

Tax Reporting Requirements

In addition to reporting to the beneficiary, a trustee has a duty to file tax returns with the IRS and sometimes various state taxing authorities. There are several areas in which tax reporting may be required.



A. Taxpayer Identification Number

For a new trust, the trustee must file an IRS Form SS-4 to obtain a taxpayer identification number for a trust. Any trust that is required to file a tax return must have a taxpayer identification number. This number may be obtained online at www.irs.gov under "more online tools". Often, the attorney who drafted the trust agree can supply the taxpayer identification number for the trust immediately from a block of numbers received from the IRS.

B. Notice of Fiduciary Relationship - Form 56

IRS Form 56 is used by a trustee to notify the IRS of the creation, change, or termination of a fiduciary relationship. Filing this form ensures that the IRS will have proper information on file and that the current trustee will receive all notices sent by the IRS involving the trust (or will at least have a defense if the notice is sent improperly). The form should be filed at the Internal Revenue Service Center where the trustee is required to file the trust's federal tax return.

C. Form 1041

Generally, trusts with \$100 or more of gross income, or *any* taxable income, must file an IRS Form 1041 fiduciary income tax return. However, certain so-called "grantor" trusts are not required to file a Form 1041. Trusts are "grantor" trusts if the person creating or contributing assets to the trust retain the right to receive trust principal or income, retained the power to control the enjoyment of the trust principal or income, or retained the power to revoke the trust.

D. Form 1041ES

IRS Form 1041ES is used to make estimated federal income tax payments for a trust. This form must be filed, and quarterly estimated income tax payments made, when the trust is required to do so. A trust is required to make estimated federal income tax payments when it: (i) is expected to owe more than \$500 in federal income taxes for the year after subtracting withholding and credits; and (ii) is expected to have withholding and credits generally to be *less than the lesser of 90%* of the current year's tax or 100% of the prior year's tax.

E. Generation-Skipping Distributions Form 706GS(D-1)

If trust distributions are made to a "skip person," as defined in Section 2613 of the IRC, the trustee must report the distribution on IRS Form 706GS(D-1), *Notification of Distribution* from a Generation-Skipping Transfer ("GST") Trust. Generally a "skip person" is a grandchild or great-grandchild of the person who created the trust. Interestingly, a trust beneficiary unrelated to the grantor, and more than 37 ½ years younger than the grantor can also be a "skip person". A GST distribution usually occurs only if material assets (more than \$5,250,000 in 2013) are placed into trust. This Notice must be filed with the IRS (with Copy B to the distributee) by April 15th of the year following the calendar year of the distribution. Whenever trust distributions are made to grandchildren or younger descendants of the grantor of the trust, a trustee should consult with the trust's attorney, accountant or other tax advisor about the necessity of and the procedures for preparing and filing this form.

F. Generation-Skipping Transfer Tax Return for Terminations - Form 706GS(T)

A trustee must also calculate and report the tax due from a trust termination subject to the GST tax on IRS Form 706GS(T) by April 15th following the year in which the termination occurs. Again, this tax is normally due only if substantial trusts terminate by making distributions to the grandchildren, great-grandchildren, more remote descendants of the grantor of the trust or much younger unrelated beneficiaries of the grantor of the trust as referenced in paragraph E above. As with generation-skipping distributions, the trustee's attorney, accountant or other tax advisor should be consulted about the necessity of and procedures for preparing and filing this form.

IMPORTANT: This publication is designed to provide general information about planning ideas and strategies. Always consult with your legal, tax, investment, and insurance advisors about your unique circumstances before changing or implementing any financial, tax, or estate planning strategy.

Pursuant to IRS Regulations, you are informed that any tax advice contained in this communication (including any enclosures or attachments) is not intended or written to be used and cannot be used by any person or entity for the purposes of (i) avoiding tax related penalties imposed by any government tax authority or agency, or (ii) promoting, marketing or recommending to you or another party any transaction or matter addressed herein, and (iii) you are advised to consult with an independent tax advisor your particular tax circumstances.