



Pioneer Bank & Trust

Trust & Investments

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Choice of trust upon marriage

It's a truism that every trust is unique, but a recent private letter ruling from the IRS shows just how creative some trust creators have been. Names are redacted from these rulings, so we'll call the players Grandson and Fiancée.

Grandson is the beneficiary of an irrevocable trust, Trust 1, created by his grandfather. Grandson receives all the net trust income each year. However, if Grandson is married he gets just half the income, and his wife gets the other half. If Grandson dies leaving a surviving spouse, she then receives all the net income from Trust 1 for life. Grandson has adult children from an earlier marriage, and they are future beneficiaries of Trust 1 after Grandson dies. Trust 1 principal eventually will pass to Foundation.

Grandson began cohabiting with Fiancée. Unbeknownst to Fiancée, Grandson created Trust 2 for her benefit. She is entitled to a fixed dollar amount, paid monthly and subject to adjustments based upon an index, so long as the two remain cohabiting. After Grandson dies, the entire principal of Trust 2 will be distributed to Fiancée over a period geared to her age.

But there's one important catch in Trust 2. In the event that Fiancée and Grandson should marry, her interest in Trust 2 will terminate, *unless she disclaims the interest that she receives in Trust 1 because of the marriage*. Thus, she is put to a choice: half of the income from Trust 1 for her life; all its income if she survives Grandson, and nothing more; or all of the assets of Trust 2 in time.

The couple has married, and Fiancée has agreed to disclaim her interest in Trust 1. The dollar values of the trusts are not given, but evidently the prospect of eventually having 100% of Trust 2 is better than the lifetime income of Trust 1. Fiancée turned to the IRS to confirm the tax consequences.

Because Fiancée will make her disclaimer within nine months of the marriage, when her interests vest, the Service holds that the disclaimer will be timely, made within a reasonable time of the "knowledge of the existence of the transfer." The fact that she knew of the trust interest for some time before the marriage does not affect this result. When she makes the disclaimer, the disclaimed interests will pass to other Trust 1 beneficiaries pursuant to the trust terms, not by her direction. Importantly, she will not make a taxable gift with the disclaimer.

Because Fiancée was kept in the dark about Trust 2 and had no control over the conditions included in that trust, the IRS holds that her Trust 2 interest will not be consideration provided to induce her to make the disclaimer. Therefore, there will be no adverse tax consequences to the disclaimer.

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