State law pertaining to a trust agreement, such as the Trust in this case. Cite 2. These determinations are strictly within the purview of the State courts. Cite 3; Cite 4.

Under State law, a trust clause may prohibit a beneficiary from seeking civil redress. Cite 5. Although the State legislature made a public policy decision to allow a beneficiary to make certain inquiries without fear of risking forfeiture, these “safe harbors” are not relevant here. Cite 6.

Under the terms of the Trust in this case, a beneficiary cannot enforce his withdrawal right in a State court. He may only press his demand before an Other Forum and be subject to the Other Forum's Rules. Notwithstanding any provisions in the Trust to the contrary, the Other Forum will not recognize State or federal law. If the beneficiary proceeds to a State court, his existing right to income and/or principal for his health, education, maintenance and support will immediately terminate. He will not receive any income or principal for his marriage, to buy a home or business, to enter a trade, or for any other purpose. He will not have withdrawal rights in the future, and his contingent inheritance rights will be extinguished. Thus, a beneficiary faces dire consequences if he seeks legal redress. As a practical matter, a beneficiary is foreclosed from enforcing his withdrawal right in a State court of law or equity.

Withdrawal rights such as these are not the legally enforceable rights necessary to constitute a present interest. Because the threat of severe economic punishment looms over any beneficiary contemplating a civil enforcement suit, the withdrawal rights are illusory. Consequently, no annual exclusion under § 2503(b) is allowable for any of the withdrawal rights. See Rev. Rul. 85-24, 1985-1 C.B. 329; Rev. Rul. 81-7, 1981-1 C.B. 474.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

It is our belief that § 2702 applies in valuing the gifts in this case. Section 2702 provides special valuation rules with respect to transfers of interests in trusts. Generally, under § 2702(a)(2), the value of any retained interest which is not a qualified interest shall be treated as being zero. Section 25.2702-2(a)(4) provides that an interest in trust includes a power with respect to a trust if the existence of the power would cause any portion of a transfer to be treated as an incomplete gift. Accordingly, under § 25.2702-2(a)(4), the Donors' retained testamentary powers are interests, and the value of their retained interests is zero. Therefore, the value of the Donors' gift is the full value of the transferred property.

If additions were made to the Trust, annual exclusions are not allowable for withdrawal rights relating to the additions because the trustee can void those rights after an addition is made. Section 25.2503-3(c), Example (1) and Example (3).

Please note, however, that our belief in this regard carries certain hazards to the extent further study is required. Should you wish to pursue this argument, please coordinate with the National Office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Deborah S. Ryan at (202) 622-4045 if you have any further questions.

Sincerely,

Associate Chief Counsel

(Passthroughs & Special Industries)

By: Leslie H. Finlow

Senior Technician Reviewer, Branch 4

Office of Associate Chief Counsel

(Passthroughs & Special Industries)

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We note that the Trust has conflicting provisions. In one provision, the Donors emphatically renounce any power to determine or control the beneficial enjoyment of the Trust, but other provisions state that the Donors have testamentary limited powers of appointment. Under State law, generally, if two provisions conflict and cannot be reconciled, the latter provision is considered to indicate the grantor's subsequent intention, and that provision prevails. That is the rule unless the general scope of the trust leads to a contrary conclusion.

Cite 1. We believe that the highest court of State would conclude that the Donors intended to retain the testamentary limited powers and, thus, did so.

# Insurance

**Insurance**

If property is transferred to a trust, or to anyone for that matter, the homeowner's insurance should be updated to reflect the new ownership. Also, consideration should be given to updating title insurance as well. Moreover, if the home is to be unoccupied, the insurance policy should be updated to reflect that.

# Some Sample Trust Clauses

# Some Sample Trust Clauses

Distributions of Income to Settlor.

(a) The Trustees shall pay the Settlor the net income of the trust at least annually during the Settlor's lifetime. Moreover, the Settlor shall retain the right to live in any residential property, condominium or cooperative apartment while it is owned by the trust without the payment of any rent. In the event that any interest in residential property (and contents thereof), whether real property, a condominium or a cooperative apartment, shall form a part of the principal of this Trust, then in addition to the other powers and authorities given the Trustees hereunder, including the power to sell, the Settlor authorizes and empowers the Trustees to continue to hold the same for such period of time as the Trustees, exercising absolute discretion, may deem same necessary or desirable.

(b) The Trustees are further authorized and empowered to sell any such residential property and to purchase other suitable residential property, whether a house, cooperative apartment, condominium apartment or otherwise, for equivalent use by the Settlor and this provision shall not be limited by the repeated exercise thereof. In all matters regarding continued use of such residential property, it is the Settlor's intention that the Trustees shall give great weight to the wishes and needs of the Settlor.

(c) Notwithstanding the provisions of EPTL 7-1.6, no distributions of principal shall be made to the Settlor.

***Consider: permitting distribution of principal to children;***

Disposition Upon The Settlor's Death.

Upon the death of the Settlor, the balance of the trust, including the remaining principal and undistributed income shall be distributed to the Settlor's children, DARCY DAUGHTER, KEVIN CLIENT, CLAIRE CLIENT, and KENT CLIENT, per capita.

***Consider: Per capita rather than per stirpes***
***Consider: special power of appointment***

***Consider: E.P.T.L. Section 7-1.9***

Consider adding to your general powers.

The situs of the property of this trust may be maintained in any jurisdiction. The Trustees may transfer the situs of this trust at any time to any jurisdiction. Upon any such transfer of situs, the Trustees may elect to have the trust be administered under the laws of the jurisdiction to which it is transferred.

***Considering adding:***

Right of Substitution.

The Settlor retains the right to reacquire the principal of this trust by substituting property of an equivalent value therefor.

***Consider a Trust Protector:***

My Trust Protector may remove any Trustee of a trust created under this agreement.

If the office of Trustee of a trust is vacant and no successor Trustee is designated, my Trust Protector may appoint an individual or a corporate fiduciary to serve as Trustee.

A Trust Protector may not appoint itself as a Trustee and a Trust Protector may not simultaneously serve as both Trust Protector and Trustee. Moreover, the Trust Protector may not appoint the Settlor as Trustee. Under no circumstances shall the Settlor serve as Trustee hereunder.

My Trust Protector may, at any time, change the governing law of the trust, remove all or any part of the property or the situs of administration of the trust from one jurisdiction to another, or both. My Trust Protector may elect, by filing an instrument with the trust records, that the trust will thereafter be construed, regulated and governed as to administration by the laws of the new jurisdiction. If necessary, or if deemed advisable by my Trust Protector, my Trust Protector may appoint an Independent Trustee to serve as trustee in the new situs.

***The above sample trust clauses are not intended to be a sample form trust for the use of any particular individual or individuals and should not be relied upon for estate planning, gift tax planning, estate tax planning or Medicaid planning purposes. The rules and laws pertaining to estate tax, gift tax and Medicaid eligibility are complicated and are often changing, and each individual's particular situation is unique. When a trust is prepared, it should be tailored for the individual's unique situation.***

# STAR EXEMPTION

# Special STAR Eligibility Rules for Seniors, Residents of Cooperative Apartments, Manufactured Home Parks, Surviving spouses, Nursing Homes, Trusts and Life Estates

**Seniors** - If you're an Enhanced STAR recipient and your local government or school district offer a partial property tax exemption for seniors with limited incomes, you may be eligible for both exemptions. Seniors who receive the Senior Citizens Exemption automatically qualify for Enhanced STAR. As a result, they only need to submit the RP-467 Application for Partial Tax Exemption for Real Property of Senior Citizens to the assessor, and if qualified they will receive both the Senior Citizens and Enhanced STAR exemptions.

**Cooperative apartments and manufactured home parks** - If you reside in this type of property, file a STAR application with your local assessor.

Administering STAR in Cooperative Apartments
Administering STAR in Manufactured Housing Communities

**Surviving spouses** - You can retain an existing Enhanced STAR exemption if you're at least 62 years old as of December 31 in the year the exemption will continue. Otherwise, you may receive the Basic STAR exemption.

**Nursing home residents** - If you own your home, you're eligible for Basic or Enhanced STAR, as long as no one other than the co-owner(s) or spouse resides there.

**Trusts - If you're a trust beneficiary who conveyed your home to trustees but continue to live in it, you get the STAR benefit**. For example, a senior creates a trust and conveys her home to her children as trustees. If she remains in the home as the beneficiary of the trust, she is considered the homeowner and gets the STAR benefit.

**Life estates** - Under a life estate, one party has a "life tenancy" (ownership for the rest of his or her life) and another party will become the owner after the life tenant dies. For exemption purposes, the life tenant is deemed to own the property; so STAR eligibility is based on the life tenant's qualifications.

***The New York State*** **Department of Taxation and Finance**
*Updated: January 04, 2012*

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**Sharon Kovacs Gruer, Esq.** focuses her practice in the areas of elder law, special needs, tax, estate planning and asset protection. Ms. Gruer holds a masters of law in taxation (LL.M.) from New York University, is certified as an elder law attorney by the American Bar Association's accredited National Elder Law Foundation*, is a past Chair of the Elder Law Section of the New York State Bar Association and is on the Board of Directors of the National Academy of Elder Law Attorneys. Ms. Gruer is the past president of the Great Neck Lawyers Association and is the past chairperson of the Nassau County Bar Association Taxation Committee. Ms. Gruer has practiced law for twenty-seven years and is certified as a mediator by the New York State Supreme Court Commercial Division.

*Certified by the American Bar Association approved National Elder Law Foundation. The National Elder Law Foundation is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

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