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Potential Changes Coming to Grantor Trust Rules

Estate Planning & Wealth Transfer

The U.S. House of Representatives bill released last month proposes several changes to the current rules governing trusts where the grantor pays the income tax, but the value of which is not included in the grantor's estate for federal estate tax purposes. These trusts commonly are referred to as "grantor trusts."

One of the changes under the bill is to include the value of a grantor trust in the grantor's taxable estate for federal estate tax purposes.

Another change is to treat sales and exchanges between a grantor trust and its owner as taxable transactions. While it was believed from the language of the bill that assets already in existing trusts would be grandfathered from the new rules, and that post-effective date gifts to existing trusts would not be grandfathered, a report released in late September suggests that all post-effective date sales and exchanges between a grantor trust and its owner would be treated as taxable transactions, even if the trust was in existence prior to the effective date and no additional gifts were made. These changes would mean that, for example:

- a gift to an insurance trust after enactment, even one established prior to enactment, would cause the insurance proceeds (or a portion of the proceeds) to be included in the grantor's estate for federal estate tax purposes, and
- for a trust like a grantor retained annuity trust (a GRAT), even a trust established prior to enactment, distributions of appreciated property in-kind to satisfy the annuity would be subject to tax.

If you have set up a trust that might be affected and would like to discuss planning you may be able to do in anticipation of this potential change, please contact a member of Gould & Ratner's [Estate Planning and Wealth Transfer Practice](#).