estate planning studies®

July 2014

Decanting is not just for sommeliers

Gerry W. Beyer*

Melissa J. Willms**

One of the hottest issues in modern trust law is decanting. This *Study* provides a "short course" on decanting by covering:

■ Reasons to decant ■ Decanting's interface with fiduciary duties ■ State decanting statutes

Introduction

The term "decanting" sounds mysterious, but in reality, decanting is simply a form of trust modification initiated by a trustee. The trustee accomplishes the modification by moving assets from one trust to a new trust with different terms. Estate planning attorneys draft trusts designed to last for generations based on assumptions about the beneficiaries that may bear no semblance to reality. Decanting then stems from the desire to make changes to an otherwise irrevocable trust.

Decanting occurs when a trustee, exercising discretionary authority to distribute trust property to or for the benefit of trust beneficiaries, distributes assets from one trust to another. Although not termed decanting, the concept can be found in the Restatement (Second) of Property: Donative Transfers (Second Restatement) and the Restatement (Third) of Property: Wills and Other Donative Transfers (Third Restatement).[1]

Reasons to Decant

Times change, needs change, and laws change thus giving a trustee motivation to decant. Examples of reasons to decant include to:

- Correct a drafting mistake;
- Clarify ambiguities in the trust agreement;
- Correct trust provisions, due to mistake of law or fact, to conform to the grantor's intent;
- Update trust provisions to include changes in the law, including new trustee powers;
- Change situs of trust administration for administrative provisions or tax savings;
- Combine trusts for efficiency;
- Allow for appointment or removal of trustee without court approval;
- Allow for appointment of a special trustee for a limited time or purpose;
- Change trustee powers, such as investment options;
- Transfer assets to a special needs trust;
- Adapt to changed circumstances of beneficiary, such as substance abuse and creditor or marital issues, including modifying distri-

Estate Planning Studies and Briefs® is published by trust departments around the country and distributed free of charge to estate planning professionals. For details, contact The Merrill Anderson Company, **www.merrillanderson.com.**

MERRILL ANDERSON

Financial Marketing Communications

bution provisions to delay distribution of trust assets;

- Add a spendthrift provision;
- Divide a "pot trust" into separate share trusts;
- Partition of trust for marital deduction or generation-skipping (GST) transfer tax planning.[2]

Trustee's Fiduciary Duties

When taking any action, including decanting, trustees must consider whether their actions fall within the fiduciary duties that they owe to the beneficiaries. Trustees cannot act arbitrarily. Two principles underlie much of the Anglo-American law of fiduciary duties: the duty of loyalty and the duty of prudence. Specific trustee duties vary from state to state; however, a number of general principles remain consistent.

Duty of Loyalty. The duty of loyalty is one of the most basic fiduciary duties of a trustee; it underlies virtually every action of a trustee. The duty of loyalty requires trustees to act in the best interests of the beneficiaries above their own interests, while remaining fair and impartial to all of the beneficiaries.

Fiduciary Duty to Be Generally Prudent. Trustees have a duty to act reasonably and competently in all matters of trust administration. A trustee must administer the trust in good faith and in accordance with the terms of the trust and state law, as well as perform all duties imposed by common law.

Duty to Control and Protect Trust Property. Common law imposes numerous duties on trustees with regard to controlling and protecting trust property, such as insuring the trust property and enforcing claims against third parties. A trustee's duty of loyalty normally requires the trustee to manage the trust assets solely in the interest of the beneficiaries and not to benefit one beneficiary over another unless allowed by the trust.

Duty to Inform and Report. A trustee has a duty to keep beneficiaries reasonably informed of the administration of the trust. Incident to the trustee's duty to account and to provide information is the trustee's duty to keep written accounts that show the nature, amount, and administration of trust property, as well as all of the acts performed by the trustee. In the case of decanting, a trustee's duty to inform may require a trustee to inform beneficiaries prior to, or at the time of, the decanting.

Decanting's Interface with Fiduciary Duties. The purpose of the decanting is an important factor in determining the interaction with and impact on a trustee's fiduciary duties. For example, decanting to make purely administrative changes should not raise problems with a trustee's duty of loyalty. However, decanting that causes a preference for one beneficiary over another or shifts beneficial interests may implicate the duty of loyalty. Language in state law or a trust agreement may authorize the trustee to decant, but it does not mean the action is proper or falls within the trustee's fiduciary duties. Trustees may be more protected if the grantor includes language in the trust agreement that exonerates the trustees for exercising discretionary authority to decant.

When the trust agreement is silent as to a type of decanting, trustees may believe that it would be best to obtain consent or a release from the beneficiaries.[3] Alternatively, trustees sometimes seek a court order approving the decanting or include an indemnification agreement in the new trust.[4] As discussed below, however, there are potential tax consequences to these actions. Accordingly, the better approach may be to use a receipt and refunding agreement.[5]

Absent tax concerns or other issues, if the trustee has an overriding concern about liability, the best course may be to seek a judicial approval of the agreement to provide the trustee with the "cover" of a court order. If the settlor wants to maintain maximum flexibility in the trust, while minimizing the trustee's concerns with liability, the grantor may consider giving a third party, in a nonfiduciary capacity, the power to appoint trust property to another trust.

Early Cases

Decanting originally developed under the common law. In *Phipps v. Palm Beach Trust Company*[6], a 1932 trust gave the individual trustee the discretion to distribute "all or any part of the . . . trust estate" to any one or more of the grantor's descendants. The individual trustee instructed the corporate trustee to transfer the trust property to a new trust for the benefit of the grantor's descendants, which gave one of the descendants a testamentary power to appoint income to that descendant's spouse. The corporate trustee sought court approval. The Florida Supreme Court cited the general rule "that the power vested in a trustee to create an estate in fee includes the power to create or appoint any estate [in] less than a fee[,] unless the [grantor] clearly indicates a contrary intent."[7] Considering the broad discretion given to the individual trustee, the court approved the transfer of the property from one trust to another—an act now known as decanting. Other state courts, even as recently as 2013, have followed suit, illustrating that decanting is possible in the absence of a state statute.[8]

Statutory Decanting

Decanting statutes allow a trustee with discretionary distribution authority over a trust to modify the trust's terms and conditions by pouring trust assets into a new trust with, for example, more or less restrictive dispositive provisions, different successor trustees, different governing law provisions, and so on. Decanting is the next step in the evolution of trust law, where it is becoming clearer that, for trusts, "irrevocable" does not mean "unchangeable."

New York, in 1992, became the first state to enact a decanting statute, and as of 2014, at least 22 states have followed suit: Alaska, Arizona, Delaware, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming.[9]

Despite the growing number of states with decanting statutes, there is tremendous variation in how the statutes operate and how they interface with the rest of the state's trust law. The following discussion gives an overview of the various state statutes and some of the major differences.

Decanting by Trustee

Typically, the trustee is given the ability to decant; however, some statutes prohibit or limit a trustee from having the power to decant if the trustee is also a beneficiary.

Applying State Law

If a trust is governed by a state that has a decanting statute and if the trust agreement does not prohibit decanting, the state's statute will apply. Most state decanting statutes apply their statute to a trust that moves its situs to that state. Absent a prohibition in the trust agreement, commentators suggest that anyone can decant by invoking the law of a state with favorable decanting rules. A trustee cannot simply choose to apply the law of a state to which the trust has no nexus; however, it may be fairly easy to establish the required nexus. The most common approach is to seek appointment of a corporate fiduciary with offices in the desired state. Therefore, if a trust permits, or does not prohibit, a change in situs, it may be possible to first move situs of the trust to a state with a favorable decanting statute and then, decant.[10] Statutory decanting can give a trustee greater certainty about both the authority to decant and the procedure for decanting. A trustee may find even greater comfort when transferring to a new situs to decant if the new state's law specifically provides that it will apply to a trust that has moved its situs to that state.

Decanting as Exercise of Power of Appointment

Earlier decanting statutes are an extension of common law, which typically provides that, absent limitations imposed by the grantor, a trustee's power to make discretionary distributions, includes the authority to make distributions subject to such terms and conditions as the trustee deems advisable. Most statutes specifically provide that the trustee's authority to decant is considered the exercise of a power of appointment.

Source of Trustee's Authority

Most state statutes allow a trustee to decant if the trustee has some authority to invade trust principal; however, some require, at least when decanting other than for administrative changes, that the trustee have absolute power or discretion to invade trust principal. Absolute power means that the power cannot be limited by an ascertainable standard. Some states allow broader decanting power if the trustee has absolute discretion and limited decanting power if discretion is limited. In these states, if the first trust grants a power of appointment to the beneficiary, then the new trust must also contain an identical power of appointment. If decanting authority is limited to an ascertainable standard, theoretically, there are situations that would justify decanting a trust for reasons of health, education, maintenance or support.

A trustee must have decanting power either from state law (including the state's common law) or from the trust agreement. The trustee's decanting power must fall within the trustee's fiduciary duties, including the duty of loyalty. A trustee may not decant if the trust agreement prohibits decanting. Clients wanting to limit a trustee's ability to alter the terms of a trust should consider including such a prohibition in the trust agreement. All trust agreements should be reviewed to determine whether decanting is specifically precluded or if procedures for decanting are addressed. If no prohibition exists, and the procedures are not addressed, then state law should be reviewed.

What the Trustee Can Decant

All states with decanting statutes allow decanting of trust principal; some states limit decanting to trust principal. A number of states appear to allow decanting of both principal and income.

Permissible Beneficiaries of the New Trust

Generally, the new trust must name at least some of the beneficiaries of the original trust. In identifying the beneficiaries of the new trust, the trustee must determine the beneficiaries of the old trust. A few states have used the term "proper objects of the exercise of the power" to describe who may be permissible beneficiaries of the new trust. Presumably, this would include future and contingent beneficiaries of the old trust. Most states, however, simply use the term "beneficiaries" or "current beneficiaries." Some states specifically provide that the new trust may not include a beneficiary who is not a beneficiary of the old trust.

Interestingly, some states provide that the terms of the new trust may contain a power of appointment, so presumably, it would then be possible to add beneficiaries to the trust. Of course, any potential tax effects from the inclusion or exercise of such a power need to be considered.

Tax Savings Provisions

Statutory tax savings provisions are common, including provisions to prevent loss of a marital or charitable deduction if the old trust qualified for the deduction. Several states include provisions that limit the ability to decant a trust that holds S corporation stock if the new trust is not an eligible S corporation shareholder.

Some statutes limit the ability to decant if a beneficiary has a presently exercisable right of withdrawal. At a minimum, these statutes provide that the beneficiary's right will carry over to the new trust, helping prevent the treatment of a withdrawal right as illusory or the treatment of the beneficiary as having made a gift to the new trust.

Other Limitations

Several states provide that the new trust must have a distribution standard as restrictive, or at least as restrictive as, the old trust. Some states only have this requirement if the trustee has limited discretion.

Almost every state prohibits a trustee from decanting if it will reduce a beneficiary's income, annuity or unitrust interest in the old trust.

Many states provide that a spendthrift provision or a provision prohibiting the grantor from amending or revoking the old trust will not prevent the trustee from being able to decant.

Some states prohibit trustees (except in narrow circumstances or with court approval) from decanting to decrease trustee liability or to provide indemnification to themselves. Some prevent decanting to change the compensation of the trustee.

Duty to Decant?

The more recent state statutes clarify that a trustee is not obligated or under a duty to decant; although, many statutes recognize that when exercising the power to decant, the trustee is acting as a fiduciary. In contrast, in states where decanting is controlled by common law and not a state statute, a trustee may have a fiduciary duty to decant.

Procedural Requirements

Most states require that the decanting be in writing, signed and acknowledged by the trustee, and maintained as part of the trust records. Even if these procedures are not required by statute, it is prudent for the trustee to document the decanting in writing and in recordable form. The trustee should maintain any such writing with the records of the trust.

A few states require court approval for decanting. Aside from one narrow exception, no state requires the trustee to obtain beneficiary consent. Most states require the trustee to give notice to the beneficiaries prior to decanting.

Choice of Law Issues

When decanting involves changing situs, choice of law issues must be considered. Under the Restatement (Second) of Conflict of Laws, when construing or administering a trust holding personal property, the law of the state designated in the trust agreement controls.[11] The designated state's law applies if the state has a substantial relationship to the trust and its law does not violate any strong public policy of the state with which the trust has the most significant relationship. The law governing construction of a trust and the law governing its administration may be different. According to the Restatement, if the trust is silent as to the law governing construction, the trust may be construed based on a number of different laws including the law of the state governing its administration, the law of its domicile, the law of the state with which the grantor had the most contacts, or even the law that the grantor would believe to apply, such as where the grantor was domiciled.

Tax Issues in Decanting.

Tax issues associated with decanting are as important as the state law issues. Since the IRS solicited comments about the tax implications, comments have been submitted by several organizations, including ACTEC, ABA's Section of Taxation, the State Bar of Texas Tax Section, the New York State Bar's Tax Section, and Bessemer Trust. The IRS recently has issued Rev. Proc. 2014-3, which placed decanting on its "no-ruling" list for specific income, gift, and GST-tax issues.[12] The IRS has not indicated when published guidance can be expected. Pending IRS guidance and case law developments, the following discusses potential tax issues that practitioners should consider when advising clients about decanting.

Income tax issues. In most cases, decanting should present minimal, if any, income tax consequences to the trust or the trust beneficiaries.

Distributions and DNI. If trust assets are decanted from one trust to another, the decanting may be treated as a trust modification rather than a termination; consequently, both trusts will be treated as the same trust for income tax purposes.[13] No income tax consequences would be recognized to either trust, and the surviving trust would report all income, expenses and distributions for the entire year.

A second possibility follows the general rule that any distribution from a trust will carry with it a portion of the trust's distributable net income (DNI).[14] Trust distributions are generally treated as coming first from the trust's current income, with tax-free distributions of "corpus" arising only if distributions exceed DNI. If a trust terminates, its current income and any unused capital losses, net operating losses, and expenses in excess of income are carried out to the beneficiaries. But when two trusts combine or merge, no provision of the Code provides that the combination of trusts is tax free. The IRS may treat the terminating trust's distribution as carrying out its DNI, unused losses, and excess deductions to the surviving trust.[15] The new trust would receive taxable income to the extent of the old trust's DNI, and the old trust would receive a corresponding distribution deduction.

Grantor trusts. The act of decanting the assets of a grantor trust to another grantor trust should have no income tax effect. [16] The mere transfer from a grantor trust to a non-grantor trust should not, in and of itself, cause a realization event. However, provisions of the Code other than the grantor trust tax rules, such as partnership tax rules, may cause a realization event for federal income tax purposes.

Gains or losses. In certain situations, the IRS might argue that decanting should be treated as a distribution followed by an exchange of interests among the beneficiaries, resulting in recognized gain for income tax purposes.[17] If sale or exchange treatment applies because of the beneficiary's involvement in decanting, I.R.C. § 1001 provides a special rule for determining gain or loss from the disposition of a term interest in property. Under § 1001(e), the adjusted basis of the interest is generally disregarded. A "term interest in property" for purposes of § 1001(e) means a life interest, an interest for a term of years, or an income interest in a trust. An exception to this rule applies where the disposition is part of a transaction in which the entire interest is transferred.

If a trustee decants property that has debt in excess of its basis, or an interest in a passthrough entity with a negative capital account, beneficiaries may face another concern. In *Crane v. Commissioner,* the taxpayer sold property subject to nonrecourse debt.[18] The Supreme Court held that the amount realized on the sale included not only any cash or other property received, but also the amount of taxpayer's debt that was discharged as a result of the sale. In the partnership context, I.R.C. § 752(d) provides that when a taxpayer sells a partnership interest, partnership liabilities are treated the same as any other liabilities in the context of a sale or exchange of property. In the trust context, § 643(e) provides that upon the distribution of trust property, a beneficiary will receive a carryover basis in the property, adjusted for any gain or loss recognized on the distribution. Section 643(e) further provides that gain or loss may be recognized on the distribution, if a trustee elects. Unfortunately, no authority establishes whether a distribution of trust property subject to debt will cause gain or loss recognition, as would be the case with the sale or exchange of other property under *Crane* and related authority, or whether no gain or loss would be recognized unless an election is made by a trustee pursuant to § 643(e).

Gift tax issues. Can the IRS argue that decanting gives rise to taxable gifts? Section 2512(b) of the Code provides that where a transfer of property is made for less than adequate consideration, the amount in excess of fair consideration will be treated as a gift. The notion that a gift arises as a result of decanting may be especially important in situations in which the beneficiary must consent to the change, or where the change results from the settlement of litigation.

On the one hand, a transfer of property by an individual in compromise and settlement of threatened litigation is a transfer for full and adequate consideration in money or money's worth and is not a gift for federal gift tax purposes.[19] On the other hand, where there is no adequate consideration for the settlement agreement, gift tax consequences will arise. For example, if a remainder beneficiary agrees to decanting and gives up his or her interest in the trust in favor of the income beneficiary, the remainder beneficiary may be treated as having made a gift. As a basis for having a dispute to settle, commentators have suggested filing a court action.

To avoid a potential IRS argument of substance over form, it is important to assess whether a true controversy exists. Gift tax implications may arise, notwithstanding the fact that the value of the foregone interest may be difficult to value. This difficulty in valuation could make it possible to assign a relatively low value to the gift. Despite a shift of beneficial interests, the IRS has not found a gift to arise when a trust is reformed to conform to the grantor's original intent.

Because decanting is based on a trustee's discretion, gift tax issues can arise if a trust beneficiary is serving as a trustee and exercises the discretion to decant. Treasury Regulation § 25.2511-1(g)(2) provides that if a trustee is a trust beneficiary and transfers trust property, the transfer will be a taxable gift by the trustee-beneficiary unless the trust agreement limits the fiduciary power by an ascertainable standard. Even more certainty is provided in Treasury Regulation § 25.2511-1(g)(1) providing that if a trustee, who is not a beneficiary, distributes property to another beneficiary, no taxable gift will occur. Therefore, if a beneficiary is the trustee, the better practice is to have an independent trustee exercise discretion to decant.

Similarly, if a beneficiary consents to decanting, such as through providing a receipt and release, the beneficiary may be treated as having exercised control over the assets, giving rise to a taxable gift. Again, the purpose for the decanting becomes important—such as whether decanting will shift a beneficial interest to different beneficiaries—to determine whether negative tax consequences may result. In a recent private letter ruling, a GST-grandfathered trust was modified to include legally adopted issue and descendants in the definitions of issue and descendants.[20] The IRS ruled that, as a result, each issue of the grantor's child made a gift of his or her respective future interest in the trust's income and principal to the adopted issue, who were now beneficiaries of the trust. Interestingly, the IRS also ruled that there was no loss of the trust's

GST-grandfathered status because the modification did not shift beneficial interests to lower generation beneficiaries or extend the term of the trust. Gift tax consequences to a beneficiary also may arise if a trust is set to terminate at a specific date or age and decanting is done to continue the trust. Furthermore, if the beneficiary consents to the decanting, the IRS may argue that the beneficiary is a grantor of the new trust pursuant to Treasury Regulation § 1.671-2(e)(1).

The exercise, release or lapse of a general power of appointment is deemed a transfer of property by the individual possessing the power.[21] To avoid gift tax implications when trusts are decanted, one must determine whether trustees who are also beneficiaries possess general powers of appointment over trust property and whether the decanting results in its creation, exercise, release or lapse.

If a trust beneficiary exercises a power of appointment to create a new trust, and the termination date of the new trust can be extended beyond the perpetuities period provided in the original trust, the exercise of the power during the life of the beneficiary may be treated as a taxable gift by the powerholder, or at the death of the beneficiary may result in inclusion in the estate of the powerholder. This is commonly referred to as the "Delaware Tax Trap." Again, if decanting is done only by an independent trustee, these issues should not arise. As is common when exercising a power of appointment which results in property passing to a new trust, language may be included in the new trust to prevent triggering the Delaware Tax Trap.

Estate tax issues. One might be concerned that if the grantor participates in the decanting, the state law basis for decanting would be used to find that the grantor somehow retained a power of change or revocation when he or she created the otherwise-irrevocable trust. Treasury Regulation § 20.2038-1(a)(2) provides, however, that I.R.C. § 2038 (power to revoke) does not apply if a power can be exercised only with the consent of all parties having an interest (vested or contingent) in the trust, and if the power adds nothing to the rights of the parties under local law. Therefore, decanting involving the grantor's participation should not implicate estate tax issues for the grantor. For beneficiaries, there may be an issue with estate inclusion as described above in the context of the Delaware Tax Trap, or if it is shown that the beneficiary had such control over the trust assets as to fall within I.R.C. § 2036 or § 2038. If the new trust grants a beneficiary a general power of appointment over the trust assets, the assets will be included in the beneficiary's estate pursuant to I.R.C. § 2041.

Generation-Skipping Transfer Tax

The GST-tax area is the one area where there is a distinction in the Treasury regulations between powers of appointment and trust decanting. Specifically, the regulations address these differences by providing different safe harbors that may be used to protect the exempt status of grandfathered trusts. Detailed discussion of the decanting-GSTT interface is beyond the scope of this article.[22]

Conclusion

With the possibility to decant under common law—and as more states enact decanting statutes—advisors should become familiar with decanting. The continuing expansion of the ability to decant makes it clearer that the term "irrevocable trust" does not mean that the trust cannot be changed. Therefore, when advising grantors, estate planners may want to discuss whether it is appropriate to give the trustee the ability to decant or to expressly prohibit the trustee from exercising decanting authority. In addition, when advising trustees, estate planners may counsel trustees to consider decanting as an option and to document any conclusions, keeping in mind that a trustee's fiduciary duties overlay any action by a trustee. As always, the terms of the trust, state statutes or common law, and tax law must be reviewed to determine the limitations to any changes that may be made.

*Governor Preston E. Smith Regents Professor of Law, Texas Tech University School of Law, Lubbock, Texas.

**Partner, Davis & Willms, PLLC, Houston, Texas.

FOOTNOTES

1 See Restatement (Second) of Prop.: Donative Transfers §§ 11.1–12.3 (1986); Restatement (Third) of Prop.: Wills & Other Donative Transfers § 17.23 (2011).

2 See Eisenberg, Uncontested Trust Modifications: Tips and Techniques, Dall. B. Ass'n, Probate, Trust and Estate Law Section 1 (Apr. 23, 2013). See also Wis. Stat. § 701.0418(4)(a) which provides a non-exclusive list of 19 reasons for which decanting may be permissible.

3 See Aghdami & Chadwick, Decanting Comes of Age, Probate

Practice Reporter, Vol. 23, No. 5, at 6 (May 2011).
4 See Culp & Mellen, Trust Decanting: An Overview and Introduction to Creative Planning Opportunities, 45 Real Prop. Tr. & Est. L.J. 1, 44–45, 48.
5 11 Id. at 45.
6 196 So. 299 (Fla. 1940).
7 Id. at 301.
8 See also In re Estate of Spencer, 232 N.W.2d 491 (Iowa 1975); Wiedenmayer v. Johnson, 254 A.2d 534 (N.J. Super. Ct. App. Div. 1969), aff'd sub nom. Wiedenmayer v. Villanueva, 259 A.2d 465 (N.J. 1969); Morse v. Kraft, 992 N.E.2d 1021 (Mass. 2013).
9 See Alaska Stat. § 13.36.157-.159; Ariz. Rev. Stat. Ann. § 14-10819; Del. Code Ann. tit. 12, § 3528; Fla. Stat. Ann. § 736.04117; 760 Ill. Comp. Stat. Ann. 5/16.4; Ind. Code Ann. § 30-4-3-36; Ky. Rev. Stat. Ann. § 386.175; Mich. Comp. Laws Ann. § 556.115a, 700.7103, 700.7820a; Mo. Ann. Stat. § 456.4-419; Nev. Rev. Stat. Ann. § 163.556; N.H. Rev. Stat. Ann. § 564-B:4-418; N.Y. Est. Powers & Trusts Law § 10-6.6(b)-(s); N.C. Gen. Stat. Ann. § 36C-8-816.1; Ohio Rev. Code Ann. § 5808.18; R.I. Gen. Laws Ann. § 18-4-31; S.C. Code Ann. § 62-7-816A; S.D. Codified Laws § 55-2-15 – 55-2-21; Tenn. Code Ann. § 35-15-816(b)(27); Tex. Prop. Code Ann. § 112.071 - .087; Va. Code Ann. § 64.2-778.1; Wis. Stat. § 701.0418; Wyo. Stat. Ann. § 4-10-816(a)(xxviii).
10 For a recent trilogy of Delaware cases supporting the proposition that it may be possible to move the situs of a trust and change the law of administration of the trust, see In re Peierls Family Inter Vivos Trusts, 77 A.3d 249 (Del. 2013), In re Peierls Family Testamentary Trusts, 77 A.3d 223 (Del. 2013), and In re Ethel F. Peierls Charitable Lead Unitrust, 77 A.3d 232 (Del. 2013).
11 Restatement (Second) of Conflict of Laws: Trusts §§ 268(1), 272(a) (1971).
12 See Rev. Proc. 2014-3, 2014-1 I.R.B. 111.
13 See I.R.S. Priv. Ltr. Rul. 200736002 (Sept. 7, 2007), I.R.S. Priv. Ltr. Rul. 2000723014 (Feb. 5, 2007), I.R.S. Priv. Ltr. Rul. 200607015 (Nov. 4, 2005).
14 See I.R.C. §§ 651, 661.
15 See I.R.C. §§ 642(h), 661(a).
16 Rev. Rul. 2007-13, 2007-1 C.B. 684.
17 See Rev. Rul. 69-486, 1969-2 C.B. 159.
18 See I.R.C. § 1001; Crane v. Comm'r, 331 U.S. 1 (1947).
19 See PLR 8902045 (transfers pursuant to settlement of will contest were not subject to gift tax; intra-family settlements should not result in shifts between parties' economic rights, that economic values of parties' claims should be determined "with appropriate allowances for uncertainty," and "differences may be justified on the basis of compromise."
20 See I.R.S. Priv. Ltr. Rul. 200917004 (Apr. 24, 2009).
21 I.R.C. § 2514(b)
22 See Willms, Decanting Trusts: Irrevocable, Not Unchangeable, 6 Est. Plan. & Community Prop. L.J. 35 (2013).