

A recent ruling under federal tax law and new Act under Pennsylvania state trust law give new meaning to "irrevocable" for trust and life insurance planning. The results are new planning opportunities with trust owned life insurance policies, the ability to modify improper or inconsistent provisions of an existing trust, or even terminate existing trusts to start over again.

**Revenue Ruling 2007-13:** Long needed guidance by the IRS was issued early this year that makes it safer to sell a life insurance policy to a new trust. Before the Ruling, advisors had to be very cautious to avoid triggering a "transfer for value," which generally causes the death benefit of a life insurance policy to lose its exemption from income tax under IRC §101. The Ruling provides that a grantor trust (a trust in which the grantor is considered the owner for income tax purposes) qualifies for the transfer-to-the-insured exception to the rule.

With this exception applicable under the Ruling, a client can consider establishing a new trust, which qualifies as a grantor trust, with the terms that are more desirable or advantageous from a planning standpoint than an existing trust. The client would then fund the new grantor trust sufficiently to allow for the purchase of the life insurance policy. After the sale, the old trust would own the cash proceeds, which it may then be able to distribute, and the new trust will own the life insurance policy.

Planning opportunities following this ruling include:

1. Eliminating or changing trust or life insurance beneficiaries;
2. Extending the trust duration to protect assets from creditors or imprudence;
3. Creating a multigenerational wealth transfer device;
4. Accommodating more creative premium funding techniques; and
5. Providing access to the accumulating cash value in the newly formed trust.

**Pennsylvania Act 98 (Uniform Trust Code):** Included in comprehensive revisions of statutory Pennsylvania trust law, are provisions allowing the modification or termination of existing trusts by agreement of the trust settlor (the individual who established the trust), trustees and the trust beneficiaries. Provisions are included to ensure that all beneficiaries, current and remainderman, are represented properly. The modification and termination provisions mark a significant effort to move away from judicial supervision to enforcement of trust rights by the interested parties.

In addition to similar opportunities listed above, modifications that potentially could be made to existing trusts include:

1. Change of trustees, successor or other fiduciaries;
2. Clarification of errant or unintentional trust provisions;
3. Direction to trustee to refrain or perform a particular act;
4. Change of investments, life insurance policies or structures; and
5. Termination and distribution of trust assets to the beneficiaries.

***With these two recent developments, now is a better time than ever to closely examine your existing trust(s) and life insurance arrangement(s) to determine if any changes are appropriate. Before making any changes, clients must consider the impact on estate, gift, and income taxes. Please call us if you have any questions or would like to discuss a particular situation.***

***Molewski Financial Partners, LLC does not provide legal or tax advice. The above discussion was meant for general information only to clients and colleagues***

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