

Grantor Trust Planning Tool that Might Change

By: Jonathan G. Blattmachr, Esq.,
Thomas Tietz , Esq., and Martin M.
Shenkman, Esq.



**A KEY ESTATE
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What Is a Grantor Trust and Why Is it So Powerful for Planning

- Grantor trusts are the foundation of much of modern estate planning.
- All based on Rev. Rul. 85-13 which held that the grantor still owns all the assets in a grantor trust for income tax purposes.
- That means that the following:
 - The grantor pays the income tax on the income earned by the trust which allows the trust to grow income tax free/compounded basis, the most powerful force in planning.
 - It allows the grantor to buy and sell assets with the trust without any income tax recognition.
 - It allows a GRAT to make the annuity payments in kind and without income tax recognition even if the property is highly appreciated.
 - It allows the grantor to substitute or swap high basis assets for a low basis asset in a grantor trust to secure an income tax free step up in basis.

What Might Happen to Grantor Trusts?

- The IRS's business plan for 2023 seems to include the denial of a step-up in income tax basis for assets in a grantor trust when the grantor dies. See Blattmachr, et. al. Journal of Taxation Sept. 2002.
- Legislative proposals which would treat transactions between grantors and their grantor trusts as taxable. While many might think that this cannot be enacted with the Republicans controlling the House, anything can happen in Washington in the negotiation process leading up to legislative change.
- The take home point is plan now while the law is favorable.

Additional information

- Jonathan G. Blattmachr
jblattmachr@pioneerwealthpartners.com
- Thomas Tietz Tietz@shenkmanlaw.com
- Martin M. Shenkman
shenkman@shenkmanlaw.com