Dangers When Irrevocable Grantor Trusts (IGTs) Own Pass-Through Entities (PTEs) that Pay State Income Tax for the Grantor – And What to Do About It

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Agenda

I. The "Gold Rush" of states hopping on the PTE tax bandwagon
II. What is a "PTE tax" and why is it different from other state/local taxes? Difference/similarities in required withholding for out of state residents
III. IRS Notice 2020-75 – benefits beyond just avoiding the $10,000 cap
IV. Three basic PTE tax regimes: mandatory, PTE option, each-owner option
V. Rev. Rul. 2004-64: IRS Guidance when Grantor's income tax bill is paid
VI. Which PTE regimes may trigger estate inclusion under Rev. Rul. 2004-64
VII. Problems when the Grantor controls who pays the state tax – IRC §2038
VIII. Fiduciary duties involved when benefits shift through PTE tax choice
IX. Application to GRATs, Grantor-CLATs and Intervivos Marital Trusts
X. Issues with Non-Grantor Trusts, including CRTs/non-grantor CLATs
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XII. Potential Solutions – Reimbursement Clauses, Walling off Grantor
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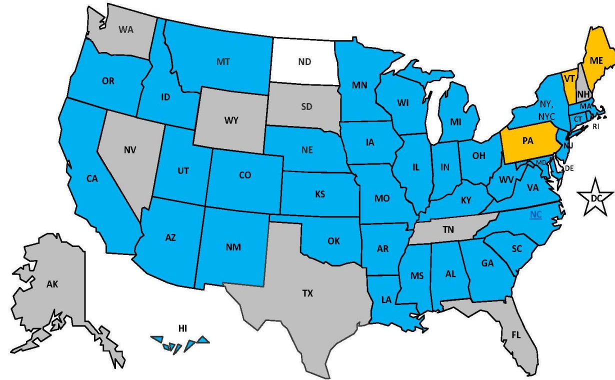
I. The Latest from AICPA re State PTE Taxes

States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax

As of June 13, 2023



- 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:
  AL, AR[1], AZ[1], CA, CO[3], CT[4], HI[2], GA[1], IA[1], ID, IL, IN[1], KS[1], KY[1] (& KY) ,LA, MA, MI, MD, MN, MO[1], MS[1], MT[2], NC[1], NE[3], NJ, NM[1], NY, OH[1], OK, OR[1], RI, SC, UT[1], VA, WI, WV[1], and NYC[1]
  - [1] Effective in 2022
  - [2] Effective in 2023 or later
  - [3] Retroactive to 2018
  - [4] Mandatory 2018-2023, elective starting 2024
- 3 states with proposed PTE tax bills:
  ME - LD 1891 introduced
  PA – SB 659 referred to Finance
  VT – SB45 passed Senate, in House
- 9 states with no owner-level personal income tax on PTE income:
  AK, FL, NH, NV, SD, TN, TX, WA, WY
- 3 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
  DC, DE, and ND

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II. Payment and Deduction of State Taxes - *Traditional*

Pass Through Entity ("PTE": S corporation or partnership) earns $1 million income in State X, which has 5% top tax rate. Files IRS Form 1120S or Form 1065. Does not pay state income tax (but "passes through" income to owners)

PTEs often withhold 5% for *Out of State* Owners, (sometimes filing composite return); but usually does **not** withhold for In-State resident owners. Issues Form K-1 to owners.

Owners file and pay state income tax. Sometimes if the owner is not a state resident, the PTE's composite return and withholding may eliminate duty of owner to file a return in that state.

Under TCJA for years 2017-2025, the payment of state income tax by the owner (even if *withheld* by a PTE) is an **itemized deduction limited by $10,000 cap** on state and local income tax, **often wasted**.

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II. Payment and Deduction of State Taxes – *New PTE Tax*

PTE (S corp or partnership) earns $1 million Income in State X, which has 5% top tax rate. Files IRS Form 1120S or Form 1065. State X has passed a new PTE tax regime and the PTE is mandated (CT) or opts into PTE tax regime, paying 5% state income tax ($50,000) to State X.

PTE issues Form K-1 to owners. But, the $1 million of income that is normally passed through to owners is reduced by the $50,000 of state income tax (like other state or local taxes that are mandatory). Forms K-1 issued for only 950,000!

Owners file state income tax return, but (most of the time) receive an exclusion of their portion of the $950,000 from income or a credit of up to their portion of the $50,000 for the tax paid. Thus, the state income tax payment is usually about the same. The payment of state income tax by the PTE is an **above the line** business deduction **not limited by $10,000 cap** on state and local income tax, fully usable! Better deductibility is why states (and business owners) will probably keep the new PTE tax regime even if the SALT cap is eliminated in 2026.

II. Differences with Non-Resident Required Withholding

- Many states require PTEs to withhold state income taxes for non-residents (a few may even require PTEs to withhold state income taxes for residents).
- Sometimes a PTE will file a composite return for non-resident shareholders that might even avoid such owners having to file a return for that state (although sometimes they may want to, to get a tax refund).
- Withholding and/or composite return filing is ***not*** the same as PTE tax, deductibility-wise. Any such withholding is treated as if the owner had simply paid the state income tax directly (thus, often wasted due to the new TCJA regime including $10,000 cap on SALT deductions).
- Remember that wealthier people paying more than $10,000 in real estate tax on their personal residence(s) and local income taxes won't get a dime of additional deduction for paying state income tax on business income – even if they itemize! Hence, the multiple advantages of the PTE tax…

III. IRS Notice 2020-75 – benefits beyond avoiding the $10,000 cap

- After Connecticut and other states started adopting these new taxes, the IRS examined them and found that there was strong authority for taking state and local income taxes as a business deduction. Indeed, there has been for decades.
- In Rev. Rul. 58-25, a pass-through entity was permitted to deduct a tax levied by the City of Cincinnati on local business income. Indeed, businesses in many so-called "no income tax" states, such as Washington, Texas or Tennessee, pay some entity level taxes.
- What is unique to these new PTE tax structures, however, is the *optional* nature of whether the entity or its owners pay the tax.
- The benefits go *beyond* just avoiding the $10,000 SALT cap under IRC §164. Above the line deductions are always better for a host of different tax effects, from employment taxes to NIIT/Medicare to taxation of social security to any number of different qualifications, deductions, credits and phase outs tied to AGI.

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IV. PTE tax regimes: mandatory, option by PTE or by each owner

- There is a huge amount of variation among the states! There is nothing like the Uniform Division of Income for Tax Purposes Act. Thankfully, we're not going to go into most of the variation, such as the different timing and procedures, whether there is a credit or exclusion, etc. – most are irrelevant to the *transfer* tax issues we will focus on.
- One state, Connecticut, currently makes its PTE tax mandatory. However, pursuant to recent legislation passed, starting in 2024, CT will join the vast majority of states that make the PTE tax system *optional*.
- Two states, Arizona and California, allow each individual owner to opt in or opt out of the PTE tax, regardless of what the other owners do.
- The remainder of the states that have a PTE tax leave it up to the PTE to decide whether it pays the tax or whether owners pay state income tax. Whether otherwise non-voting shares/interests are permitted a vote, or whether the operating agreement may set different rules (e.g., manager decides, supermajority required, etc.), may vary state by state.

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V. IRS Guidance when Grantor's income tax is paid

- Rev. Rul. 2004-64 is our touchstone for authority on the gift and estate tax effects when a grantor of an IGT's tax bill resulting from inclusion of such income is or may be paid (or the grantor is or may be reimbursed). The IRS outlined three broad rules/scenarios:

1) If the payment of grantor's tax bill is mandatory, this retained benefit causes estate inclusion.

2) If the payment is within the *trustee's discretion*, it does not cause estate inclusion *by itself*.

3) However, if the payment is within the trustee's discretion, there may still be estate inclusion if there is *prearrangement/understanding*, if state law would make corpus *susceptible to grantor's creditors*, or *if grantor is trustee or can make themselves or a related/subordinate party trustee*.

- Highly important takeaway: usually paying another's tax bill is a gift, but the grantor's payment of income tax on grantor trust income is ***not*** a gift to the trust/beneficiaries because the grantor owes the tax

V. IRS Guidance when Grantor's income tax is paid

- Is the mandatory payment of state income tax by the PTE (by required state income tax withholding or required payment of PTE tax) sufficiently similar to a mandated payment or reimbursement from a trust to cause estate inclusion? *We have no definitive guidance*. Economically, of course, it's exactly the same, which is the worry.
- If a state mandates the payment, can there still be a "retained interest"? Perhaps. See discussion of *Wyly* case in article.
- Not addressed in the ruling is whether such a mandated payment or reimbursement added later can still be "retained" if not included at the outset. What if the IGT purchased the PTE or the PTE did not originally make the PTE election – can we argue that there is nothing "retained"? Yes, but the IRS has won IRC §2036 cases when there was no *legally binding retention* by the court *inferring* that there was an "understanding" (e.g., *McCabe, McNicols, Skinner, Paxton* cases). The IRS can make §2038 arguments if the grantor controls the switch directing who benefits even if nothing is retained from the outset.

VI. Application of Rev. Rul. 2004-64 to Three PTE regimes

- If the state **mandates** that the PTE tax be paid (only Connecticut does this so far, and that will change next year), such a PTE regime is closer to the mandatory income tax regime in Rev. Rul. 58-25. However, because the grantor of an IGT is receiving a tax benefit through the structure (and not at the discretion of the trustee or PTE), it seems *very close to the mandatory payment/reimbursement of tax that the IRS found to cause estate inclusion in Rev. Rul. 2004-64*.
- Is the receipt of a tax credit or exclusion due to a PTE tax payment when an IGT is the owner of a PTE substantially different or substantially similar to the grantor having their tax bill paid directly by the trustee? Economically, it is very similar.
- What will the IRS ultimately conclude? It may be years before we know.

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VI. Application of Rev. Rul. 2004-64 to Three PTE regimes

- Arizona and California are the two states that have created the most flexible PTE tax. **Each owner may opt in or opt out**. This scheme seems less like Rev. Rul. 58-25, but much less likely to cause serious transfer tax concerns because a trustee of an IGT can (usually) opt out no matter what the other PTE owners do.
- If the trustee opts into the PTE tax regime, this seems to be very analogous to the trustee using its discretion to pay/reimburse a grantor for his or her state income tax burden, which is authorized under Rev. Rul. 2004-64. The question would then be whether the trust instrument permits this. And, whether the grantor is trustee or could replace the trustee with someone related/subordinate, and whether state law protects discretionary payments of such tax from a grantor's creditors (which Arizona and California do, as long as the grantor is living in one of those states – see 50 state chart).

  Thus, the AZ/CA regimes may not cause the same issues (but, what if the trustee is ***directed*** by the grantor on the PTE??)

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VI. Application of Rev. Rul. 2004-64 to Three PTE regimes

- The remaining majority of PTE regimes that are ***optional by the entity*** are more difficult to analyze.
- First, if the entity already irrevocably elected into the PTE tax regime at the time the grantor transfers the PTE into the IGT, or requires it in the operating agreement, the analysis may be similar to a mandatory payment.
- For subsequent years when the PTE has the option to pay PTE tax or not, it does not seem like a mandatory tax payment that Rev. Rul. 2004-64 lambasted.
- If it is discretionary on the part of the PTE, is it substantially similar to being at the discretion of the *trustee* to come within Rev. Rul. 2004-64? If the PTE is controlled by the trustee, perhaps it is, but this is just one aspect of the gauntlet of arguments the IRS might raise. Is it clear under state law that state tax payments made by a PTE for a grantor of an IGT are protected from the *rule against self-settled trust* doctrine? In most states, it's hardly clear – even DAPT states!

VI. Application of Rev. Rul. 2004-64 to Three PTE regimes

- There is a list of the 50 states (and DC) statutes with hyperlinks to each jurisdiction's statute. The article suggests how states may clarify that their state protects grantor's interests in state income tax payments that come from a PTE owned by a grantor trust, not just direct payments/reimbursements from a trustee of an IGT.
- Be careful to check, if your state has a DAPT statute, whether your situation comes under your state's normal statute or case law or your DAPT statute. Some states may protect if qualifying under DAPT statute, but not otherwise.
- Many states only protect a trustee of other than the grantor's discretionary power, not the discretionary powers of other parties (such as a PTE), or a discretionary decision by the grantor, who often controls the PTE. So even if the analogy could be made that a PTE's discretionary payments for the grantor should also be protected, this may not help if the grantor controls the PTE.

VI. Application of Rev. Rul. 2004-64 to Three PTE regimes

- If the grantor controls the trolly car switch of whether the PTE pays the tax for the grantor or lets the grantor (and any other owners) pay it, it seems very analogous to the situation that the IRS warned against in Rev. Rul. 2004-64 that if the grantor is the trustee deciding to pay tax/reimburse that it causes inclusion even if the decision is a discretionary one.
- Could the grantor "Chinese wall" themselves off from any decision regarding the PTE election so that other owners or managers make that decision? Would state law allow that? Perhaps. But even still, the IRS noted in Rev. Rul. 2004-64 that the grantor having the ability to later appoint themselves or a related/subordinate party as trustee may be fatal, and since the grantor controlling a PTE could always change the operating agreement and rules regarding this decision, it may not necessarily be enough to cleanse any taint. We simply don't know.

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VII. Problems if the Grantor controls the switch: IRC §2038

- Even if the grantor does not opt in, and could argue that there is no "retained" interest because the PTE tax benefit arose much later after the original transfer, or even if no payment is never made to create "retained income", there is still the prospect of estate tax issues *when the grantor dies with control of who benefits*.
- IRC §2038(a)(1): "To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the **enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate**, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death."

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VII. Problems if the Grantor controls the switch: IRC §2038

- Just because the grantor does not control the ***trust*** does not mean that the IRS won't find *inclusion* based on the grantor's control of an ***entity owned by the trust*** if it's used for personal purposes.
- In *Reichardt v. Comm'r (In re Estate of Reichardt),* 114 T.C. 144 (U.S.T.C. 2000), the settlor transferred FLP interests to trust, but retained control of partnership checking account and used it for personal expenses and lived in a home owned by it rent-free. Held: included in settlor's estate despite no explicit access in the trust instrument.
- Yes, that's a bad facts case (like many others), but the IRS is definitely not limited to looking only within the four corners of the *trust* and is not precluded from looking to control of an *entity owned by the trust* for §2036/2038 purposes.

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VII. Problems if the Grantor Controls the Spigot – Gift Tax

- Aside from the spectre of the "string" sections of IRC §2036 and §2038 applying, whenever someone chooses between taking funds themselves or giving it away, or paying the tax for themselves or for another, the gift tax may apply to a transfer.
- Yes, Rev. Rul. 2004-64 settled the question of whether a grantor paying tax for an irrevocable grantor trust is a gift or not (it's not, *normally*). That said, the rationale and reason that the IRS had to rule this way is that the law requires the grantor to pay that tax – if it's required, there can be no gift. The problem when trying to fit the new PTE tax regimes by analogy into the protection of Rev. Rul. 2004-64 is that these PTE taxes are *not* required (except CT until next year), they are optional. Paying a tax for someone else when you are not required to do so does not come under this ruling and may involve a gift in the context of the wealth transfer that is caused by the PTE regime when an IGT is an owner.

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VIII. Fiduciary Duties Involved When Benefits Shift

- When the LLP, LLC (psp), S corp decides to make a PTE payment that benefits only some owners, not others, could there be a breach of duty to the deprived owners? How many attorneys have addressed PTE tax decisions in their pass through entity operating agreements??
- When is it prudent for an IGT trustee (or investment trustee directing the trustee on the PTE) to opt-in (or vote for) the entity paying PTE tax that benefits the grantor rather than the trust beneficiaries? Only if the grantor threatens to turn off grantor trust status if it's not done? Should that be in writing so the trustee can document that their decision was prudent in light of the risk of breach of fiduciary duty allegations? What if everyone knows it's a hollow threat? Is there clear protection in the document or under state law for making such payments (see 50 state chart)?

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IX. Application to GRATs

- As if the uncertainty for ordinary irrevocable grantor trusts owning PTEs paying PTE tax were not bad enough, the scenario may also threaten GRATs.
- Assume a grantor transfers $100 million of closely held PTE stock into a zeroed out GRAT ($10 gift) where the PTE elected to pay PTE tax. Is this additional benefit that the grantor retains cause the grantor's interest to be a disqualified interest?
- We could argue both ways. There is a safe harbor in the 2702 regulations where a GRAT may pay income above the annuity back to the grantor IF the income were greater than the annuity (which, for shorter term GRATs, would be rare). Can the grantor retain any interests beyond that and still claim their retained interest is "qualified"? It depends on whether the grantor is considered to have only *one* retained interest *with multiple characteristics* or may have *multiple separate interests*. Do you want your client to be the test case?

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IX. Application to GRATs

- Most practitioners do not permit additional discretionary payments of income or principal back to the grantor, whether to pay for or reimburse income tax or otherwise, even though there is an argument that this should be allowed and that a grantor can have many retained interests, not just one, and the "interests" that are not qualified are merely ignored for valuation purposes. Some old PLRs take such a position.
- If it were 100% safe to do so, however, ACTEC members would be establishing GRATs in DAPTs states that permit discretionary payments back to the grantor, to allow for quick and easy early termination of underwater GRATs (and re-GRATing). If safe and permitted, this would be a far superior design structure.
- Even if there were a PLR allowing this, would you risk it without more authoritative guidance?

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IX. Application to Grantor-CLATs

- The scenario where grantors control the PTE tax switch and benefit from it also threatens *Grantor-CLATs* that own PTEs.
- Assume a grantor transfers $10 million of closely held PTE into a zeroed-out grantor-CLAT where the PTE elects to pay PTE tax. Does this additional benefit that the grantor receives cause a prohibited self-dealing transaction (IRC §4941)? What if the grantor (or family) or trustee does not control the PTE?
- It's harder to argue that this one is not a problem when the grantor controls the PTE – it seems that the IRS would have a stronger case than disqualifying a retained interest in a GRAT.
- Again, perhaps we are wrong, but do you want your client to be the test case?
- Should the grantor reimburse the CLAT for any state tax benefit received (which would normally be the first step in curing a *self-dealing* transaction)? See clause in article.

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IX. Application to Intervivos QTIPs (Marital Trusts)

- Such scenarios where the grantor receives a state tax payment or benefit may also threaten Intervivos QTIPs that own PTEs.
- Assume a grantor transfers $12 million of closely held PTE into an intervivos QTIP to soak up the poorer donee spouse's GST exemption if the donee spouse dies first, and the PTE withholds state income tax or elects to pay PTE tax which benefits the *grantor*. Does this violate the rules under IRC §2523/2056 that the donee spouse must be the sole beneficiary during the donee-spouse's lifetime? If the PTE does ***not*** elect but ***may*** do so (e.g., CA/AZ), doesn't this still cause a problem, since normally any *discretion* to pay funds to anyone other than the donee-spouse blows the QTIP? Should a QTIP trust *forbid* the trustee from making a PTE election without required reimbursement by the grantor?
- Remember that if the trust does not qualify, it's a $12 million gift, similar to the effect of disqualifying a GRAT. Ouch!

X. Application to Non-Grantor Trusts, including CRT/CLTs

- *Non-Grantor* Trusts, being their own taxpayer, appear to be safe from the previously mentioned issues since the trust gets both the burden and the benefit of such payments.
- That said, it's unclear whether and how the trust and beneficiaries share such PTE credits/exclusions, if at all.
- If the trust makes no distributions and uses the PTE tax credit, this seems "clean", but if the trust distributes all of its income (DNI) to the beneficiaries and cannot use the PTE tax credit/exclusion, can the trustee "distribute" the PTE benefit to the beneficiaries? Must it follow DNI distributions? How? May a CRT trustee distribute the entire PTE tax benefit to the individual beneficiaries? Is it fair or permitted for the trustee to distribute such benefits non-pro rata?
- There are still unanswered questions and we suggest caution in dividing such benefits (if possible) especially for non-grantor *CRTs and CLTs* to avoid self-dealing accusations.

XI. Valuation of PTEs – Is Appraiser Considering PTE Tax?

- We're not expert business appraisers, but tax-effecting is a hot topic in the valuation world, especially when it is more appropriate to lean towards a discounted cash flow approach rather than the value of underlying assets (common for a PTE).
- If a business having to pay 21% corporate income tax effects cash flow and valuation, wouldn't the business now being subject to a new state PTE tax have a similar (albeit smaller) effect on valuation? What if the PTE (either required by operating agreement or by prior election) has already opted into the PTE tax regime at the time of gift/sale?
- If, as in most states, a minority owner can't control whether a PTE pays a tax or not, but a majority owner can, then shouldn't this factor increase the *lack of control* discount and perhaps increase the *control premium* if a larger block is gifted/sold?
- Appraisers should factor this into their analysis – while it may be small, it is probably ***not negligible***.

XII. Solutions?

- In AZ/CA, the issues may not be as critical (unless someone has a multi-state business with income in another state with different PTE tax regime), since the trustee can simply opt-out (assuming the grantor is not directing the trustee), or if there is clear discretionary authority in the trust and it makes sense otherwise (i.e., not a specialized trust), the trustee might even decide to opt-in (as it might reimburse a grantor otherwise).
- For other states' "optional by entity" PTE regimes, it's unclear whether a grantor of an IGT who controls a PTE can simply recuse him or herself from the decision, or if that would even clear up all the issues. If the grantor cannot "control the trolly car switch", then arguably we've at least avoided IRC §2038.
- Wealthy people are not going to stop transferring PTEs into trust – that's often where most of their wealth and opportunity for optimal wealth transfer resides.
- There is a sample grantor reimbursement clause in the LISI article for your consideration – pros and cons on next slides.

XII. Solutions? Grantor Reimbursement Clauses

- Can the grantor simply "undo" the transfer of wealth and *reimburse* the trustee for the amount of state income tax benefit that the grantor received (funds that the trustee failed to receive)? This would attempt to simply restore the *status quo ante* as if the PTE tax had never been paid.
- Such a reimbursement may also help in non-PTE tax situations in which the PTE *withholds* state income tax for non-resident grantors of IGTs. Withholding implicates many of the same issues (regarding §2036, not §2038), since a grantor is having their tax bill paid from profits that should be inuring to the IGT.
- The LISI article's sample trust reimbursement clause addresses *both* of these issues and prevents application of 2036/2038 by essentially undoing the transfer of wealth back to the grantor. *Economically*, it is similar to a disclaimer, saying "I don't want to keep this benefit" – except that a grantor can't disclaim a tax credit/exclusion and have the benefit inure back to the IGT - only a *reimbursement* would make the trust whole again.

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XII. Solutions? Grantor Reimbursement Clauses

- If state law permits, the trust instrument could grant the trustee the *discretion to not seek reimbursement* from the grantor, which would be similar to the trustee in its discretion paying or reimbursing income tax for a grantor in the first place.
- While this seems like a simple and elegant solution, it's not exactly the same as a qualified disclaimer or a refusal to accept payment. Unfortunately, there is still some uncertainty.
- Could the IRS claim that such a reimbursement is *another gift*? E.g., if the PTE pays $50,000 of state income tax for the grantor due to her ownership of the IGT, and the grantor pays $50,000 to the trust to reimburse it for the reduced distributions it received, is the $50,000 *another gift* to the trust? Probably NOT if merely reimbursement for nonresident withholding, but more uncertain if it's a PTE tax. It may depend on whether there is any fair and adequate consideration received in return and/or prior contractual obligation. Would the trustee have a colorable cause of action against the grantor in equity for unjust enrichment that would be fair consideration for the $50,000 reimbursement??

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XII. Solutions? Grantor Reimbursement Clauses

- If it involves a unique grantor trust that cannot accept additional gifts (e.g., GRAT, CLAT), to be safe, wall off any transfer that is considered a subsequent gift into a separate trust, as many such trusts do already.
- Which is the safest route in the event of uncertainty – to have a reimbursement clause or not? Is it better to be 100% certain to avoid the potential disqualification of a GRAT, CLAT, intervivos QTIP and/or cause estate inclusion for a large trust, or is better to be 100% certain that there is not a minimal additional gift made (if, indeed, such a reimbursement is an additional gift?). Usually the amounts of state income tax would be quite small, even within the annual exclusion if there are *Crummey/Cristofani* powers. E.g., an IGT with $5 million worth of PTE kicking out 8% taxable income of $400,000, paying 6% state income tax would only be $24,000. But the amount potentially brought into an estate under §2036/2038 may be 40% on the full $5 million, plus growth thereon.

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Questions?

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- We have no insight into where the IRS is in the process of issuing proposed regulations. Since the IRS has signaled that it will issue favorable proposed regulations in the income tax arena, perhaps it will issue similarly favorable regulations in the transfer tax arena? *We won't hold our breath*! Guidance may be years or even decades in coming.

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Appendix: Proposed Modification of State Laws

- Each state is different, even those that modify UTC §505, but here is a redlined amendment to Ohio's statute, recently proposed to the Ohio State Bar for study/proposal to the Ohio legislature:
- Ohio R.C. §5805.06(B): "(2) None of the following shall be considered an amount that can be distributed to or for the benefit of the settlor:***

(c) Trust property that, pursuant to the exercise of a discretionary power by a person other than the settlor, could be paid to a taxing authority or to reimburse the settlor for any income tax on trust income or principal that is payable by the settlor under the law imposing the tax. For purposes of this paragraph, trust property also includes any pass-through entity owned by the trustee, whether or not such entity is controlled by the settlor, even when payments are made by the entity on behalf of its owners as state or local income tax withholding or payments are made for state or local income taxes for the entity that indirectly benefit its owners by creating an income tax exclusion, deduction, or credit for them, such as through the payment of a pass-through entity tax. Such state or local income tax payments do not make the settlor a beneficiary of the trust for purposes of this section even if such payments directly or indirectly benefit the settlor.