

legally speaking

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WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

GRANTOR TRUSTS

What the heck are they?


A “Grantor Trust” is a trust you create during your life that you own *for income tax purposes*. This means that the trust is not a separate taxpayer from you. The income, losses, deductions, and credits of the Grantor Trust you create are reported on your personal income tax return.

One type of Grantor Trust is a “revocable trust”, the assets of which are also included in your estate for estate tax purposes when you die. There are, however, other types of Grantor Trusts that are not included in your estate. A “Defective” Grantor Trust is one such trust.

A Defective Grantor Trust gives you (the Grantor) certain powers over the trust property which purposely make the trust’s income taxable to you, but the trust will not be included in your estate at death. The advantage of a Defective Grantor Trust is that your payment of the trust’s income taxes is effectively a tax-free gift to the trust and its beneficiaries. Also, note that transactions between the Grantor and the trust are not taxable. For instance, if you buy back property from the trust that has appreciated in value since you made the gift to the trust, there is no capital gains tax on this transaction.

There have been proposals to disallow the use of Defective Grantor Trusts by making changes to the Internal Revenue Code. To date, such changes have not been made, and Defective Grantor Trusts can still be a good estate planning tool.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column.



“I’m so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family’s future.”



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