Alaska Consensual Community Property Law And Property Trust

THE STATE OF ALASKA has adopted a new community property law by which a married couple may elect to treat all of their assets or specific assets as community property. This article discusses the estate planning uses and implications of converting one's separate property to community property, and how non-Alaskans may use an Alaska Community Property Trust to obtain the tax and non-tax benefits of community property status for select assets.

In most community property states, many forms of property acquired by a married couple are automatically held as community property, unless the couple enter into a binding agreement to treat their assets as separate property. The Alaska Community Property Act (the Act) gives Alaska residents the option of conducting their marital finances within a community system, making it the first wholly consensual community property statute in nearly 60 years.[1] Of even greater importance to estate planners in other states, however, the Act allows both residents and non-residents to establish Alaska Community Property Trusts, by which specific assets can be held as community property under Alaska law.

Alaska Community Property

The Act, which became law on May 22, 1998, allows a husband and wife who are both domiciled in Alaska to enter into an agreement that converts any or all of their property into community property.[2] The Act draws many of its key provisions from the Uniform Marital Property Act, which has previously been adopted only in Wisconsin.[3] The key elements of the Alaska community property rules for residents are that:

1. The couple may select which assets are to be community property and which are to be held in some other form of separate or joint ownership;[4]

2. Community property may be owned with rights of survivorship;[5]

3. Each spouse owns and may control a one-half interest in the community property,[6] but the spouses may choose to grant management authority to one of them;[7]

4. Each spouse is required to act in good faith toward the other with respect to their community property.[8]

5. A spouse may "reclaim" community property given to a third party by one of them unless the non-transferring spouse consents, except for gifts that do not exceed $1,000 in any calendar year or larger gifts which are reasonable, in light of the economic position of both spouses;[9]

6. An Alaska court may equitably divide community property along with marital property in the event of divorce, except to the extent, if any, the spouses have provided otherwise in a community property agreement or trust;[10]

7. Community property is not subject to a claim by a surviving spouse to any minimum or elective share when the first spouse dies;[11]

8. An Alaska Community Property Agreement may be set aside if it is found that it was unconscionable when made, was not voluntarily executed, or that he or she was not given and did not have fair and reasonable disclosure of the property and financial obligations of the other spouse and did not voluntarily waive such disclosure.[12]

The Alaska Community Property Trust

Both resident and nonresident married couples may classify property as community property by transferring it to a community property

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trust and by providing in the trust agreement that the property is community property.[13] The Act requires for a valid Alaska Community Property Trust that:

1. One or both spouses transfer property to a trust;

2. The trust expressly declares that some or all the property transferred is community property under Chapter 75 of Title 34 of the Laws of the State of Alaska;

3. At least one trustee of the trust is a "qualified person" whose powers include or are limited to a. maintaining records of the trust and b. preparing or arranging for the preparation of any income tax returns that must be filed by the trust. A "qualified person" is an individual Alaska domiciliary, Alaska trust company or Alaska bank as described in AS 34.75.100(a) (Michie 1998). The powers to maintain trust records and prepare or arrange for the preparation of trust income tax returns may be given either to the Alaska trustee alone or to the Alaska trustee and one or more other trustees;

4. The Trust must contain the following language (in capital letters) at the beginning of the trust agreement:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.[14]

5. Both spouses must sign the trust, even if only one transfers property to the trust;

6. The trustees must maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

An Alaska Community Property Trust that meets these requirements will allow the conversion of the trust assets from separate or joint property into community property. Furthermore, it allows the spouses to enter into enforceable agreements regarding:

1. Their rights and obligations in the property transferred to the trust;

2. The management and control of the property transferred to the trust;

3. The disposition of the property transferred to the trust in the event of the dissolution of the marriage or of the trust, death of either or both spouses or the occurrence or nonoccurrence of another event;

4. The choice of law governing the interpretation of the trust; and

5. Any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

An Alaska Community Property Trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. This means that the spouses may amend the trust to transmute property back from community property to separate property. Both an Alaska Community Property Trust and a later (amending) Community Property Trust are enforceable without consideration,

although no such agreement is enforceable if unconscionable when made or the spouse against whom enforcement is sought was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse, did not voluntarily sign a written consent expressly waiving the right to disclosure of the property and financial obligations of the other spouse beyond any disclosure made and did not have notice of the property or financial obligations of the other spouse.

Efficacy Of Alaska Community Property Trusts

An Alaska Community Property Trust for nonresidents of the State of Alaska should be valid for tax purposes if the trust can create enforceable property rights with respect to property contributed by persons who are not resident or domiciled within the State of Alaska. The law on point supports the use of a trust in one state to create beneficial and property rights for nonresident beneficiaries, but even in jurisdictions in which the law may be less supportive, good planning can help assure the desired result.

The rules by which the state that should assume jurisdiction over various aspects of trust administration, construction and the rights of beneficiaries, depend upon whether the trust corpus is real or personal property. Generally, the intent of the settlor determines the jurisdiction for a trust holding personal property, while the sites of the real property are determinative with respect to a trust on real property.

Issues of the administration of a trust holding personal property (whether tangible or intangible) are determined under the jurisdiction in which the trust is otherwise administered, which itself is determined on the basis of the intent of the settlor, as disclosed in the governing instrument. Absent an express declaration in the instrument as to the place of administration, the settlor's intent is usually assumed to be that the trustee shall administer the trust at the trustee's principal place of business or domicile. A settlor who names two or more trustees who are domiciled in different states may manifest an intention that the trust should be administered at the domicile or place of business of one of them. Therefore, if the settlor names one or more trustees situated in Alaska, as is required of an Alaska Community Property Trust, it may be assumed that the trust should be administered in Alaska and that it should be supervised by the courts of that state.

The requirements for an Alaska Community Property Trust include the designation of at least one Alaska trustee and refer repeatedly to the construction of the rights of the parties in the property under Alaska law. Under the general rule, therefore, Alaska courts should have jurisdiction over matters involving the administration of an Alaska Community Property Trust even though they might lack jurisdiction over some or all of the beneficiaries.[15]

Questions relating to the construction of an inter vivos trust holding personal property and the rights of the various beneficiaries will be based on the law of the state designated in the instrument, or in the absence of such a designation, the law of the place of administration, if the issue relates to trust administration, or otherwise the jurisdiction that the settlor would probably have desired to apply.[16] A state need have no connection with the trust in order to use its law in construing the trust instrument, if the settlor has selected that particular state's law.[17]

A similar rule applies in determining the overall validity of a trust of personal property. The validity of the trust is determined under the law of the state designated by the settlor, as long as that state has a substantial relation to the trust and that the application of its law does not violate a strong public policy of the state with which the trust has its most significant relationship.[18] A state

has a substantial relation to a trust if the settlor designates that the trust is to be administered there, if any trustee has its principal place of business or domicile in that state when the trust is created, if the trust is administered in that state or if it is the domicile of the beneficiaries.

As to trusts of interests in land, however, the law of the situs of the land becomes more important. The administration and validity of a trust in land is determined according to the law of the state in which the land is situated, even if the trustees are situated elsewhere.[19] A court of a state other than that in which the property is situated may still exercise jurisdiction over the administration of the trust, if this does not unduly interfere with the control by the courts of the situs.[20]

Issues of construction of the trust instrument, however, have not always been construed according to the situs. Some courts apply the law of the situs,[21] but a few others have applied the law designated by the settlor in construing a trust on real estate.[22] The law of the situs almost certainly controls issues of construction only in the absence of a designation in the instrument of the governing law.

Therefore, it appears very likely that an Alaska Community Property Trust holding personal property will be respected in matters of administration, construction and trust validity, as long as it meets the basic rules set forth by Alaska law. On the other hand, it is quite possible that a court would view an Alaska Community Property Trust as not creating community property interests in real estate, the title to which is held by the trust but the location of which is in another state that has no community property rules, or that has significantly different rules from those adopted in Alaska. A practitioner who wishes to create an Alaska Community Property Trust to hold out-of-state real estate should, therefore, arrange for the transfer of the real estate to an Alaska corporation or partnership or limited liability company if that is otherwise compatible with the client's wishes, since stock, partnership interests and LLC interests are themselves personal property, even if the underlying assets are real property. The stock or partnership or LLC interests may then be transferred to an Alaska Community Property Trust, the terms of which would be governed more clearly by Alaska law.

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Gift Tax Consequences Of Creating An Alaska Community Property Trust

Although an Alaska Community Property Trust could be irrevocable, the grantor or grantors should ensure that neither spouse will be deemed to make a completed gift for Federal gift tax purposes to any third party upon the transfer of property to the trust or thereafter unless that is what he, she or they wish. Because both spouses must sign the trust, even if only one of them transfers assets to it, one spouse cannot create the trust, make the assets community property and unilaterally control what the disposition of those assets will be. If the other spouse does not agree to the proposed disposition, he or she presumably will not sign the trust.

The gift tax marital deduction would appear to be a simple protection against adverse gift tax consequences on the creation of an Alaska Community Property Trust, but the law does not clearly establish that granting one's spouse the immediate, unilateral and continuing right until death to withdraw one-half of any property transferred to and which becomes a community property asset should qualify such one-half interest for the gift marital deduction. In other words, the fact that the donee-spouse's interest in the community property under the Alaska Community Property Trust will terminate at his or her death (if the right to withdraw that interest from the trust is not exercised) may mean it is a terminable interest.[23]

With reasonable planning and drafting, a transfer to an Alaska Community Property Trust should be capable of qualifying for the marital deduction.[24] One way is to create an interest which constitutes an "estate trust," that terminates in favor of the donee-spouse's own probate estate, making it thereby disposable by that spouse's Will.[25] Alternatively, the transfer may be made to qualify by falling under the life estate general power of appointment exception.[26] The donee-spouse must be entitled to all of the income for life payable at least annually and be granted a lifetime and/or testamentary general power of appointment exercisable by the donee-spouse alone and in all events in favor of that spouse and/or his or her estate. These are known as general powers of appointment marital deduction trusts.

Although the statute relating to such general power of appointment marital deduction trusts states that the income must be payable to the spouse at least annually, the regulations promulgated under the gift tax regulations relating to such trusts clarify that the income does not, in fact, have to be paid to the donee-spouse but merely be subject to withdraw by that spouse.[27]

The interest created for the donee-spouse in the Alaska Community Property Trust could be made to qualify alternatively for QTIP treatment under Code Sec. 2523(f) by structuring the donee-spouse's interest that way and by election on a timely filed United

States Gift Tax Return. However, it nonetheless seems appropriate to grant the donee-spouse the immediate, unilateral and continuing right to withdraw his or her half of the assets transferred to the Alaska Community Property. The nature of community property is that each spouse owns and may control his or her one-half of the assets. Of course, the trust could provide that either or both spouses could relinquish his or her unilateral right to withdraw although, presumably, care should be taken to ensure that any such relinquishment is not a taxable gift, unless that result is intended.[28]

Income Tax Treatment Of Alaska Community Property Trusts

If one spouse transfers property to the Alaska Community Trust, the trust presumably will be treated as a grantor trust in its entirety with respect to that spouse so that all the trust property, whether all or only part of it becomes community property under Alaska law, is treated as owned for income tax purposes by the grantor-spouse as long as the income and corpus may be distributed, without the consent of an adverse party, to or for the benefit of either or both spouses.[29] Even if the other spouse has the unilateral right to withdraw his or her half of the community property from the trust, powers held by the grantor's spouse are attributed under Code Sec. 672(e) to the grantor. As a result, the grantor-spouse will be treated as though he or she held that power to withdraw, presumably negating any possible application of Code Sec. 678, under which a beneficiary, who is not the trust's grantor but has a unilateral right to withdraw trust property, is treated as the owner of that property for income tax purposes. Moreover, the Internal Revenue Service has consistently held that the provisions of the grantor trust rules (Code Secs. 671-679) which cause the actual grantor to be treated as the owner of the trust assets supercede Code Sec. 678.[30]

When the grantor spouse dies, the trust property will no longer be treated as owned by that spouse for income tax purposes. To the extent that the surviving spouse has a unilateral power to withdraw such property from the trust that spouse will be treated as the owner under Code Sec. 678. Often, a joint revocable community property trust (that is, one created by both spouses with their community property, as well as, perhaps, separate property) provides, when the first spouse dies, that the survivor's half of the assets which had been community property as well as the survivor's separate property, if any, remains subject to that spouse's power of withdrawal. If that pattern is followed in an Alaska Community Property Trust, the surviving spouse will be considered the owner of such property for income tax purposes under the grantor trust rules. However, to the extent the surviving spouse's power unilaterally to withdraw one-half of the community property contributed by the other spouse expires at or before the death of the grantor spouse, the surviving spouse will not be treated as the owner of such property under the grantor trust rules.[31]

When the grantor spouse dies, the trust property will no longer be treated as owned by that spouse for income tax purposes.

To the extent a spouse makes a contribution to the Alaska Community Property Trust that spouse presumably will continue to be treated as the owner of the property, as discussed above, for income tax purposes under the grantor trust rules even if the noncontributing spouse has a unilater-

al right to withdraw none, some (e.g., half) or all of property so contributed if the income from the property contributed or the property itself may be distributed, without the consent of an adverse party, to either or both spouse.[32] As a result, during the spouses' joint lifetimes, each spouse will be treated as owning for income tax purposes the assets he or she contributed. That probably will be the case even if the spouses are treated as exchanging interests in assets contributed. For example, the wife contributes Asset X worth $2 million to the trust which became community property (and, therefore, treated as owned under Alaska law as one-half by the husband) and the husband contributes Asset Y worth $1 million which became community property (and, therefore, treated as owned under Alaska law as one-half by the wife). Even if the wife is treated as exchanging a 25 percent interest of Asset X for a 50 percent interest in Asset Y and the husband is treated as exchanging a 50 percent interest in Asset Y for a 25 percent interest in Asset X, the wife probably will be treated as owning all of Asset X and the husband probably will be treated as owning all of Asset Y for Federal income tax purposes. The reason is that for income tax purposes (of which the grantor trust rules are a part), that exchange normally would be treated as a gift rather than as an exchange.[33] Hence, the spouse who contributed the property presumably will be treated as the sole grantor of that asset for income tax purposes.

To the extent of the property contributed by him or her, the surviving spouse will continue to be treated as the property owner for income tax purposes under the grantor trust rules to the extent the property or its income may be distributed to that spouse, without the consent of any adverse party,[34] after (as well as before) the other spouse dies. In addition, the surviving spouse may become to be treated as the owner under Code Sec. 678 of property contributed by the first spouse to die upon that spouse's death to the extent the survivor has a unilateral right to withdraw the property after the death of the first spouse to die.

Basis Adjustment At Death

One major tax advantage of creating an Alaska Community Property Trust is that it enables residents of non-community property states to take advantage of Sec. 1014(b)(6), which states that, upon the death of either spouse, the basis of the entire community property asset (and not just one-half of the asset) becomes equal to the value of the asset at the death of that spouse (or, if applicable, on the alternate valuation date determined under Code Sec. 2032). Sec. 1014(b)(6) does not distinguish between property that is held as community property under automatic (opt out) state laws or under elective (opt in) state laws. Furthermore, significant authority strongly suggests that community property under an opt in law, such as that adopted in Alaska, would be eligible for the basis adjustment at death under Sec. 1014(b)(6).[35]

However, it is appropriate to note that Code Sec. 1014(b)(6) only requires that the property is community property under the laws of any State (or possession or foreign country). If a non-Alaska married person or persons transfers property to an Alaska Community Property Trust, the property will be community property under the law of Alaska. Therefore, it seems literally to fall under the section.

Although it seems the asset which is community property under Alaska law is "community property ... under the community property laws of [a] State," it is possible the courts will hold otherwise.[36] Accordingly, married couples should elect into the Alaska community property system only if that form of ownership reflects their wishes regardless of whether the basis of the surviving spouse's interest in the property

will be determined on the death of the first spouse to die under Code Sec. 1014(b)(6). Moreover, because the Alaska Community Property law's treatment under that section is untested, it may be preferable for the couple, if it is seeking a step-up in basis for all of their wealth when the first spouse dies, to place all of the assets in the name of the spouse who will die first. Unfortunately, that is not always predictable well before that death occurs. Under Code Sec. 1014(e), no change in basis occurs under Code Sec. 1014(a) for property which was given to the decedent within a year of his or her death and is reacquired, directly or indirectly, by the donor.[37]

Conclusions

Under the Alaska Community Property Act, both married Alaskans and non-Alaskans may elect for some or all of their assets to be community property under Alaska law. To the extent the value of what one spouse converts to community property exceeds the value of what the other so converts, a gift will be made. That gift should usually qualify for the gift tax marital deduction unless the donee spouse is not a U.S. citizen and the gift, along with other gifts to the spouse, exceeds $100,000 in a calendar year.[38]

Although converting assets to community property that may provide the surviving spouse a significant income tax benefit when the first spouse dies, the change in the nature of assets may have other far-reaching effects.[39] Each spouse, in fact, will have a 50 percent ownership interest in the community property. That means, for example, that the community assets will be subject to a 50 percent division in the event of divorce (except to the extent the court having jurisdiction over the divorce may and does order a different division under applicable equitable distribution or similar laws) and each spouse will be permitted to dispose of his or her one-half of the assets when he or she dies except to the extent agreed otherwise. As with other community property systems, spouses hold other rights with respect to their community property which do not exist with respect to other property they own. As a consequence, it is likely that only couples in long-term stable marriages, and perhaps only those who have descendants only of their common union, will elect to have their assets treated as community property under Alaska law.

Even if neither the Internal Revenue Service nor the courts rule that Alaska community property is community property under Code Sec. 1014(b)(6), it seems likely it will be treated as a "50-50" tenancy in common between the spouses or, if elected under the Alaska Act to be "survivorship" community property as the Act permits,[40] as a joint tenancy with rights of survivorship between the spouses. If so, that probably means one-half of the asset will be included in the estate of the first spouse to die.[41]

Thus, the Alaska Community Property Act and the Alaska Community Property Trust offer a rare opportunity for clients whose marriages are extremely sound, to convert those assets that they wish into community property, with possibly significant income tax advantages upon the first spouse's death. Furthermore, these new laws present this opportunity with remarkably few downside risks. ◆

End Notes

1. In other community property states, marital property agreements frequently convert some or all of the parties' non-community property assets into community property, filling the gaps left by state law. However, those agreements differ materially from the Alaska Community Property Agreements because the former add some assets to an extant stack of community property, while the latter starts from a situation in which no assets are community property prior to the agreement. On the non-Alaska form of agreement, see, e.g, Rasmussen, "Divorce Provisions in Opt-In Marital Property Agreements," 67 *Wisc. Lawyer* 15 (Apr 1994).
2. Alaska Stat. 34.75.060(a) (Michie 1998).
3. The Uniform Marital Property Act was approved by the National Conference of Commissioners on Uniform State Laws in 1983. It is adopted in Wisconsin at Wisc. Stat Ann. Sec. 766.001-766.97.

4. Alaska Stat. 34.75.030 (Michie 1998).
5. *See, e.g.* Alaska Stat. 34.75.1101(e) (Michie 1998).
6. *See, e.g.*, Alaska Stat. 34.75.30(c) (Michie 1998).
7. *See, e.g.*, Alaska Stat. 34.75.040 and 34.75.909(d) (Michie 1998).
8. Alaska Stat. 34.75.010 (Michie 1998)
9. Alaska Stat. 34.75.050 (Michie 1998).
10. Alaska Stat. 25.24.160(d) (Michie 1998).
11. Alaska Stat. 13.12.208(d) (Michie 1998).
12. Alaska Stat. 34.75.090(g) and (h) (Michie 1998).
13. Alaska Stat. 34.75.060(b) (Michie 1998).
14. A similar requirement exists for an Alaska Community Property Agreement. *See*, Alaska Stat. 34.75.090(b) (Michie 1998).
15. See *Mullane v Central Hanover Bank & Trust Co* , 339 U.S. 306 (1950).
16. Restatement (2d) Conflicts of Law, Sec. 268.
17. *Hughes v. Commissioner of Internal Revenue*, 104 F.2d 144 (9th Cir. 1939); *Noble v. Rogan*, 49 F.Supp. 370 (S.D.Cal.1943); *Application of Eyre*, 133 N.Y.S.2d 511 (1954); *Matter of Grant-Suttie*, 205 Misc. 940, 129 N.Y.S.2d 572 (1954); *Matter of Carter*, 13 Misc.2d 1040, 178 N.Y.S.2d 569 (1958).
18. Restatement (2d) Conflicts of Law, Sec. 270.
19. Restatement (2d) Conflicts of Law, Sec. 276.
20. *Fuller v. McKim*, 187 Mich. 667, 154 N.W. 55 (1915); *Knox v. Jones*, 47 N.Y. 389 (1872); *Matter of Osborn*, 151 Misc. 52,270 N.Y.S. 616 (1934); *In re Sandford's Will*, 81 N.Y.S.2d 377 (1948); *In re Fagan's Estate*, 84 N.Y.S.2d 558 (1948); *In re Piazza's Estate*, 130 N.Y.S.2d 244 (1954); *In re Master's Will*, 136 N.Y.S.2d 907 (1954); *In re Warburg's Estate*, 237 N.Y.S.2d 557 (1963).
21. *Bowen v. Frank*, 179 Ark. 1004, 18 S.W.2d 1037 (1929); *Veach v. Veach*, 205 Ga. 185, 53 S.E.2d 98 (1949); *Peet v. Peet*, 229 Ill. 341, 82 N.E. 376 (1907); *Scofield v. Hadden*, 206 Iowa 597, 220 N.W. 1 (1928); *Thompson v Penn*, 149 Ky. 158, 148 S.W. 33 (1912); *In re Estate of Hencke*, 220 Minn. 414, 19 N.W.2d 718 (1945); *Minot v. Minot*, 17 App.Div. 521, 45 N.Y.S. 554 (1st Dep't 1897); *Matter of Good*, 304 N.Y. 110, 106 N.E.2d 36 (1952), *aff'g* 278 App.Div. 806, 927, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 278 App.Div. 806, 927, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 96 N.Y.S.2d 798 (1950).
22. *Greenwood v. Page*, 138 F.2d 921 (D.C.Cir.1943); *Guerard v. Guerard*, 73 Ga. 506 (1884); *Brown v. Ramsey*, 74 Ga. 210 (1884) (*inter vivos trust*); *Keith v. Eaton*, 58 Kan. 732, 51 P. 271 (1897); *Houghton v. Hughes*, 108 Me. 233, 79 A. 909 (1911); *Martin v. Eslick*, 229 Miss. 234, 90 So.2d 635 (1956); *Zombro v. Moffett*, 329 Mo. 137, 44 S.W.2d 149 (1931); *Applegate v. Brown*, 344 S.W.2d 13 (Mo. 1961); *Cary v. Carman*, 116 Misc. 463, 190 N.Y.S. 193 (1921)
23. As a general rule, a terminable interest does not qualify for the marital deduction. Code Sec. 2523(b)(1). Certain terminable interests may so qualify. *See, e.g.*, Code Sec. 2523(e), 2523(f).
24. As a general rule, no marital deduction is allowed if the transferor's spouse is not a citizen of the United States. Code Sec. 2523(i).
25. *See, e.g.*, Reg. Sec. 20.2056(c)-2(b)(1)(i). Cf. Rev. Rul. 72-33, 1972-2 C.B. 530.
26. Code Sec. 2523(e).
27. Reg. Sec. 25.2523(e)-1(f)(8). See, also, Reg. Sec. 25.2523(f)-1(f), *Example 2* and *Example 3*.
28. *See, generally*, Reg. Sec. 25.2511-2.
29. Code Secs. 672(e), 673, 676 and 677. The trust may be a grantor trust for income tax purposes for other reasons as well. *See*, Code Sec. 674 (control of beneficial interests in the trust) and 675 (administrative powers).
30. *See, generally*, Blattmachr & Sembler, "Crummey Powers and Income Taxation", *The Chase Review* (July 1995).
31. *See* PLR 9321050, essentially reversing PLR 9026036.
32. As mentioned above, the trust may be a grantor trust for other or additional reasons.
33. Code Sec. 1041
34. As mentioned above, it may be a grantor trust for other or additional reasons.
35. On the validity of a consensual community property law for this purpose, see *Comm'r v Harmon*, 323 US 44 (1944); and *McCollum v United States*, 58-2 USTC ¶ 9957 (USDC ND Ok. 1958); and also see Rev. Rul 77-359, 1977-2 C.B. 24.
36. The IRS seems to accept that separate property converted to community property by agreement is community property for Federal income tax purposes, at least under an opt-out system. *See* Rev. Rul. 77-359, *supra*.
37. If, as suggested by Rev. Rul. 77-359, *supra*, the transmutation of separate to community property is a gift, Code. Sec. 1014(e) may control notwithstanding Code Sec. 1014(b)(6).
38. *See*, Code Sec. 2523(i)(2).
39. Caution should be exercised in converting certain assets to community property, for instance, if one spouse owns a policy of insurance on the life of the other, the conversion presumably will cause the insured spouse to hold an incident of ownership in the policy potentially causing proceeds paid at death to be included in his or her estate. *Cf. Estate of Cervon v Commissioner*, 111 F.3d 1252 (5th Cir 1997). It may be inappropriate also for one spouse to convert qualified plan and similar interests into community property. Generally, such interests represent income in respect of a decedent under Code Sec. 691(a) which, under Code Sec. 1014(c), do not receive the income tax-free step-up in basis under Code Sec. 1014(a), but complications of such ownership can arise in the non-participant spouse dies first.
40. *See*, Alaska Stat. 34.75.110(c) (Michie 1998).
41. *See, e.g., Harvey v. United States*, 185 F.2d 463 (7th Cir. 1950).