

SB

163

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 4/22/99

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 163

"An Act relating to a trustee's duties to inform and account to beneficiaries; relating to the revocation, modification, termination, reformation, construction, and trustees of trusts; and relating to transfer restrictions in trusts."

and recommends:

- be replaced with S CS SB 163 LS0486W (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>			
		<i>[Signature]</i>	✓		
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

Chairman,
Judiciary Committee

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Senator Robin L. Taylor

SPONSOR STATEMENT

SB 163

An Act relating to a trustee's duties to inform and account to beneficiaries; relating to the revocation, modification, termination, reformation, construction, and trustees of trusts; and providing for an effective date.

This legislation defines a current beneficiary as a person who receives a mandatory distribution of income or principal from a trust. Current law does not define "current beneficiary". Some trusts name as many as dozens of discretionary beneficiaries who may not be entitled to receive any income or principal for years. Under current law the trustees of such trusts do not know whether they have to notify these discretionary beneficiaries. The new legislation would clarify that the trustee only has to notify a beneficiary who is entitled to a mandatory distribution of income or principal from the trust.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 163

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title " ... relating to a trustee's duties to inform and account to beneficiaries; ... revocation, modification ... of trusts ..."	BRU	Civil Division
Sponsor Senate Judiciary Committee by Request	Component	Commercial
Requestor Senate Judiciary Committee	Component Serial No.	2211

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 163 requires a trustee to give current beneficiaries notice of the registration of a trust and to keep the beneficiaries informed about its administration. Under this bill, trusts are presumed revocable unless expressly made irrevocable. It further defines how trusts can be revoked, whether they are revocable or not, modified and reformed to correct mistakes not intended by the person creating the trust.

This bill will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 4/27/99, 9:08 AM
 Date 4/27/99

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Explanation of Changes to Senate Bill 163

Proposed changes to the current statutory requirement that trustees must notify all beneficiaries...

The reason for the original proposal to modify the trustee's duty to notify current beneficiaries and contingent beneficiaries was due to two factors:

1. There was no definition of current beneficiaries in the statute.
2. We wanted to give the settlor (the creator of a trust) flexibility and privacy to limit the notification to some beneficiaries if they felt it was appropriate.

Based upon issues raised and certain concerns, it is felt that the original draft of the statute may have gone too far and may have caused a broad range of beneficiaries not to receive proper notification. Therefore, we have limited the scope of the proposed change.

The revised language in SB 163 allows a settlor in writing to exempt a trustee of the notification requirement only to a beneficiary who was not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis. If a beneficiary is (1) entitled to a distribution or (2) does receive a distribution, then the trustee would still be required to provide notice and accountings. The exemption period may not exceed the shorter of the settlor's lifetime or a judicial determination of the settlor's incapacity.

This change will allow settlors the flexibility and privacy of not being required to inform their young children that they are a beneficiary of trust. Many settlors have expressed concern that they may not want the beneficiaries to know they have a future interest in a trust. For example, the settlor is afraid that knowledge of the trust by the beneficiary might prevent them from conducting a productive lifestyle. In addition this allows Alaska to provide the same flexibility as other states that are competing with Alaska for trust business.

Again it should be noted that this restriction only applies to beneficiaries who are not entitled to a mandatory distribution and can only last for the settlor's lifetime or when the settlor has become judicially incompetent. If the creator of the trust (settlor) sets forth the waiver of notification in writing, the trustee will not notify the beneficiary until the time set forth above. This amendment is a default statute so if the settlor does not provide the written waiver, the current standard of notice to all current beneficiaries still applies.

Summary

IN ESTATE OF GERMAN 85-1 USTC ¶ 13,610 (CCH) (CT. Cl. 1985), MRS. GERMAN WAS DOMICILED IN FLORIDA WHEN SHE CREATED THE TRUST. MARYLAND LAW GOVERNED THE TRUST - ONE OF THE TRUSTEES RESIDED THERE. MRS. GERMAN WAS NOT DOMICILED IN MARYLAND WHEN SHE DIED. YET, CLEARLY, THE COURT HELD CREDITORS' RIGHTS UNDER MARYLAND LAW CONTROLLED THE ESTATE TAX INCLUSION ISSUE.

Summary

ESTATE OF ESTELLE E. GERMAN, 7 CL. CT. 641

"Internal Revenue Code § 2036 includes in the gross estate the value of any interest in property of which a decedent has at any time made a transfer under which he has retained for his life the possession or enjoyment of, or the right to income from, the property, or the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom."

* * *

"The question presented is whether the decedent divested herself of her interest in property in 1969 when she transferred such property to a trust with a proviso that the trustee might, in their absolute discretion, pay any or all of the income or principal to decedent at any time during her lifetime, if they received the written consent of the person who was entitled to receive the principal and accumulated income of the trust after her death, or whether she continued to enjoy the right to the income or principal of the trust up to the date of her death, because under Maryland law if she chose to incur any debts her creditors could still attach or levy upon the trust assets to collect them."

* * *

"During the grantor's life the trustees had the power at anytime in their absolute and uncontrolled discretion to pay to or apply for the benefit of the grantor all or part of the net income and principal as the trustees should determine, in their absolute and uncontrolled discretion, for any reason whatsoever, including the termination of the trust, subject only to the condition

277-1700

that the trustees receive the written consent thereto of the respective beneficiary of the particular trust, Frederick or Arthur, individually."

* * *

"Thus, the narrow issue to be decided herein is as to the extent of decedent's creditors' rights with respect to the trust income and assets under Maryland law."

* * *

"Defendant [IRS] has not established that under Maryland law creditors of the settlor could have reached the trust income or principal of her discretionary trust up to the time of her death."

Estate of Estelle E. German, Plaintiff v. The United States, Defendant.
U.S. Claims Court, No. '34-81T, 3/26/85.

This is a suit for refund of estate taxes. Internal Revenue Code § 2036 includes in the gross estate the value of any interest in property of which a decedent has at any time made a transfer under which he has retained for his life the possession or enjoyment of, or the right to income from, the property, or the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom. Section 2038 includes in the gross estate the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power by the decedent alone or by the decedent in conjunction with any other person, to alter, amend, revoke, or terminate. The question presented is whether the decedent divested herself of her interest in property in 1969 when she transferred such property to a trust with a proviso that the trustees might, in their absolute discretion, pay any or all of the income or principal to decedent at any time during her lifetime, if they received the written consent of the person who was entitled to receive the principal and accumulated income of the trust after her death, or, whether she continued to enjoy the right to the income or principal of the trust up to the date of her death, because under Maryland law if she chose to incur any debts her creditors could still attach or levy upon the trust assets to collect them.

Statement

On July 31, 1969, Estelle E. German (decedent) made six separate transfers of property to Frederick A. German and Arthur W. German, her sons, as trustees jointly. Each trust agreement provided that the trustees shall accumulate the net income of the trust, and that at the end of each year should add the accumulated net income to the principal of the trust. Three of the trusts were for the benefit of Frederick German and three for the benefit of Arthur German. Each trust provided that after decedent's death the trustees, in their sole and absolute discretion, were to accumulate for, pay to or apply for the benefit of the respective beneficiary all or part of the net income and principal of the trust, and, upon the death of the beneficiary, to such members of Frederick's or Arthur's family as each should appoint. Notwithstanding the foregoing, during the grantor's life the trustees had the power at anytime in their absolute and uncontrolled discretion to pay to or apply for the benefit of the grantor all or part of the net income and principal as the trustees should determine, in their absolute and uncontrolled discretion, for any reason whatsoever, including the termination of the trust, subject only to the condition that the trustees receive the written consent thereto of the respective beneficiary of the particular trust, Frederick or Arthur, individually. (FNI)

The decedent filed a gift tax return for 1969 which reflected that she had made no taxable gift during that year. She died on November 21, 1970. Her estate tax return, filed August 11, 1972, likewise failed to include in the estate the value of the assets transferred in 1969 to the six trusts.

Subsequently, there was assessed against the estate a \$355,959 deficiency in federal estate tax, plus interest thereon, which amounts were paid on various dates in 1973 and 1974.

A timely claim for refund was filed on December 17, 1975, which was denied on December 28, 1979, and this suit was timely filed on December 28, 1981.

Decision

1. *On liability for estate tax.*

[1] The government's theory is based upon the rationale of *Outwin v. Commissioner*, 76 T.C. 153 (1981) (acq., 1981-2 C.B. 2), a gift tax case. There the taxpayer had created four irrevocable trusts, which were to accumulate the income during his lifetime. After his death, if his wife survived him she was entitled to mandatory distributions of the trust income annually, and to distribution of the corpus to her only in the absolute and uncontrolled discretion of the trustee. In addition, she was given a special testamentary power of appointment over the corpus. Notwithstanding the foregoing, the trustees were given the power at any time during the life of the grantor, to pay to, or apply for the benefit of, the grantor, such part or parts of the income and principal as the trustees should determine in their absolute and uncontrolled discretion, for any reason whatsoever, notwithstanding that such payments might result in the termination of the trust; but such distributions by the trustees required the prior written consent of the grantor's spouse.

The Commissioner determined that in transferring property to such trusts Mr. Outwin had made a completed taxable gift, while the taxpayer contended to the contrary. The Tax Court overruled the Commissioner on the ground that the gift was not completed because the donor retained dominion and control over the property transferred. The court stated that "[w]here the trust agreement specifies * * * that distributions to the settlor are to be made in the absolute discretion of the trustees, with no enforceable standard provided, the transfer is generally held to be complete for tax purposes." *Id.* at 162. However, "[a] different result obtains * * * where state law permits creditors of the settlor-beneficiary to pierce the trusts for satisfaction of claims." *Id.* This result follows, the court said, from the fact that if under state law the creditors of a settlor-beneficiary of a discretionary trust may reach for satisfaction of claims the maximum amount which the trustee may pay to the settlor or apply for her benefit, the taxpayer may at any time "obtain the economic benefit of the trust income simply by borrowing and then forcing [his] creditors to look to [his] interest in the trust income for a source of repayment." *Id.* Because it found that the settlor-beneficiary's creditors did have such a right under Massachusetts law, which was applicable to the *Outwin* trust, the court held that the gift was incomplete to the extent of the value of the settlor-beneficiary's life estate. *Accord Commissioner v. Vander Weele*, 254 F.2d 895 (6th Cir.1958) (applying Michigan law); *Paolozzi v. Commissioner*, 23 T.C. 182 (1954) (also applying Massachusetts law); and *Rev.Rul. 76-103*, 1976-1 C.B. 293. *But see Herzog v. Commissioner*, 116 F.2d 591 (2d Cir.1941), and *In Re Uhl's Estate*, 241 F.2d 867 (7th Cir.1957), reaching contrary results under New York and Indiana law, respectively.

Defendant claims that under Maryland law, which is applicable to the trusts herein, decedent's creditors could have reached the principal and interest of such trusts until the time of her death, and, accordingly, she had not disposed of her right to possession and enjoyment of the property and the transfer took effect upon her death. On the other hand, plaintiff maintains that Maryland law did not give decedent's creditors such right, and, accordingly, her gifts were completed at the time she transferred the assets in trust and they were no longer subject to estate tax. Thus, the narrow issue to be decided herein is as to the extent of decedent's creditors' rights with respect to the trust income and assets under Maryland law.

The authority upon which defendant relies primarily for Maryland law is the decision in *Warner v. Rice*, 66 Md. 436, 8 A. 84 (1887). That case presented the question as to whether or not the income of a debtor, from certain property embraced in a deed of

trust made by himself and his wife prior to incurring the debts, was liable to attachment or execution in a suit for his debts. The deed was made "[i]n trust for the use and benefit of said George Warner and his immediate family, free from liability for any of his debts, contracts, or engagement; and when, if so by said trustees found requisite, by him being proper, to apply the uses, rents, income, and profits to the support and maintenance of said George and his said family during his, said George's, life, and, after his decease, the same to go as he by last will may have directed, or, in case of his decease intestate, the same to go according to law under the existing statutory provisions of the law of Maryland." *Id.* 8 A. at 85. The court held that Mr. Warner's creditors could reach the income of this trust because "a beneficial legal estate, in fee or for life, cannot be conveyed or devised to a person with a provision that it shall not be alienated, or that it shall not be subject to the debts of the legal owner" (*id.*); that "equitable estates cannot be effectually created with a proviso against alienation, or that they shall not be liable to the debts of the *cestui que trust* * * * and, generally, whenever property is subject to alienation by the owner it is subject to his debts" (*id.* at 85-86); and because, in this case--

The object of the deed of trust was not to destroy or divest himself of his right of property, but simply to place a legal estate therein in a trustee, as, perhaps, a guard against improvident management. But the equitable estate remains in George Warner during his life, with full power of disposition by will, and, in default of will, the property devolves on his heirs and representatives at his death, when the trust will terminate. It is only during his life that the rents, profits, and income from the property are directed to be applied to the support of himself and his family, when and as the trustee may deem proper. Full and complete control is retained in the *cestuis que trust* over the investments, and change of investments; and they declare, moreover, that they are entitled and reserve the right to collect, receive, and have, each for her or himself, the rents, issues, and profits of his or her share, conformably with the trust declared. As we have seen, there is no limitation over or cesser of George Warner's equitable life-estate, or his interest in the rents and profits of the property, upon seizure of the same by his creditors. (*Id.* at 86.)

In response to the argument by Warner that the trustee had discretion as to whether or not he would pay over the rents and profits to Warner, the court noted that if the trustee did not pay them over, he had no authority to accumulate them for any other purpose; they would still belong to the estate of George Warner and the trustee would have to account to his executor or administrator for such arrearage. *Id.* Accordingly, "[t]he discretion given the trustee, if the terms of the direction can be construed into a power to exercise a discretion at all, can only apply to the manner of the application, and not to any power to withhold or divert the rents and profits, and apply them to any other purpose." *Id.*

The instant case is distinguishable from *Warner* in several respects: First, if the trustee here, in the exercise of his discretion, did not distribute the income or principal to Mrs. German, it would go to the specified remaindermen; whereas in *Warner* the undistributed trust income would be accumulated for the settlor's benefit and the corpus distributed pursuant to his will. Second, unlike *Warner*, before the settlor here could receive any distribution from the trustees, the consent of a beneficiary having an adverse interest had to be obtained. Third, the trusts here, but not in *Warner*, made dispositions of the property upon the death of the settlor and were not intended solely to shield her assets from her creditors.

In Mercantile Trust Co. v. Bergdorf Goodman & Co. 167 Md. 158, 173 A. 31 (1934).

the Maryland Court of Appeals confirmed that where there is no proof of fraud the rights of attaching creditors to property in a trust created by a debtor depend upon whether the property which is not distributed to the settlor-beneficiary or according to his direction goes back to the settlor or to a third-party at his death. There the settlor had created an inter vivos trust, retaining a life estate in the trust assets and a power of appointment by will, which, if not exercised, would result in the property going to her then living issue or next of kin. The Maryland court held that although the creditors could attach the settlor's income from the life estate, in the absence of a fraudulent conveyance they could not reach the corpus of the trust, because, "there was an immediate vesting of the remainder in the next of kin of the settlor", and "[w]ith the ownership of the corpus in the remaindermen, even though the possession may be delayed or defeated by the will of the donor, * * * the corpus cannot be attached to satisfy the creditors of the settlor." (*Id.* at 165-66, 173 A. at 34-35.) *Accord, United States v. Baldwin*, 283 Md. 586, 391 A.2d 844 (1978). If the unexercised right of the settlor in *Mercantile Trust Co.* and *Baldwin* to dispose of the corpus by will was not sufficient to render the trust property subject to execution by creditors because of the interests of the remaindermen in such property in default of appointment, for the same reason it would appear that the unexercised discretion of the trustees of Mrs. German's trust with respect to both principal and income would not render either vulnerable to Mrs. German's creditors under Maryland law.

Apart from *Warner v. Rice*, defendant has not cited any Maryland decision in which creditors were able to reach income or corpus which could be distributed to the settlor of a trust, not as a matter of right, but in the uncontrolled discretion of the trustee.

Equally important, defendant has cited no decision, either in the Maryland courts or elsewhere, where the creditor was held entitled to attach trust property where the trustee's discretion could only be exercised with the prior consent of those who would receive the property in default of such exercise. In *Outwin*, the Tax Court likewise confessed that it had been unable to find any authorities in any state which addressed the precise issue. *Outwin*, 76 T.C. at 165. However, it resolved that problem by reasoning that in view of the strong public policy of the Massachusetts courts against persons placing property in trust for their own benefit while at the same time insulating such property from the claims of creditors the veto power of a spouse would not be a barrier to such creditors under Massachusetts law, because it assumed (1) that (in the absence of divorce) the possibility that the spouse would veto a disbursement by the trustee to her husband was remote, and (2) the fact that the husband might reciprocate by veto of disbursements to the wife under her similar trust would tend to further discourage her veto. *Id.* at 166-67. This court finds no such strong public policy in the Maryland courts where there is a remainder interest. It finds no assumption by the Maryland courts that the wife may be deemed merely the husband's alter ego for purposes of insulating property from a settlor's creditors in a non-fraudulent conveyance transaction. Indeed, *Watterson v. Edgerly*, 40 Md.App. 230, 388 A.2d 934 (1978), appears to be to the contrary. And the instant case does not involve reciprocal husband and wife trusts.

Thus, defendant has not established that under Maryland law creditors of the settlor could have reached the trust income or principal of her discretionary trusts up to the time of her death.

The most satisfactory resolution of this question of state law would have been by certification to the Maryland Court of Appeals. See *United States v. Baldwin*, 283 Md. 586, 391 A.2d 844 (1978). Unfortunately, while the Uniform Certification of Questions of Law Act, Md. [Courts and Judicial Proceedings] Code Ann. §§ 12-601--12-609 (1984), grants jurisdiction to the Maryland Court of Appeals to answer questions of law

certified to it by a United States District Court or United States Court of Appeals, it does not allow certification from this court. Accordingly, it is the duty of this court to approximate the law of the state from decisions of its highest court as best it can. See *Commissioner v. Estate of Bosch*, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967).

2. *On Equitable Estoppel.*

As noted previously, Estelle E. German made the transfers in trust on July 31, 1969, but in a gift tax return for that year asserted that they were not taxable because they did not constitute completed gifts. On November 21, 1970, decedent died. However, the estate tax return filed by her estate likewise failed to include any amount for the 1969 transfers to the trusts, stating merely that decedent had made six irrevocable transfers in 1969 which had been excluded from the gross estate.

Defendant now asserts, on the basis of an affidavit from an estate and gift tax examiner that the examiner, upon audit of both returns, had discussions with plaintiff's representative; that the latter acknowledged that the value of the 1969 transfers was includable in either the gift or the estate tax return; and that he then offered to include the trust property in the gross estate for estate tax purposes if the examiner would treat the transfers as incomplete for gift tax purposes. According to the examiner, he accepted the offer, and in reliance thereon the Commissioner of Internal Revenue assessed plaintiff \$355,959 in estate tax but nothing in gift tax. Nevertheless, less than 6 months after the period of limitations on assessing the gift tax expired, plaintiff filed a claim for refund of the estate tax paid pursuant to the assessment, and upon its denial filed this suit.

The affidavit of plaintiff's representative denies the examiner's allegations.

Plaintiff now concedes that the gift tax was properly due and that defendant is entitled to offset the estate tax overpayment by the gift tax deficiency. However, such concession does not satisfy defendant. It asserts that the applicable estate tax is \$66,000 more than the gift tax on the same transfers, and that, even if this court finds that only the gift tax was due, plaintiff is equitably estopped by the conduct of its representative from recovering any of the estate tax.

It is unnecessary to decide the disputed allegations, because, even if defendant's affiant's statements are true, defendant's claim for additional tax cannot be supported on the theory of equitable estoppel.

[2] Equitable estoppel is ordinarily invoked when because of representations by the taxpayer, relied on by the government, the latter allows the period of limitations on assessment of a tax properly due to pass without a statutory notice of deficiency. But it is an equitable doctrine and requires misrepresentations of fact, reliance thereon, and detriment to the government which cannot otherwise be corrected. *Glazer Steel Corp. v. United States*, 181 Ct.Cl. 1063, 1077, 388 F.2d 990, 998 (1967); *Crosley Corp. v. United States*, 229 F.2d 376, 381 (6th Cir.1956); *Commissioner v. Mellon*, 184 F.2d 157, 160 (3d Cir.1950); *Ross v. Commissioner*, 169 F.2d 483, 496 (1st Cir.1948); and see also *Hess v. United States*, 210 Ct.Cl. 483, 495, 537 F.2d 457, 463 (1976), cert. denied, 430 U.S. 931, 97 S.Ct. 1551, 51 L.Ed.2d 775 (1977); *Oak Woods Cemetery Association v. United States*, 345 F.2d 361, 363 (7th Cir.1965); *Ford v. United States*, 149 Ct.Cl. 558, 566, 276 F.2d 17, 21 (1960).

[3] None of these prerequisites may be found here. There is no allegation of misrepresentation as to the pertinent facts, as the only substantive dispute between the parties is as to the state law. There is no valid reason why defendant should have relied upon plaintiff's allegations as to the state law, as it is equally accessible to both parties.

Defendant has incurred no substantial detriment, as plaintiff concedes that defendant is entitled to an offset for gift tax which was properly due.

[4] As the phrase implies, equitable estoppel may be applied only to correct an inequity. *Ross*, 169 F.2d at 494. It has [*647] already been determined herein that the estate tax is not applicable, and accordingly the applicable tax is the lesser gift tax. There is no equity in defendant's claim that equitable estoppel militates in favor of collecting more than was originally due absent the bar of the statute of limitations. As noted by the Supreme Court in *Dickerson v. Colgrove*, 100 U.S. 578, 580-81, 25 L.Ed. 618 (1879), equitable estoppel "is available only for protection, and cannot be used as a weapon of assault. It accomplishes that which ought to be done between man and man, and is not permitted to go beyond this limit."

Conclusion

Defendant's motion for summary judgment is denied. Service of defendant's pretrial submission is now due on April 25, 1985.

FN1. The trustees were also required to obtain the written consent of a trust committee, comprised of individuals who were not beneficiaries of the trusts, before any distribution of trust assets or income could be made.

Summary
Private Letter Ruling 9332006 (not precedent)

"The Settlers recently created an irrevocable trust (the "Trust") under the laws of Country X and contributed nominal consideration to fund it. Relevant trust provisions include the following. Trust beneficiaries include the Settlers, Beneficiary A (a living parent of the Settlers and a United States citizen), and the Settlers' living and future heirs. Either (1) the Trustee (an independent Country X corporation) with the consent of the Protector (see below), or (2) Beneficiary A, may direct trust income or principal to be appointed to or for the benefit of any beneficiary, provided, however, that only the Protector may make any such appointment for the benefit of a Beneficiary A or of either Settlor."

* * *

"It has been represented that under the laws of Country X, neither a beneficiary nor any creditor of any beneficiary, including the Settlers, may compel the trustee to distribute the Trust's assets to or for their benefit at any time during the trust term; that transfers by the Settlers of interest in the Partnership to the Trust are not in any way liable to be set aside under any applicable fraudulent conveyance or other law, domestic or foreign."

* * *

"Will any of the interests in the Partnership transferred to the Trust by the Settlers be includible in their gross estate under sections 2033, 2036, 2037, or 2038? Section 2036(a) provides that a decedent's gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) by trust or otherwise, under which he has retained, for his life or for any period not ascertainable without reference to his death or any period that does not in fact end before his death, (1) the possession or enjoyment of or the right to income from the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom."

* * *

"Furthermore, based on the taxpayer representations regarding Country X law, the property transferred to the Trust will not be included in the gross estate of either Settlor under section 2033, since the gift to the Trust will be complete and neither Settlor will have the right to compel a distribution from the trust. Similarly, interests in the Partnership transferred to the Trust by either Settlor will not be included in that Settlor's gross estate under sections 2036, 2037, or 2038, since under the facts presented, the Trustee's

discretion to make distributions to a Settlor is not a retained interest or power for purposes of those sections. See Rev. Rul. 76-103, cited above."

PLR 9332006, IRC Sec. 2031

PLR 9332006, IRC Sec. 2031

Section 2031

Headnote

TRANSFERRED PARTNERSHIP INTEREST NOT INCLUDABLE IN GROSS ESTATE.

Two siblings created an irrevocable trust in a foreign country. The trust beneficiaries included the siblings, a living parent, and their future heirs. The laws of the country allow for a protector of the trust. The protector was a U.S. citizen, and the trust provided that neither the protector nor his estate could be a beneficiary. The trust further provided that the protector was neither a person nor entity related to or under the control of the settlors; that the beneficiaries could not compel distributions from the trust, and that the trust was a foreign trust for purposes of section 7701(a)(31). The settlors funded the trust with fractions of directly held partnership interests.

The Service has ruled that the partnership interests transferred to the trust were completed gifts and, thus, subject to gift tax, finding that the settlors parted with dominion and control of the property on the transfer. The Service further ruled that the partnership interests would not be includable in the settlors' estates, finding that the trustee's discretion to make distributions to the settlors was not a retained interest or power.

The Service also ruled that the trust was a grantor trust and, thus, the settlor's were required to take into account the appropriate portion of the trust's income, deductions, and credits when computing their tax liability. Finally, the Service ruled that any portion of the trust that was treated as owned by a settlor would cease to be treated so on that settlor's death.

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Geographic Identifier: United States

Index Term: estate tax, gross estate

Full Text

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2038 00-00, 2511.00-00

Date: August 20, 1992

Refer Reply to: CC:INTL:Br4-0239-92

This is in response to a letter dated February 12, 1992 in which certain rulings were sought in connection with the income, excise, gift, and estate tax consequences of the establishment and funding of a trust organized under the laws of Country X. Additional information and representations were submitted in letters dated March 24, 1992, March 31, 1992, and April 20, 1992.

The rulings contained in this letter are predicated on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for the rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

The information submitted is substantially as follows. Settlor A and Settlor B (collectively, the "Settlers"; individually, a "Settlor") are siblings. Both are United States citizens. Each Settlor owns a Percentage A interest in Corporation A, a domestic corporation. Corporation A owns all of the voting common stock of Corporation B, also a domestic corporation. That voting common stock represents Percentage B of the value of Corporation B. The balance of Corporation B's stock, represented by non-voting common shares, is owned by the Partnership, a domestic limited partnership. The Partnership conducts no active business. Each Settlor now owns directly Percentage C of the interests in the Partnership; together, those interests comprise all of the Partnership's limited partnership interests. Corporation A, which owns a Percentage B general partnership interest in the Partnership, is its sole general partner.

The Settlers recently created an irrevocable trust (the "Trust") under the laws of Country X and contributed nominal consideration to fund it. (The Trust was subsequently amended; the terms of the trust described herein are as amended.) Relevant trust provisions include the following. Trust beneficiaries include the Settlers, Beneficiary A (a living parent of the Settlers and a United States citizen), and the Settlers' living and future heirs. Either (1) the Trustee (an independent Country X corporation) with the consent of the Protector (see below), or (2) Beneficiary A, may direct trust income or principal to be appointed to or for the benefit of any beneficiary, provided, however, that only the Protector may make any such appointment for the benefit of Beneficiary A or of either Settlor. The term of the trust is 100 years, unless it is terminated earlier in the sole discretion of the Trustee. Upon termination, the Trustee may, in its discretion, appoint the trust's assets to any or all of the then beneficiaries, or, if there are no then living beneficiaries, for charitable purposes. Each Settlor is precluded from becoming a successor trustee.

Under the laws of Country X, a trust may include provisions pertaining to the rights and obligations of a Protector. The Trust names a United States citizen as Protector and makes provision for the appointment of successor Protectors. The Trust further provides that the Protector may appoint new or additional trustees (but not, as noted above, a Settlor), and that neither a Protector nor his estate is a permissible trust beneficiary.

It has been represented that the Protector is not and shall not be a person or entity related

to or under the control of either Settlor; that under the laws of Country X, neither a beneficiary or any creditor of any beneficiary, including the Settlers, may compel the trustee to distribute the Trust's assets to or for their benefit at any time during the trust term; that transfers by the Settlers of interests in the Partnership to the Trust are not in any way liable to be set aside under any applicable fraudulent conveyance or other law, domestic or foreign; that neither the Trustee nor the Settlers have any plans to hold Trust assets anywhere other than Country X; and that the Trust is a "foreign trust" within the meaning of section 7701(a) (31) of the Internal Revenue Code of 1986, as amended (the "Code"). (Hereafter, all references to sections are to sections of the Code.)

The Settlers propose to transfer equal fractions (but not less than half) of their directly-held interests in the Partnership to the Trust. Rulings are requested regarding the following issues: (1) That the transfers of interests in the Partnership to the Trust by the Settlers are completed gifts for purposes of section 2511 at the time of the transfers to the trust; (2) that no portion of the Trust will be includible in the estates of either Settlers A or B under sections 2033, 2036, 2037, or 2038; (3) that the Trust is a grantor trust within the meaning of section 679, and (4) that each portion of the Trust treated as owned by a Settlor under section 679 will, upon that Settlor's death, cease to be so treated even if then trust beneficiaries include United States persons.

These issues are considered below.

ISSUE (1). WILL INTERESTS IN THE PARTNERSHIP TRANSFERRED TO THE TRUST BY THE SETTLERS WILL BE COMPLETED GIFTS UNDER Code SECTION 2511 SUBJECT TO FEDERAL GIFT TAX? Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that this tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Treas. Reg. section 25.2511-2(b) provides that a gift is complete when an owner of property, or an interest therein, has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another. If upon a transfer of property, whether in trust or otherwise, the owner reserves any power over its disposition, the gift may be wholly incomplete or partially complete and partially incomplete, depending on all of the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserve power, the terms of the power must be examined and its scope determined. The regulation cites as an example a situation where a donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among his descendants. No portion of the transfer is a completed gift. On the other hand, if the donor had not retained the testamentary power of appointment, but had instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift. However, if the exercise of the trustee's powers in favor of the grantor is limited by a fixed or ascertainable standard, enforceable by or on behalf of the grantor, then the gift is incomplete to the extent of the ascertainable value of any rights thus retained by the grantor.

Rev. Rul. 77-378, 1977-2 C.B. 347, provides that even though a trustee may have an unrestricted power to return all of the trust's assets to the grantor, if the grantor's interest in the trust is not enforceable either by the grantor or on the grantor's behalf, then the grantor has parted with dominion and control over the property transferred into trust. Furthermore, if the grantor retains such a mere expectancy that the trustee will distribute trust assets to the grantor rather than an enforceable interest in the trust, the expectancy does not prevent the completion or reduce the value of the gift.

The Sixth Circuit Court and Tax Court have held that a grantor of an irrevocable inter vivos trust has not completely parted with dominion and control over trust assets where the grantor could in actuality retain the economic benefit and enjoyment of the entire trust income and corpus by borrowing money or by selling, assigning, or transferring the grantor's interest in the trust fund and relegating the grantor's creditors to the trust fund for payment. *Commissioner v. Vander Weele*, 254 F.2d 895 (6th Cir. 1958); *Outwin v. Commissioner*, 76 T.C. 153 (1981); *Estate of Paxton v. Commissioner*, 86 T.C. 785 (1986). In view of the settlors' retained rights in these cases, there was no assurance that anything of value had passed to the remaindermen and the gifts were held to be entirely incomplete. See also Rev. Rul. 76-103, 1976-1 C.B. 374 (concluding that such an incomplete gift would be includible in the gross estate for estate tax purposes under section 2038).

In the instant case, the Settlers will part with dominion and control over the property being transferred into the trust. Although the Trustee has an unrestricted power to pay over trust assets to the Settlers, the Settlers cannot individually or together require that any of the trust's assets be distributed to themselves. Further, assuming taxpayers' representation regarding the law of Country X is correct, neither of the Settlers can utilize assets transferred to the Trust by incurring debt and relegating the Settlor's creditors to the trust.

Accordingly, based on the taxpayers' representations regarding Country X law, the transfers of interests in the Partnership to the Trust are completed gifts and the entire value of the interests in the Partnership transferred to the Trust by the Settlers is subject to the federal gift tax.

ISSUE (2). WILL ANY OF THE INTERESTS IN THE PARTNERSHIP TRANSFERRED TO THE TRUST BY THE SETTLORS BE INCLUDIBLE IN THEIR GROSS ESTATES UNDER SECTIONS 2033, 2036, 2037, OR 2038? Section 2036(a) provides that a decedent's gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) by trust or otherwise, under which he has retained, for his life or for any period not ascertainable without reference to his death or any period that does not in fact end before his death, (1) the possession or enjoyment of or the right to income from the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2036(b)(1) provides that the retention of the right to vote, either directly or indirectly, shares of stock of a controlled corporation shall be considered a retention of the enjoyment of the transferred property.

In *United States v. Byrum*, 408 U.S. 125 (1972), 1972-1 C.B. 518, the decedent was a controlling shareholder and a member of the board of directors of a closely-held corporation. The Supreme Court held that stock in the corporation transferred by the decedent to an irrevocable trust, even though the decedent expressly retained the right to vote the transferred stock and to veto the sale or disposition of the stock by the trustee, was not included in his gross estate under section 2036. The Court held that the decedent, as a controlling shareholder and a member of the board of directors, had a fiduciary duty to promote the interests of the corporation and not to exercise his voting power to promote his personal interests at the expense of the minority shareholders. Accordingly, the decedent's retained power to vote the stock did not constitute the retained enjoyment of the transferred stock or the right to designate the income from the transferred stock for purposes of section 2036.

In the instant case, the Settlers are the sole shareholders of Corporation A, which is the general partner in the Partnership. Accordingly, the grantors have management authority over the Partnership, which would include the authority to control partnership distributions. However, like the decedent in *Byrum*, each Settlor in the instant case occupies a fiduciary position with respect to the limited partners of the Partnership, and cannot distribute or withhold distributions or otherwise manage that partnership for purposes unrelated to the conduct of the partnership business.

Section 2038 provides that the value of the gross estate shall include the value of all property of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) in trust or otherwise, where the enjoyment thereof was subject to a power in the decedent to alter, amend, revoke, or terminate such interest or where any such power was relinquished during the 3-year period ending on the date of the decedent's death. Based upon the foregoing analysis, each partner would have a similar fiduciary duty with respect to their management of the partnership.

PLR 9332006, IRC Sec. 2031

1. Does not address 2036(a)(1)
2. Like 76-103 for 2036
it is with authority

Furthermore, based on the taxpayer representations regarding Country X law, the property transferred to the Trust will not be included in the gross estate of either Settlor under section 2033, since the gift to the Trust will be complete and neither Settlor will have the right to compel a distribution from the trust. Similarly, interests in the Partnership transferred to the Trust by either Settlor will not be included in that Settlor's gross estate under sections 2036, 2037, or 2038, since under the facts presented, the Trustee's discretion to make distributions to a Settlor is not a retained interest or power for

purposes of those sections See Rev. Rul. 76-103, cited above.

Accordingly, the value of the interests in the Partnership transferred by a Settlor to the Trust will not be includible in the gross estate of that Settlor under sections 2033, 2036, 2037, or 2038.

ISSUE (3). IS THE TRUST A TRUST DESCRIBED IN SECTION 679? Section 679 provides (with exceptions not here relevant) that a United States person who directly or indirectly transfers property to a foreign trust shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust. Section 7701(a)(30)(A) provides in part that the term "United States person" includes a citizen of the United States. Under section 679, the term "United States beneficiary" includes a trust beneficiary who is a United States person.

Each Settlor, a United States person, is considered to have transferred property to the Trust. Further, each Settlor and Beneficiary A is a "United States beneficiary" within the meaning of section 679. Accordingly, whether the Trust will be treated as a grantor trust under section 679 depends upon whether it is a foreign trust.

Section 7701(a)(31) defines a "foreign estate" and a "foreign trust" as an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A of the Code.

It has been represented that the Trust is a foreign trust. If that is so, the Trust will be treated as a grantor trust under section 679, and each Settlor will, for the taxable year in which the Trust is funded and in each succeeding taxable year during his or her life in which the Trust continues to have a United States beneficiary, be treated as the owner of a portion of the Trust income and corpus. That portion shall be determined in accordance with the principles of Treas. Reg. section 1.671-3, and each Settlor shall be required to take into account, in computing his or her federal income tax liability that Settlor's appropriate portion of the Trust's items of income, deductions, and credits.

ISSUE (4). UPON A SETTLOR'S DEATH, WILL THE PORTION OF THE TRUST TREATED AS OWNED BY THAT SETTLOR CEASE TO BE SO TREATED EVEN IF THEN TRUST BENEFICIARIES INCLUDE UNITED STATES PERSONS? Section 679(a)(2) (A) provides that the rules of section 679(a)(1) do not apply to "a transfer by reason of death of the transferor." While section 679(a)(2)(A) does not expressly address the tax consequences of the termination of foreign grantor trust status by reason of the grantor's death, the legislative history of the enactment of section 679 (H.R. Rep. No. 658, 94th Cong., 1st Sess. at 209 (1975), S. Rep. No. 938, 94th Cong., 2d Sess. at 218 (1976)) provides that "an inter vivos trust which is treated as owned by a U.S. person under [section 679] is not treated as owned by the estate of that person upon his death." Accordingly, any portion of the Trust that is treated as owned by a Settlor under the rules of section 679 shall cease to be so treated upon that Settlor's death.

No opinion is expressed about the tax treatment of the proposed transaction under other

provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed with respect to the imposition, under section 1491 of the Code, of the excise tax on the transfer of appreciated property by a United States citizen or resident to a foreign trust.

This letter is directed only to the taxpayers who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax and, if required to be filed, gift and/or estate tax returns of the taxpayers involved for the taxable year of the proposed transaction.

Pursuant to a power of attorney on file, a copy of this letter is being sent to the taxpayers.

Charles P. Besecky

Chief, Branch 4

Office of the Associate Chief

Counsel (International)

ccs:

CS FOR SENATE BILL NO. 163(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trusts, to a trustee's duties to notify and inform beneficiaries,
2 and to the revocation, modification, termination, reformation, construction, and
3 trustees of trusts."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 13.36.080 is amended by adding a new subsection to read:

6 (b) The trust agreement or instrument may exempt a trustee from the duty
7 under this section to provide notification or information regarding the trust to a
8 beneficiary who is not entitled to a mandatory distribution of income or principal from
9 the trust on an annual or more frequent basis. The exemption may not exceed in
10 duration the shorter of the settlor's lifetime or a judicial determination of the settlor's
11 incapacity. If the trust instrument or agreement provides for an exemption and a
12 beneficiary with a future interest who is not a beneficiary entitled to a mandatory
13 distribution of income or principal from the trust on an annual or more frequent basis
14 receives a distribution, the trustee shall provide notification or information limited to

1 the accounting period during which the distribution was made. If a beneficiary with
2 future interest becomes a beneficiary entitled to a mandatory distribution of income
3 or principal from the trust on an annual or more frequent basis, the trustee shall
4 provide notification and information as required under AS 13.16 and this chapter.

5 * Sec. 2. AS 13.36.192 is amended by adding a new subsection to read:

6 (c) In addition to the powers provided under (a) of this section, the settlor of
7 a trust affected by AS 13.36.105 - 13.36.220 may, by provision in the instrument
8 creating the trust if the trust is created by a writing, by oral statement to the trustee at
9 the time of the creation of the trust if the trust is created orally, by an amendment of
10 the trust if the settlor reserved the power to amend the trust, or by a written document
11 after the trust is created, relieve the trustee from the duty to provide notification or
12 information to a beneficiary ^{subject to} ~~in accordance with~~ AS 13.36.080(b).

13 * Sec. 3. AS 13.36 is amended by adding new sections to read:

14 **Sec. 13.36.335. Presumption of revocability.** (a) Unless a trust is expressly
15 made irrevocable, a trust executed on or after the effective date of this Act is revocable
16 by the settlor.

17 (b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the

18 (1) settlor is domiciled in this state when the trust is created;

19 (2) trust instrument is executed in this state; or

20 (3) trust provides that the law of this state governs the trust.

21 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A
22 trust that is revocable by the settlor may be modified or revoked in whole or in part
23 by

24 (1) substantial compliance with a method of modification or revocation
25 provided in the trust instrument; or

26 (2) a writing, other than a will, signed by the settlor and delivered to
27 the trustee during the lifetime of the settlor, except that, if the trust instrument
28 expressly makes the method of revocation provided in the trust instrument the
29 exclusive method of revocation, the trust may not be revoked under this paragraph.

30 (b) Unless otherwise provided in the trust instrument, if a trust that is
31 revocable by the settlor is created by or funded by more than one settlor,

1 (1) the trust may be modified or revoked as provided in AS 34.77.100
2 to the extent the trust consists of community property under AS 34.77 (Alaska
3 Community Property Act);

4 (2) each settlor may modify or revoke the trust as to the portion of the
5 trust property contributed by that settlor that is not community property under
6 AS 34.77.

7 (c) A revocable trust may not be modified or revoked by an attorney-in-fact
8 under a power of attorney unless the modification or revocation is expressly permitted
9 by the trust instrument.

10 **Sec. 13.36.345. Modification or termination of irrevocable trusts because**
11 **of unanticipated circumstances.** (a) On petition by a trustee, settlor, or beneficiary,
12 a court may modify the administrative or dispositive terms of an irrevocable trust or
13 terminate an irrevocable trust if, because of circumstances not anticipated by the
14 settlor, modification or termination would substantially further the settlor's purposes
15 in creating the trust.

16 (b) Upon termination of a trust under this section, the trust property shall be
17 distributed in accordance with the settlor's probable intention.

18 **Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts.** (a)
19 On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an
20 irrevocable trust, even if the trust instrument is not ambiguous, to conform to the
21 settlor's intention if the failure to conform was due to a mistake of fact or law,
22 whether in expression in the trust or inducement to create the trust, and if the settlor's
23 intent can be established by clear and convincing evidence.

24 (b) A court may consider evidence, including direct evidence contradicting the
25 plain meaning of the text, when determining the settlor's intent or for any other
26 purpose under this section.

27 **Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives.** (a)
28 The terms of a trust shall be construed to achieve the settlor's tax objectives.

29 (b) On petition by a trustee, settlor, or beneficiary, a court may modify the
30 terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that
31 does not violate the settlor's probable intent. The court may order that the

1 modification operate retroactively.

2 **Sec. 13.36.360. Modification or termination of irrevocable trust by consent.**

3 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
4 beneficiary, a court may modify or terminate an irrevocable trust if all of the
5 beneficiaries consent and if continuation of the trust on the existing terms of the trust
6 is not necessary to further a material purpose of the trust. However, the court, in its
7 discretion, may determine that the reason for modifying or terminating the trust under
8 the circumstances outweighs the interest in accomplishing the material purposes of the
9 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
10 interests under AS 34.40.110 may constitute a material purpose of the trust under this
11 subsection, but is not presumed to constitute a material purpose of the trust under this
12 subsection.

13 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may
14 not be modified or terminated under this section while a settlor is also a discretionary
15 beneficiary of the trust.

16 (c) If a beneficiary other than a qualified beneficiary does not consent to a
17 modification or termination of an irrevocable trust that is proposed by the trustee,
18 settlor, or other beneficiaries, a court may approve the proposed modification or
19 termination if the court determines

20 (1) if all the beneficiaries had consented, the trust could have been
21 modified or terminated under this section; and

22 (2) the rights of a beneficiary who does not consent will be adequately
23 protected or not significantly impaired.

24 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

25 (1) on the date the beneficiary's qualification is determined, is entitled
26 or eligible to receive a distribution of trust income or principal; or

27 (2) would be entitled to receive a distribution of trust income or
28 principal if the event causing the trust's termination occurs.

29 **Sec. 13.36.365. Uneconomical irrevocable trust.** (a) Notwithstanding the
30 other provisions of AS 13.36.335 - 13.36.365, if the value of the property of an
31 irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the

1 trust instrument provides otherwise.

2 (b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.365 and the
3 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
4 the court may modify or terminate an irrevocable noncharitable trust, or remove the
5 trustee and appoint a different trustee, if the court determines that the value of the trust
6 property is insufficient to justify the cost of administration.

7 (c) Upon termination of a trust under this section, the trustee shall distribute
8 the trust property in accordance with the settlor's probable intent.