Thomas Swenson 303-440-7800 tswenson@swenlaw.com

Self-Settled Discretionary Asset Protection Trust Not Part of Estate

Summary: An IRS ruling provided some clarity and reassurance to US taxpayers who want to be beneficiaries of a self-settled, irrevocable, discretionary asset-protection trust. In Private Letter Ruling (PLR) 200944002, the IRS ruled that assets in an asset protection trust were not includable in the grantor's gross estate even though the grantor was a beneficiary of the trust.

In these times of eroding property rights, punitive tax rates, and financial insecurity, a U.S. taxpayer can use an irrevocable life insurance trust to protect trust property against creditors, legally avoid all future U.S. taxes, and also enjoy trust assets. Generally, a carefully-designed irrevocable life-insurance dynasty trust (or GST trust) provides tax-free growth of policy assets, and proceeds of the life insurance policy are paid to the trust free of income and estate taxes.

Previously, some uncertainty still existed whether the person who settled and funded a trust could also be a trust beneficiary without loss of estate-tax advantages. Private Letter Ruling (PLR) 200944002 ruled that the grantor (or settlor) of the trust may be a discretionary beneficiary (i.e., subject to the discretion of the trustee), but trust assets will not be taxed in his estate when he dies. A private letter ruling is formally applicable only to the taxpayer to which it is addressed. It has no precedential force for other tax cases. Nevertheless, a private ruling is a good indicator of the IRS's general position. Furthermore, PLR 200944002 is consistent with the case law and revenue rulings that have treated related issues over past decades. For example, Revenue Ruling 77-378 clarified Revenue Ruling 62-13 to remove any implication that an entirely voluntary power held by a trustee to distribute all of the trust assets to the grantor is sufficient to render a gift to the trust incomplete in whole or in part.

Thus, a U.S. taxpayer can fund an irrevocable trust that buys a life insurance policy insuring his life, the policy assets can grow tax-free, he can benefit from trust property during his lifetime, and when he dies, the insurance policy proceeds are paid to the trust free of income and estate taxes.

In the past, some U.S. taxpayers used secret offshore companies and numbered offshore bank accounts to avoid taxes. Now, similar benefits can be achieved in complete compliance with U.S. tax laws, and with the peace of mind that everything is completely legal.

An offshore trust holding an offshore private-placement life insurance policy provides virtually unassailable asset protection, in addition to tax-free growth and tax-free wealth transfer in the family legacy trust – a nice solution to the problem of high taxes and precarious property rights. A deferred variable annuity owned by a trust can provide some of the same benefits. Advice on these and other

wealth-building and asset-protection techniques is available to clients of The Law Office of Thomas J. Swenson, at 303-440-7800, and at www.swenlaw.com.

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