FEATURE:
ESTATE PLANNING & TAXATION

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Deciding and Converting Between Grantor And Non-Grantor Trust Status (Part I)

Evaluation of planning opportunities and potential pitfalls

While properly structured trusts are effective vehicles for achieving transfer-tax planning objectives, clients are increasingly interested in maximizing income tax benefits that those trusts may afford. A choice between grantor and non-grantor trust status is key to accomplishing certain income tax planning goals. However, both types of trusts have their own advantages and disadvantages, and converting one variety into another can raise many issues that can be traps for the unwary.

This article discusses planning techniques unique to both varieties of trusts, assesses overall tax benefits in various fact patterns taking both income tax and transfer tax into account and analyzes certain special cross-border issues and planning opportunities. We've divided the article into two parts.

Part I discusses tax saving opportunities afforded by non-grantor trusts such as: state income tax minimization (with or without additional techniques such as incomplete non-grantor (ING) trust planning; enhanced federal tax deductions under Internal Revenue Code Section 199A (relating to "qualified business income"), IRC Section 164 (relating to state and local taxes) and IRC Section 170 (relating to charitable contributions); and income exclusions at federal and state levels for qualified small business stock (including combining qualified small business stock (QSBS or QSB stock) planning with ING trusts to multiply the income exclusion benefits).

Part II will discuss certain advantages of grantor trusts. For instance, if a grantor materially participates in a business of a partnership owned by the grantor trust, then certain income tax exclusions available to the grantor of a grantor trust under IRC Section 1411(c) (relating to net investment income tax) isn't available to a non-grantor trust. Further, various flexibilities common to grantor trusts are unavailable to non-grantor trusts. In the cross-border context, a foreign non-grantor trust with U.S. beneficiaries can be a trap for the unwary and, if not managed properly, can result in devastating income tax consequences to the U.S. beneficiaries, whereas a U.S. non-grantor trust with foreign beneficiaries can result in unnecessary indirect U.S. income tax to the foreign beneficiaries unless a proper distribution policy is crafted and implemented diligently. However, in certain unique situations, when a U.S. non-grantor trust, rather than a U.S. grantor trust with a U.S. grantor, is the borrower in a cross-border transaction, opportunities exist to significantly reduce relevant withholding obligations.

Part II will also discuss methods for converting grantor trusts into non-grantor trusts, and vice versa, and the income and transfer-tax implications of each conversion method. Under current law and the current Internal Revenue Service's litigation position, converting a grantor trust to a non-grantor trust shouldn't result in an income tax liability to the grantor unless the trust has outstanding liabilities. Converting a non-grantor trust to a grantor trust shouldn't trigger income tax either. We'll survey and analyze the relevant authorities (or the lack thereof in certain instances). In discussing conversion methods, we'll mostly focus on select methods that the IRS has

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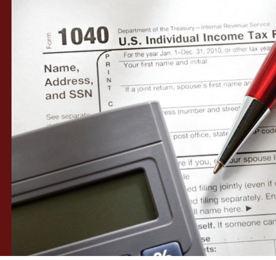


approved, especially with respect to the transfer-tax implications of relevant conversion methods, and analyze aspects of the transfer-tax implications that the IRS has yet to opine on. Under the right facts, affirmatively triggering IRC Section 679 could be a light-touch method for converting a non-grantor into a grantor trust, with the least tax risks on conversion, while requiring significant ongoing reporting and sophisticated foreign trust administration.

Non-Grantor Trust Benefits

Non-grantor trusts can provide benefits to individual taxpayers in several scenarios. Taxpayers in high income tax states using non-grantor trusts can reduce their state income tax liabilities. In some circumstances, individuals can also benefit from increased deductions by using non-grantor trusts, including deductions under Section 199A, state and local income tax (SALT) deductions and charitable deductions. Individuals owning QSBS could enjoy multiple exclusions from gains by using non-grantor trusts. Converting grantor trusts into non-grantor trusts can also provide practical, non-tax benefits for individuals desiring additional cash flow.

State Income Tax Savings

Non-grantor trusts can provide significant benefits for clients living in high income tax states. By structuring a new trust as a non-grantor trust or converting an existing grantor trust into a non-grantor trust, taxpayers in high income tax states have opportunities to protect gains from state income taxes.

For federal income tax purposes, a trust can either be a grantor trust, in which case an individual is treated as the owner of the trust for income tax purposes, or a non-grantor trust, in which case the trust is responsible for its own income taxes.[1] In most cases, state taxing authorities will respect the federal income tax treatment of the trust. Accordingly, trusts that are grantor trusts under federal law are subject to income tax imposed by the grantor's state of residence. Conversely, non-grantor trusts can only be taxed by a state if there's the requisite "minimum connection" between the non-grantor trust and the taxing state to satisfy the due process clause of the U.S. Constitution.[2]

The minimum connection requirement for a state to tax a non-grantor trust, which is frequently referred to as a "nexus" requirement, is formulated differently from state to state. Some states impose a tax on non-grantor trusts based on the creator's residence when the trust was created.[3] Other states refer to the residence of the trustee or the state of administration as the basis for their taxing authority.[4] A third group of states imposes no income tax at all on non-grantor trusts.[5] These differences provide opportunities for new non-grantor trusts to be created or for existing grantor trusts to be converted into non-grantor trusts in a way that can shield a trust from state income taxes.

> As New York respects the federal income tax treatment of grantor trusts, a grantor trust considered owned for federal income tax purposes by a New York domiciliary would incur New York state income taxes.

For example, New York imposes its income tax on non-grantor trusts deemed to be resident trusts (that is, trusts created by a New York domiciliary or a New York decedent).[6] However, New York doesn't imposes its income tax on a resident trust if it qualifies as a resident-exempt trust.[7] To qualify as a resident-exempt trust, the trust must have no: (1) trustees domiciled in New York,[8] (2) New York situs assets,[9] and (3) New York source income. The third prong is often most difficult to satisfy, as even a de minimis amount of New York source income results in the trust failing the test and not being considered a resident-exempt trust.[10]

Because New York respects the federal income tax treatment of grantor trusts, a New York resident who's treated as the owner of a trust for federal

income tax purposes is subject to state income tax on the trust's income. Conversely, New York's separate regime for taxing non-grantor resident-exempt trusts makes the state income tax avoidable if a taxpayer converts their grantor trust to a non-grantor trust that satisfies New York's three-prong test. By naming non-New York persons as trustees, separating New York situs assets from non-New York situs assets and separating New York source income from non-New York source income, the overall income taxes due can be significantly reduced. State income taxes imposed on the trust can even be completely eliminated if the trustees are resident in a state that imposes no state income tax on non-grantor trusts (such as Florida) or in a state that only taxes non-grantor trusts based on the grantor's domicile (such as New Jersey).

In some situations, simply converting a grantor trust in a high income tax state to a non-grantor trust in a jurisdiction that doesn't impose an income tax on grantor trusts could eliminate the trust's state income tax obligations.

In other situations, simply converting a grantor trust in a high income tax state to a non-grantor trust in a jurisdiction that doesn't impose an income tax on grantor trusts could eliminate the trust's state income tax obligations. A California grantor trust, for example, could convert to a non-grantor trust governed by Nevada law if there are no California trustees or beneficiaries and, in doing so, would no longer be subject to any state income tax.[11] A Colorado grantor trust simply converted to a non-grantor trust and moved to Nevada would also avoid any state income tax, as Colorado taxes non-grantor trusts based on the state of administration.[12]

Of course, turning off grantor trust status eliminates the federal transfer-tax benefits of the grantor continuing to pay the income tax attributable to a grantor trust. Planners should also be aware of throwback-type taxes imposed by states for distributions to a beneficiary resident in the grantor's original state of residence.[13]

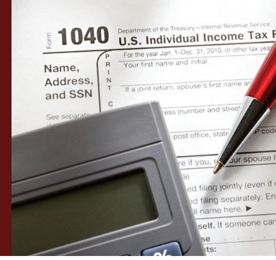
Even after factoring in these concerns, new and converted non-grantor trusts present an opportunity for taxpayers in high income tax states, such as New York or California, to avoid state income tax on the trust property, which can be imposed at rates as high as 14.8%.[14] For the right trusts and the right individual taxpayers, this strategy can provide clear state income tax savings without the individual moving or otherwise changing their life.

Enhanced Federal Deductions

Non-grantor trusts can also be used to help reduce overall taxes by allowing individuals to realize multiple federal income tax deductions, including the deductions available under Section 199A (relating to qualified business income), Section 164 (relating to SALT) and Section 170 (relating to charitable contributions).

In some cases, individuals may want to create multiple non-grantor trusts to potentially "stack" the allowable deductions. When considering that type of tax planning, having separate non-grantor trusts with different beneficiaries and separate estate-planning purposes is critical to avoid the separate trusts being aggregated under the "multiple trust rule" of IRC Section 643(f) and the Treasury regulations thereunder.[15]

Section 199A. Taxpayers, including individuals and non-grantor trusts, are entitled to a federal income tax deduction under Section 199A equal to the lesser of: (1) the taxpayer's "combined qualified business income amount"; or (2) 20% of the taxpayer's taxable income without regard to net capital gain and the deduction under Section 199.[16] The qualified business income amount is the sum of: (1) 20% of the taxpayer's qualified business income (QBI) from each qualified trade or business; and (2) 20% of the taxpayer's aggregate



amount of qualified real estate investment trust dividends and qualified publicly traded partnership income.[17] Effectively, QBI is the income of a domestic business operated as a sole proprietorship, partnership or corporation governed by subchapter S (S corporation).

By allowing non-grantor trusts to benefit from the deduction under Section 199A, clients may be able to obtain two or more deductions under Section 199A by creating separate non-grantor trusts. Practically, if clients fund non-grantor trusts to divide their combined QBI amount between themselves and the non-grantor trusts, the total allowable deductions under Section 199A should be increased.

In considering this type of planning, practitioners should be aware of Treasury regulations under Section 199A that provide that any trust formed for the principal purpose of abusing Section 199A won't be respected.[18] Moreover, structuring around Section 199A is complex and requires both detailed legal and accounting analysis to confirm that the client's goals of increasing deductions under Section 199A can be achieved.

SALT. Under Section 164, taxpayers are entitled to separate federal income tax deductions for the SALT they paid. Since enactment of the Tax Cuts and Jobs Act in 2017, this deduction has been capped at $10,000 per year per taxpayer, with a scheduled sunsetting of the cap on Dec. 31, 2025.[19] This is particularly relevant for wealthy taxpayers in high income tax states, such as California or New York, where the SALT paid likely exceeds this $10,000 annual limit.

If taxpayers in these high income tax states have separate assets that produce sufficient income or property subject to local taxes, such as real estate subject to significant property taxes, the taxpayer may consider creating separate non-grantor trusts to hold those assets. The non-grantor trusts, as separate taxpayers, should be entitled to their separate SALT deductions. By contributing assets to the separate non-grantor trusts and spreading out the SALT payable between the taxpayer, individually, and the non-grantor trusts, the family unit should be able to have aggregate SALT deductions more than the default $10,000 cap.

Of course, the separate non-grantor trusts should have distinct terms and purposes in addition to the potential benefit of allowing for a separate SALT deduction to avoid being aggregated as a single trust and eliminating this potential benefit. Clients should also be aware that in the event the $10,000 limitation actually sunsets at the end of 2025, property contributed to separate non-grantor trusts can't be involved in transactions without income tax consequences, such as a reacquisition or rental payments from the taxpayer.

Charitable contributions. Clients who are charitably inclined are also entitled to an unlimited charitable deduction (subject to percentage limitations depending on the type of organization receiving the contribution).[20] However, the deduction is only useful to the extent a client has income in excess of the allowable deduction.

Some wealthy clients may have significant assets in trust or otherwise have minimal income each year. This frequently happens to retired taxpayers who already had significant realization events in prior years and now are living off those proceeds while carrying out their significant philanthropic goals.

> Taxpayers can also achieve significant tax benefits by using one or more non-grantor trusts to own QSB stock.

In these situations, the client could consider creating non-grantor trusts with charitable beneficiaries. The non-grantor trusts should be able to take charitable deductions for any charitable contributions that come from the gross income of the trust. In turn, the charitable contributions will be factored into the non-grantor trusts' distributable net income (DNI) under IRC Sections 661 through 664, which should allow additional distributions of trust property to family beneficiaries with minimal or no income tax payable by the recipient family beneficiary.

Planning With QSBS

Taxpayers can also achieve significant tax benefits by using one or more non-grantor trusts to own QSB stock.

QSB stock is stock qualifying under IRC Section 1202, which requires the stock to: (1) have been issued *directly* from a U.S. corporation subject to Chapter C of the IRC (a C corporation (C corp)); (2) have been issued after Aug. 10, 1993; (3) have been issued when the C corp had less than $50 million of gross assets; (4) have been issued when the company was operating an active business deemed to be a "qualified small business"; and (5) be held by the client for five years or more of the C corp being in active business, subject to tacking rules for stock received by gift from the original holder.[21]

For clients holding highly appreciated QSB stock or QSB stock that may significantly appreciate in the future, the use of non-grantor trusts to hold QSB stock in a single issuer can be incredibly powerful, potentially shielding tens of millions of dollars of gain from gross income.

Gain realized on the sale of QSB stock, up to the greater of 10 times the taxpayer's basis in the stock or $10 million per taxpayer, per issuer, is 100% excluded from gross income.[22] Because each non-grantor trust is a separate taxpayer for federal income tax purposes, a client and any non-grantor trusts created by that client should each be entitled to separate exclusions for sales of QSB stock of a particular issuer as long as the trusts are structured in a way that prevents them from being aggregated under the multiple trust rule.

To benefit from these separate exclusions, the individual can create one or more non-grantor trusts and fund those separate trusts with a portion of the QSB stock of a particular issuer (again, with each new non-grantor trust having different terms, different beneficiaries and other distinguishing purposes to avoid being aggregated[23]). For purposes of the 5-year holding period requirement mentioned above, the holding period of any taxpayer, including a non-grantor, who received QSB stock by gift, includes the holding period of the donor.[24] For clients holding highly appreciated QSB stock or QSB stock that may significantly appreciate in the future, the use of non-grantor trusts to hold QSB stock in a single issuer can be incredibly powerful, potentially shielding tens of millions of dollars of gain from gross income.

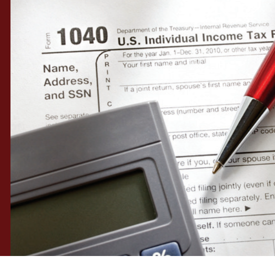
Because qualifying for QSBS treatment results in the exclusion of a non-grantor trust's relevant gains from its federal income tax computation, the income exclusion treatment should flow through to the state level.

Cash Flow Benefits

There's a significant practical benefit of increased cash flow to an individual using a non-grantor trust, especially if the non-grantor trust was converted from a grantor trust.

Many individuals initially create trusts as grantor trusts to allow the trust to grow while the individual taxpayer pays the income attributable to the grantor trust. The individual taxpayer's payment of the income tax is a transfer-tax-free benefit to the trust and, thus, effectively a "free" gift to the grantor trust. However, as the grantor trust grows, the attendant income tax liability grows as well. The income tax liability growth can be further exacerbated if the original grantor moved to a higher income tax jurisdiction since creating the grantor trust.

If a client feels that they're giving the grantor trust and its beneficiaries more than they intended through this ongoing income tax liability or if the client is otherwise frustrated with their cash flow situation by paying income tax on assets they don't control, converting to a non-grantor trust can



provide significant relief. Simply converting the grantor trust to a non-grantor trust, either through the release of powers or decanting, can stop the outflow of the individual taxpayer's liquid assets to income tax payments on behalf of the grantor trust. This can increase the client's own cash flow situation while also providing greater alignment between the client's estate-planning goals and the estate-planning vehicles intended to achieve those goals. This is especially beneficial when the relevant trust's governing law doesn't allow independent trustees to reimburse the grantor for the grantor's income tax or the trust's governing instrument doesn't otherwise empower the independent trustees to do so.[25]

ING Trusts

ING trusts are intended to qualify as non-grantor trusts for federal income tax purposes (which generally requires that the grantor relinquish all relevant control or deemed control over the trust), the contributions to which are intended to be treated as incomplete gifts for federal gift tax purposes (which generally requires that the grantor retain certain control or deemed control over the trust). The primary objective of ING trust planning is to avoid state income taxation in the grantor's state of residence. ING trusts are created under state law in a low or no-tax jurisdiction where the client (who settles the trust) isn't a resident or that has enacted a self-settled asset protection statute.[26]

According to the existing IRS private letter rulings, a client should be able to make a transfer to a trust that's an incomplete gift for federal transfer-tax purposes while having the trust treated as a non-grantor trust for federal income tax purposes.[27] Under the latest ING trust PLRs, the trust should include two major terms.[28] First, the grantor should retain a special testamentary power of appointment (POA) whereby they can appoint the trust remainder assets to any person other than the grantor, the grantor's creditors, the grantor's estate or the creditors of the grantor's estate. Second, whenever a POA committee (which consists of the grantor and multiple beneficiaries of the trust) is serving, distributions must be made pursuant to the following:

1. Trustee, pursuant to a writing executed by either of the grantor and a majority of the other members of the POA committee, shall distribute to the beneficiaries or the grantor such amounts of income or principal as the POA committee appoints (grantor's consent power);
2. Trustee, pursuant to a writing executed by all then-serving members of the POA committee other than the grantor, shall distribute to or for the benefit of the beneficiaries or the grantor such amounts of income or principal as the POA committee appoints (unanimous member power); and
3. Grantor has the power, in a non-fiduciary capacity, at any time and from time to time, to appoint such amount of the principal to any one or more of the beneficiaries as the grantor deems advisable to provide for the health, education, maintenance or support of the beneficiaries (grantor's sole power).

If successfully structured, an ING trust can allow taxpayers to avoid all state income tax on income attributable to the trust assets.

Here, according to the PLRs, the grantor's consent power, the grantor's sole power and the grantor's testamentary POA cause the trust funding to be an incomplete gift. The IRS effectively concluded that for gift tax purposes, members of the POA committee *aren't* "adverse parties" as to the grantor.[29] Without much explanation in recent PLRs, the IRS privately ruled that a trust with terms described above would be a non-grantor trust, which conclusion likely is based on the members of the POA committee being considered "adverse parties" as to the grantor for income tax purposes.[30] Whether a potential discrepancy as to how "adverse party" is defined for purposes of income tax and gift tax truly exists is subject to debate.[31]

If successfully structured, an ING trust can allow taxpayers to avoid all state income tax on income attributable to the trust assets. This can be very appealing for high income clients in high tax states, especially if they anticipate having significant realization events on the assets contributed to the ING trusts. The transfer of assets to an ING trust shouldn't be treated as a completed gift for gift tax purposes, though the assets and all appreciation on the assets remain subject to estate tax on the client's death.

Clients could also consider combining ING trust planning with the type of QSBS planning discussed above so as to increase the number of income tax exclusions with respect to the QSB stock of any particular issuer.

SPOTLIGHT

Taste the Rainbow

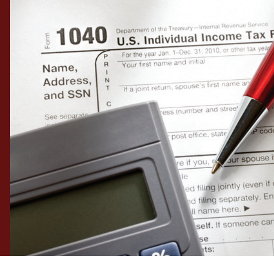
Prism by Caroline Absher sold for $12,700 at Phillips 20th Century & Contemporary Art auction on July 18, 2023 in New York City. Absher is known for her figurative and abstract large-scale paintings that vary from muted to vibrant color palettes. Having been painting since she was a little girl growing up in North Carolina, oil is Absher's preferred medium because it stays wet enough to allow her to finish her work in seven to eight hours.

States are aware of ING trusts and have increasingly sought to take actions to stop settlors resident in their jurisdictions from being able to use ING trusts. New York passed a law effectively treating an ING trust as a grantor trust for state income tax purposes, thereby eliminating most benefits of ING trusts for New York tax residents.[32] In July 2023, California became the second state to pass a law that would treat ING trusts as grantor trusts for state income tax purposes, effective for tax years beginning on or after Jan. 1, 2023.[33] California and New York are now the only jurisdictions to pass laws to stop taxpayers from achieving state income tax benefits through ING trusts, but other states are considering other legislative action to preserve their tax base. Anecdotally, other jurisdictions without proposed or enacted legislation continue to consider the issue and argue that income attributable to an ING trust should be taxed to the settlor for state law purposes. For example, the settlor's state of residence may argue that its state law doesn't recognize self-settled asset protection trusts or that the ING trust is otherwise subject to tax as a non-grantor trust due to the state's source income rules or the residence of the individuals named to control distributions.

In light of the current position of many states and the IRS, taxpayers considering ING trusts should be sure to consult tax advisors when considering the viability and complexity of an ING trust in their circumstances. Given that the controversy is whether a non-grantor trust status and an incomplete gift can be achieved at the same time, as a matter of risk management, make sure the gift is incomplete (if the non-grantor trust status has to be sacrificed) so as to avoid an immediate significant gift tax liability.

Endnotes

1. *See* Internal Revenue Code Section 641, et seq. for rules applicable to non-grantor trusts and IRC Section 671, et seq. for rules applicable to grantor trusts.
2. *North Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213, 2220 (2019).
3. *E.g.*, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York and Pennsylvania.
4. *E.g.*, California, Delaware, North Dakota and Oregon.



5. *E.g.*, Florida, New Hampshire, Nevada, South Dakota and Texas.
6. N.Y. Tax Law. Section 605(b)(3).
7. N.Y. Tax Law Section 605(b)(3)(D).
8. Critically, the test is based on domicile and can be met even if a trustee is a New York statutory resident.
9. Intangible assets are considered sitused in the domicile of the trustee, whereas tangible assets are deemed sitused based on their physical location.
10. TSB-A-20(2)I, Advisory Opinion, New York State Department of Taxation & Finance (2020).
11. Cal. Rev. & Tax. Code Section 1.7742(a).
12. *See* CO Code Section 39-22-103; CO Code Section 39-22-401.
13. New York, for example, imposes a throwback tax on distributions from a resident-exempt trust to a New York resident beneficiary if there's income included in the distribution that wasn't previously taxed by New York. N.Y. Tax Law Section 612(b)(40). However, there are various mechanisms to avoid or minimize the throwback tax, including avoiding distributions to New York residents, minimizing the trust's distributable net income, distributing income attributable to capital gains and allocating capital gains to income in the year of distribution. Moreover, New York imposes no interest or penalties on the throwback tax.
14. New York City residents with income over $25,000,001 are subject to a 10.9% state income tax and a 3.876% city income tax on worldwide income.
15. Treasury Regulations Section 1.643-1(f)(1) (providing that "two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and if a principal purpose for establishing one or more of such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax").
16. Internal Revenue Code Section 199A(a).
17. IRC Section 199A(b).
18. Treas. Regs. Section 1.199A06(d)(3)(vii).
19. IRC Section 164(b)(6).
20. IRC Section 170.
21. IRC Section 1202(c)-(d).
22. Section 1202(b).
23. Treas. Regs. Section 1.643(f)-1.
24. Section 1202(h).
25. Some states, including Connecticut, Delaware, Florida, New Hampshire and New York, enacted statutes to allow independent trustees, in their absolute discretion, to reimburse the grantor for their income tax liability arising from their grantor trust's income, without subjecting the reimbursement to the grantor's gross estate. *See also* Revenue Ruling 2004-64.
26. Between 2001 and 2020, the Internal Revenue Service issued numerous private letter rulings approving certain specially structured trusts' non-grantor trust status and the trust funding's incomplete gift nature. The latest PLRs issued were PLR 202006002 (Feb. 7, 2020), PLR 202007010 (Feb. 14, 2020), PLR 202014001 (April 3, 2020), PLR 202014005 (April 3, 2020) and PLR 202017018 (April 24, 2020). Starting from 2021, incomplete non-grantor trusts have been on the IRS' "no-rule" list. *See, for example,* Revenue Procedure 2023-3, Sections 5.01(9) and 5.01(17).
27. *See* Treas. Regs. Section 25.2511-2(b) (providing that a gift is complete for federal income tax purposes when "the donor has so parted with dominion and control as to leave in him no power to change its disposition" but when a donor "reserves any power over its disposition, the gift may be whole incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case").
28. *See, for example*, PLR 202006002 (Feb. 7, 2020).
29. Otherwise, the grantor's consent power wouldn't have caused the transfer to be an incomplete gift under Treas. Regs. Section 25.2511-2(e).
30. If members of the power of appointment (POA) committee were treated as "non-adverse parties" for income tax purposes, then the grantor's consent power and the unanimous member power would have caused the trust to be a grantor trust under IRC Section 674(a), Section 676(a) and Section 677(a).
31. *See, for example,* New York City Bar, Committee on Estate and Gift Taxation, Comments in response to IR-2007-127 (Oct. 3, 2007) and Grayson M. P. McCouch, "Adversity, Inconsistency, and the Incomplete Nongrantor Trust," 39 *Va. Tax Rev.* 419 (Summer 2020). *But see also* Jonathan G. Blattmachr, Review of Reviews: "Adversity, Inconsistency, and the Incomplete Nongrantor Trust," *Trusts & Estates* (June 2021), *https://www.wealthmanagement.com/estate-planning/review-reviews-adversity-inconsistency-and-incomplete-nongrantor-trust-39-va-tax-rev*.
32. N.Y. Tax Law Section 612(b)(41):

    There shall be added to federal adjusted gross income: . . . (41) In the case of a taxpayer who transferred property to an incomplete gift non-grantor trust, the income of the trust, less any deductions of the trust, to the extent such income and deductions of such trust would be taken into account in computing the taxpayer's federal taxable income if such trust in its entirety were treated as a grantor trust for federal tax purposes.

33. Cal. Rev. & Tax. Code Section 17082 (enacted via SB 131, approved by Governor Gavin Newsom on July 10, 2023).