

Tax Alert | Trust Modification and Tax Reimbursement Clause-IRS Update

TAX ALERT

More Online Services Available To Business Owners

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On November 28, 2023, the IRS Chief Counsel's office changed its position on the modification of an existing irrevocable trusts to add a discretionary tax reimbursement clause. In Chief Counsel Advice (hereinafter CCA 202352018) the IRS reversed its previous position. Previously in private letter ruling 201647001, the IRS approved the addition of the clause to an existing irrevocable clause meaning no gift to the grantor when the trust reimburses him or her for the income tax paid. In CCA 20232018, it disapproved the addition of the clause. It held that the addition of the discretionary clause and the use by the trustee would result in the beneficiaries making a gift to the grantor. CCA 202352018 also discusses the amount of the gift and discusses how to value the gift in footnote number 2.

CCA 202352018 does not impact a discretionary reimbursement clause if it is in the original trust.

For those who have to defend a modification, it bears noting that a Chief Counsel Advice, like a Technical Memorandum, cannot be cited as precedent.

For advisors who are contemplating modifying an existing irrevocable trust, CCA 202352018 is a warning.

Whether the warning is limited to tax reimbursement clauses or modifications in general remain to be seen.

There are other estate planning devices that can achieve similar results for grantor's who can no longer afford or do not wish to pay the income tax on the income their past gifts.

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