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CLARIFYING THE TAX TREATMENT OF GIFTS TO GRANTOR TRUSTS IN 2010 – NOTICE 2010-19

Back in 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). While many provisions of EGTRRA have been acutely focused on by planners since that time, one provision has received little attention until recently. Under Section 511(e) of EGTRRA, Section 2511(c) of the Internal Revenue Code was added and provides that for transfers between December 31, 2009 and January 1, 2011, except as provided in the regulations, a transfer in trust shall be treated as a transfer of property by gift unless the trust is a grantor trust.

As 2010 approached, planners began to wring their hands over what this provision means: (1) does it make incomplete gifts to non-grantor trusts complete; (2) does it make completed gifts to grantor trusts incomplete or (3) both? In Notice 2010-19, the IRS confirmed that it is the former, but not the latter. So planners can breathe easier knowing that completed gifts to grantor trusts are still an effective planning technique in 2010.