



Volume 2012 - October

## Sales to Intentional Grantor Trusts

Sales to Intentional Grantor Trusts (IGTs) (sometimes also referred to as "intentionally defective grantor trusts") are an effective estate planning strategy to remove assets from the estate of the senior generation while preserving an income stream from the sale. An IGT is an irrevocable trust that removes assets from the grantor's taxable estate. This strategy "freezes" the estate of the senior generation by converting appreciating assets into a non-appreciating asset with a fixed yield. The strategy takes advantage of the differences between the estate tax inclusion rules and the separate grantor trust income rules under the Internal Revenue Code ("Code").

### A. Description

The senior generation (grantor) creates an irrevocable IGT that is treated as a grantor trust for income tax purposes. As a result, the grantor will be treated as owning the IGT assets and the trust's income will be taxed to him.

Second, the grantor sells assets (a business, real estate, marketable securities or other appreciating asset) to be removed from his estate to the IGT. The sale is customarily structured as an installment sale. The grantor receives an interest bearing promissory note payable by the IGT. The grantor, because he is treated as the owner of the assets of the IGT, is not taxed on the sale (because he is considered for income tax purposes as having made a sale to himself). The usual disadvantage of gain recognition on a sale is eliminated.

The grantor is paid principal installments and interest under the note, thus preserving an income stream from the sale of the asset. The terms of repayment under the note may be tailored to the needs of the grantor. The grantor is, however, taxed on all of the IGT's income. The IGT may reimburse the grantor for the income tax paid, provided the reimbursement is discretionary by an independent trustee and *not* required by the terms of the trust.

If the grantor outlives the term of the note, all of the assets are removed from his taxable estate. If he does not outlive the note term, the unpaid balance is included in his estate. If appropriate, the note

OUR FIRM

OUR ATTORNEYS

LATEST NEWS

CONTACT US

**Butler, Snow, O'Mara, Stevens & Cannada, PLLC, is a full-service law firm with more than 220 attorneys representing local, regional, national and international clients from offices in Atlanta, Georgia; Montgomery and Birmingham, Alabama; Greater Jackson, Gulfport, Bay St. Louis and Oxford, Mississippi; Nashville and Memphis, Tennessee; Baton Rouge and New Orleans, Louisiana; Fort Washington and Bethlehem, Pennsylvania. For more information, visit [www.butlersnow.com](http://www.butlersnow.com).**

**Copyright © 2012 Butler, Snow, O'Mara, Stevens & Cannada, PLLC. All Rights Reserved.**

PLANNING NOTES is published by the Taxation Group of Butler Snow on selected issues. The content of this publication is intended for general informational purposes only. It is not legal advice, does not form or constitute an attorney-client relationship with any recipient, and should not be acted upon without first seeking legal counsel. For further information or specific questions relating to this publication, please contact your primary Butler Snow attorney. The invitation to contact firm attorneys should not be construed as a statement of availability to perform legal services in any jurisdiction in which such attorneys are not permitted to practice. No representation is made that the quality of the legal services to be performed is greater than the quality

could be self-cancelling at the death of the grantor, to avoid inclusion of the unpaid balance in the grantor's estate.

**B. Advantages**

There are numerous advantages of a sale to an IGT strategy:

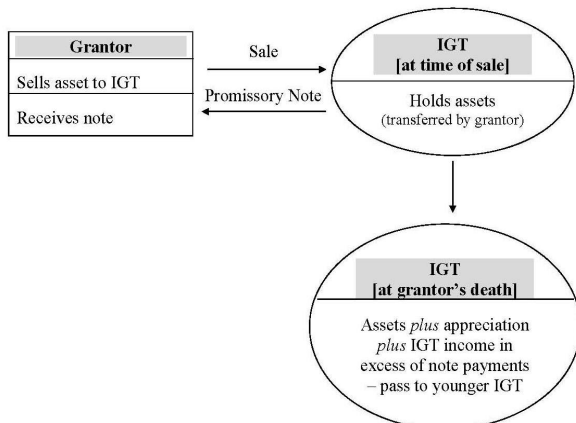
- a. No gain is recognized by the grantor on the sale of appreciated assets to the trust
- b. If the IGT realizes more income than the payment obligations under the note, the excess income is removed from the grantor's estate (as well as the income tax paid by the grantor on the IGT's income)
- c. The assets sold to the IGT and all future appreciation is removed from the grantor's estate
- d. The income tax is paid by the grantor on trust income is not an additional gift for tax purposes
- e. The grantor need not outlive the term of the promissory note to obtain estate planning benefits [unlike a grantor retained annuity trust (GRAT) where assets are included in the grantor's estate unless he outlives the GRAT term];
- f. An IGT (because it is a grantor trust) may own stock of a Subchapter "S" corporation, making the sale of Subchapter "S" stock attractive (other types of trusts may not own Subchapter "S" stock without meeting certain requirements)

**C. Disadvantages**

The grantor should make an initial gift of "seed" assets (cash or marketable securities) at least two months in advance of the sale, in an amount of at least ten percent (10%) of the purchase price, to establish the capability of the IGT to make payments under the note and that it constitutes a bona fide debt.

The gift of "seed" assets to the IGT will be a taxable gift and utilize a portion of the grantor's lifetime gift tax exemption.

**D. Diagram of a Sale to an IGT**



of legal services performed by other lawyers.

IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations, you are hereby advised that any federal tax advice contained in this communication or any attachment does not constitute a formal tax opinion. Accordingly, any federal tax advice contained in this communication or any attachment is not intended, or written to be used, and cannot be used, by any recipient for the purpose of avoiding penalties that may be asserted by the Internal Revenue Service.

FREE BACKGROUND INFORMATION IS AVAILABLE UPON REQUEST.

Advertising Material

- No gain to grantor on sale
- Grantor receives note payments tax-free
- *May be* reimbursed by IGT for income taxes owed on IGT income

#### Estate Tax Consequences

- At grantor's death, asset sold to IGT *not* includable in his estate
- If a self-cancelling note used, nothing includable in grantor's estate

*Butler Snow will continue to keep you informed of new and changing regulations that could affect your business.* If you have questions regarding this Planning Notes newsletter, please call your [primary contact at Butler Snow](#).

As an attorney or employee of Butler Snow, you are a member of the Prima Cura distribution list.

[Unsubscribe](#) jennifer.odonnell@butlersnow.com from this list.

Our mailing address is:  
Butler, Snow, O'Mara, Stevens and Cannada, PLLC  
1020 Highland Colony Pkwy  
Suite 1400  
Ridgeland, MS 39157

[Add us to your address book](#)

Copyright (C) 2012 Butler, Snow, O'Mara, Stevens and Cannada, PLLC All rights reserved.

[Forward](#) this email to a friend

This ad authorized by Donald Clark, Jr. Chairman, 1020 Highland Colony Parkway, Suite 1400, Ridgeland MS 39157

Advertising Material

