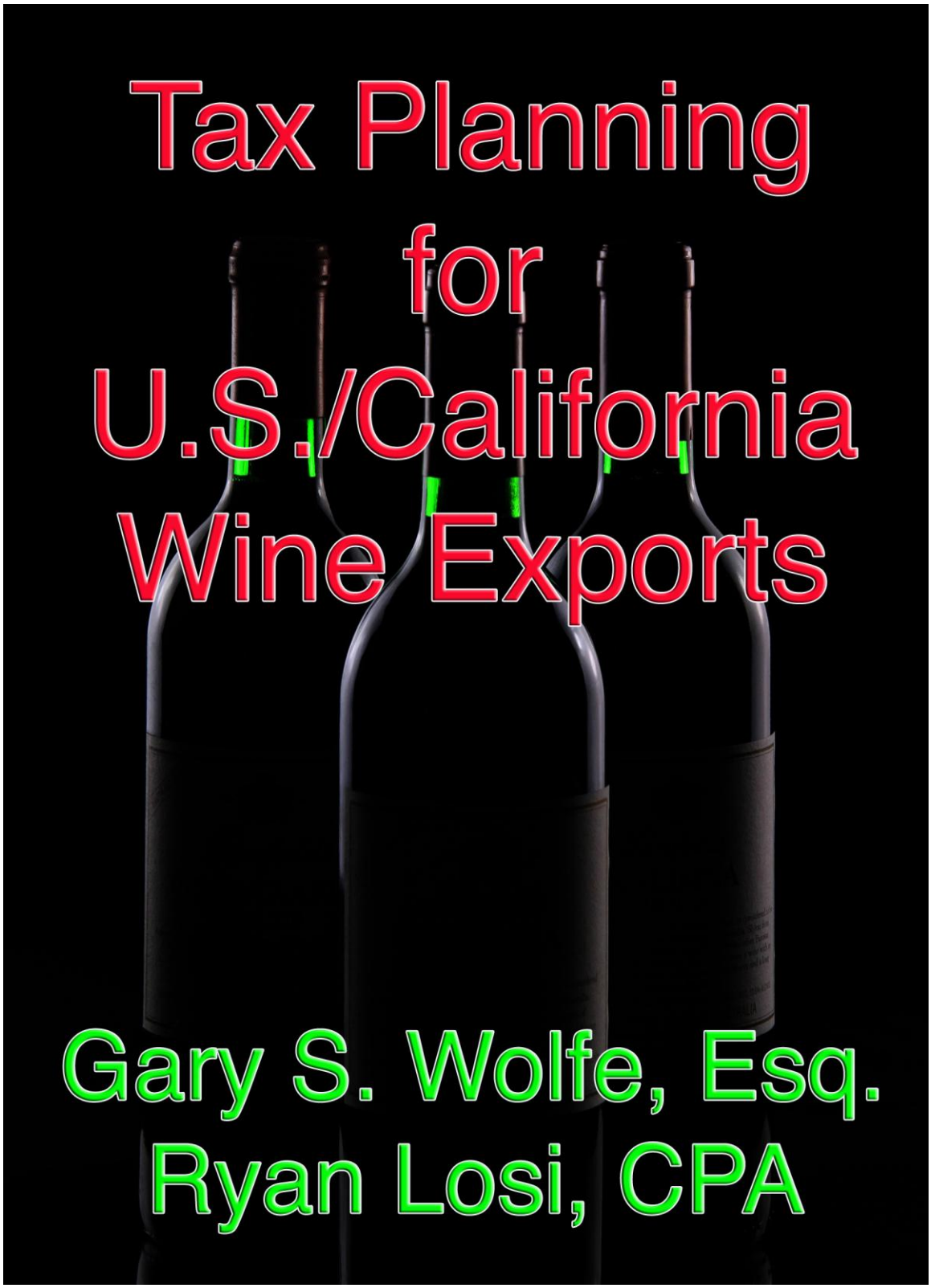
Tax Planning for U.S./California Wine Exports



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Tax Planning for U.S./California Wine Exports

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Introduction - Uncorking Huge Tax Savings for California Winemakers

By all accounts, the California wine industry is booming. With appropriate tax planning strategy, tax on wine export sales may be reduced by 33%.

It is the fourth year in a row for record sales. In the last 15 years estimated retail value has nearly doubled from $12.0 billion in 1998 to $23.1 billion in 2013. California now has 4100 wineries up 119% since 2010, with the majority being family owned businesses, and California is now the fourth-leading wine producer in the world, after France, Italy, and Spain.

Globally, U.S. wine export sales hit a record high of $1.55 billion in 2013 with California producers accounting for 90% of the total.

The European Union was the top destination for U.S. wine exports, accounting for $517 million, followed by Canada, $487 million, Japan, $88 million, and China, $71 million.

With exports sales being only a fraction of total sales and only 5% of the world's population within our own borders there is obvious room for growth.

The prime market for expansion of California wine exports appears to be China. With a population of 1.4 billion people and a growing middle class, China has been developing a taste for red wine to the tune of 155 million cases consumed in 2013 outpacing both France (150 million cases) and Italy (141 million cases). France and Italy make much of their own wine, China doesn't. Wine produced by their nascent wine industry is not coveted by Chinese citizens as much as the higher quality imported wines.

The Chinese are not only drinking a lot of red wine they are also investing heavily into it. Partly inspired by China's NBA Star, Yao Ming (who in 2011 founded Yao Family Wines in Napa), Chinese investors are looking into California wineries not only for the high-quality wines, but also for the winery real estate as well. An added benefit is that with a $1 million investment and the creation of 10 new jobs a Chinese, or other international, investor may receive an EB-5 visa and green card for themselves and their family.

If the foreign investor uses that investment to capitalize a new export company in which the current winery owners contributes either money and/or wine inventory both parties benefit. The investor gets the aforementioned investment and green card and the winery expands globally.

Another aspect to this arrangement is the tremendous tax savings that occur when developing a special type of U.S. Corporation known as an IC-DISC (Interest Charge Domestic International Sales Corporation).

The IC-DISC ("DISC") was originally developed by Congress in 1971 to spur export sales through

a sluggish economy. Under a slightly different manifestation, the DISC is still very active today as a legally authorized tax-savings vehicle. The DISC does not require office space, employees or tangible assets; rather it is a “conduit for export tax savings” paid to the DISC as an annual “sales commission" for international export sales of U.S. made products which includes wines grown in the U.S.

As an example, the California winery principals establish a separate export company (in which the foreign investor may invest). The export company (principals) establish an IC-DISC, pay it an annual commission (e.g. $2.5million on $10million gross sales, $5million net income) which may immediately save up to $1.1million in annual taxes and reduce the US/California income taxes on the wine export sales from the highest blended tax rate (US/CA) of 55% to approximately 33%, a savings of nearly 22%. After tax net income from the wine export sales is increased from 45% (at the 55% tax rate) to nearly 67% (based on the discounted tax rate of 33%).

Additional tax saving may be realized if the DISC is owned by a Puerto Rican Private Placement Life Insurance Policy (“PR/PPLI”).

Chapter 1 - Tax Planning for California Wine Exports

I. California Wine and China

While California US wine sales currently are $23.1B per year, California wine international export sales are only $1.395B per year (6% of California's US wine sales). Since 95 % of the world's consumers live outside the US, the "world is a bigger market" for sales of California wines.

China (combined with Hong Kong) is California's biggest market for California export sales (total: $6.4B per year). Yet China and Hong Kong rank behind EU, Canada and Japan as California's biggest markets for California wine sales. WHY?

China with 1.4B people, a 300m+ consumer middle class, is currently the world's biggest market for red wine (between 2008-2013 China red wine consumption was up 175% while France was down 18% and Italy down 6%). Between 2012-2017 China US wine sales are projected to explode: wines $5-$10 bottle (increase 64%), $10-$20 bottle (increase 69%), over $20 bottle (23%). For California wineries the key distribution strategy is to export California red wines to China at $5-$20+ price points and "surf the wave" of the exploding demand for US wines (California sells 90% of US wine exports).

As detailed below, a Chinese (or other international investor) may invest $1m in a California winery, create 10 new jobs, and receive an EB-5 Visa and green card (for them and their family). If the California winery exports the California wines to China (or other foreign country), and uses a special type of US Corporation, an IC-DISC (Interest Charge Domestic International Sales Corporation), on $10m in annual export sales ($5m net income) the winery may annually save up to $1.085m in income taxes.

An IC-DISC is a "paper entity" which is a legally authorized tax-savings vehicle. The IC-DISC ("DISC") does not require office space, employees or tangible assets; rather it is a "conduit for export tax savings" paid to the DISC as an annual "sales commission" for international export sales of US made products (which includes wines grown in the US).

Under our IC-DISC Tax Planning Strategy, based on a projected $10m in California wine export sales (with projected $5m net income):

1) Without our tax strategy, at the maximum "blended" US/CA income tax rate (individual) of 55%, projected tax due is $2.750m, net after tax yield $2.250m (45% net after-tax yield);

2) With our tax planning strategy, the projected tax due on the $5m net income is $1.665m (66.7% net after-tax yield);

3) Effectively, the combined US/CA tax on California wine sale exports is reduced from 55% to

33.3%, a 21.7% net after tax yield increase, which based on $10m wine export sales ($5m net income) may annually save $1.085m in income taxes.

As described in the American Bar Association/Practical Tax Lawyer Summer 2013 Article: International Tax Planning for US Exports (IC-DISC), co-authors Gary S. Wolfe, Esq. & Ryan Losi, CPA, if a $2.5m DISC commission is received annually for 15 years and invested under the income tax planning strategy described in the article, the combined income tax benefits and investment tax benefits may total in excess of $100m at the end of 15 years.

II. California Wine Exports

In a 2/25/15 Los Angeles Times article by David Pierson, (with statistics provided by San Francisco based California Wine Institute) it has been reported that exports of US wine in 2014 were the second most valuable on record, reaching $1.49B in revenue, with approximately 90% of US wine exports from California. The volume of wine exports rose to 116.9 million gallons in 2014, up from 115 million in 2013 when wine export revenue reached $1.55B.

The EU was the largest buyer of US wine ($517m), followed by Canada ($487m), then Japan ($88m). Wine exports grew in Asian markets: South Korea, Vietnam, Singapore and Taiwan. However, China sales fell 7.6% to $71m (fourth biggest export market for US wine) due to a corruption crackdown and austerity campaign launched by Chinese President Xi Jinping. Exports to Hong Kong (fifth biggest market) fell by 10.7% to $69m.

The value of US wine exports has more than doubled in the last decade and has risen 64% since 2009, while only approximately 1/10th of the wine produced in the US is exported. Wine export revenues have grown from 2004 ($809m) to 2014 ($1.49B), while the volume has actually decreased in gallons of wine exported (2004: 121.9m vs. 2014: 116.9m)

Robert Koch President and CEO of the Wine Institute said: "With three back-to-back California vintages heralded for their high quality and size, we have the ability to meet consumer demand for our wines both in the US and abroad... CONSUMERS WORLDWIDE ARE ATTRACTED TO ALL THINGS CALIFORNIA".

California Wines and the U.S. Economy

As can be seen by the following statistics California wines contribute billions of dollars to the US economy, may create thousands of jobs, are “ripe” for expanded exports:

1. $61.8B in state economic impact

2. $121.8B in national economic impact

3. 330,000 jobs in California

4. 820,000 jobs nationwide

5. $12.3B in state wages

6. $25.8B in US wages

7. $14.7B in state and federal taxes

Source: Wine Institute, Gomberg-Fredrikson Report (Stonebridge Research California Impact Study 2009, CA Dept of Food & Agriculture, US Tax and Trade Bureau and US Dept of Commerce.

III. Red Wine and Health

1. Wine is 7500 years old. The ancient Greek physician, Hippocrates advised the medicinal uses of wine include it as a remedy for various ailments: anxiety, eye pain, urinary tract infections.

2. In New Testament, Paul advises his colleague, Timothy, to "Drink no longer water, but use a little wine for thy stomach's sake".

3. Modern Scientific studies confirm that moderate drinkers live longer and wine consumption decreases blood clotting, and increases HDL ("good cholesterol). Moderate drinking is defined as 1-3 drinks per day (no more than 14 a week for men, 7 for women), with a drink defined as a 5-ounce glass of wine. Various medical studies confirm that wine may reduce the risk of stroke, cancer, arthritis, lymphoma, artery disease, Alzheimer's disease, dementia and the common cold.

4. Red wine in particular is cited for its medicinal value. Organic compounds in red wine known as phenols are also antioxidants which are elements that fight oxidative stress which is found in cardiovascular disease and in general the aging process. On 11/17/91 60 Minutes aired a segment about the French paradox i.e. the French consume vast amounts of saturated fat (e.g.. butter, choose, duck & goose fat) yet enjoy a low incidence of heart disease. A French medical researcher, Serge Renaud postulated that the deleterious effects of the French diet were mitigated by their consumption of red wine. Red wine sales in America increased 40% almost literally overnight. Some California winemakers attempted (mostly unsuccessfully) to obtain permission to legally tout red wine benefits on their labels.

5. In 2003, David Sinclair a Professor of Genetics at Harvard University discovered the life-extending properties of one of the compounds found in red wine, known as Resveratrol, which is found to work by stimulating a group of genes called sirloins, which help slow the aging process and promote general health (these same genes are linked to ultra-low-calorie diets). Researchers have found that the highest concentrations of trans-resveratrol (the most active form of the compound) are found in Pinot Noir grapes, and other related grapes, grown in cool regions.

So, red wine for lifestyle and health benefits may be best enjoyed in the California sunshine. In the words of Galileo: “Wine is sunshine held together by water,”

IV. Tax Strategy

The Plan

1. Winery principals establish export company (new company) separate from winery, which exports California red wine to Hong Kong/China.

2. Export Company owners include: winery principals and if available an EB-5 investor who invests $1m (and creates 10 jobs). Winery Company principals may use wine (unsold inventory), cash, or a portion of the winery real estate for the export company (the export company will build a separate warehouse, with separate sales and administrative staff to create the 10 new jobs so the EB-5 investor qualifies and receives their green card);

3. The owners of the Export Company will establish a DISC to whom it pays the up to $2.5m annual commission, based on sales (i.e. $10m sales, $5m net income).

Tax Strategy

1. Annual income tax savings (based on the 43.4% federal income tax deduction for the DISC commission) is $1.085m (on $2.5m DISC payment) i.e. projected up to $1.1m per year. So for a 15-year period tax savings of up to $16.5m (plus annual earnings on the tax savings);

2. $2.5m DISC payment if made for 15 years is $37.5m. If held thru PR/PPLI and invested in S&P 500 index fund (avg. 10.6% over last 30 years including dividends) after 15 years is valued at $83+m (see our ABA/PTL article);

3. So annual income tax savings ($16.5m) + PR/PPLI value ($83+m) is nearly $100m plus additional death benefit (over $100m total).

4. If DISC shares are held thru the PR/PPLI, owned by a California Irrevocable Trust, then no 40% federal estate and gift tax on the $100m+ (save over $40m in taxes). The trust will be an intentionally defective grantor trust (e.g. the grantor can borrow trust assets without collateral) so trust is not subject to a separate income tax filing (i.e. no Form 1041/541) all trust income (if any) reported on Grantor’s Form 1040/540 annually.

5. Asset Protection - Under Puerto Rico law, the cash value benefits of a life insurance policy are expressly exempt from seizure by creditors (absent fraudulent conveyance funding of the policy). Act No. 399 of September 22, 2004, as amended by Act No. 98 of June 20, 2011. Under Act No. 98 (June 20, 2011), which amended Act. No. 399 (September 22, 2004), the policy owner and policy beneficiary are statutorily protected from seizure.

V. California Wineries and Chinese Investors

As we discussed on 11/6/14 at The Wolfe Law Group event at the Peninsula Hotel, Beverly Hills, the prime market for expansion for wine exports is China (1.4B people, 300m+ middle class consumers) particularly for red wine.

Inspired by China's NBA Star, Yao Ming (who in 2011 founded Yao Family Wines in Napa), Chinese investors are investing heavily in California wineries. These investors are attracted to the high-quality wines and reasonable price for both the wines and the winery real estate.

1) China is currently the world's biggest consumer of red wine. In 2013 China consume 155m cases (1.865B bottles). France is #2 150m cases, Italy #3 141m cases.

2) Between 2008-2013 China red wine consumption up 175% (while France down18%, Italy down 6%);

3) Price points: growth in China wine consumption (US wines) 2012-2017, projected to increase 64% (wines $5-10 bottle), 69% (wines $10-20 bottle), 23% (over $20 bottle), and decrease 7.4% under $5 bottle.

Chinese Investors (EB-5 Visa)

Chinese Investors (or other foreign investors) who receive an EB-5 Visa/Green Card become US income, estate and gift tax residents and subject themselves to:
1) World-wide US income tax in California top federal/state federal tax rate "blended tax rate" is up to 55%;

2) Annual Disclosure of world-wide foreign bank and financial accounts over $10k (FBAR filing, FINCEN FORM 114)

3) Annual Disclosure of all foreign financial assets over $50k (FATCA/Form 8938)

4) US Estate and Gift Tax on world-wide assets (40% tax on assets over $5.34m/2014; $5.43m/2015)

VI. Chinese Investors and U.S. Taxes

In many foreign countries, "tax cheating" is a sport, in America it is a crime with multiple felonies, which if it includes wire fraud, mail fraud, money laundering may result in 8 separate felonies and over 80 years in jail.

In 1776, the US fought a revolution over taxes. Unlike the rest of the world the US has the IRS with nearly 100,000 employees, a nearly $11B annual budget. The IRS annually collects: more

than $2.5 trillion in taxes, in 2013 processed 143m income tax returns, and for those who make over $1m per year has a nearly 11% audit rate (1 in 9).

In American, tax planning is not a crime, it is actually both allowed and encouraged under the law. As the great judge Learned Hand stated in Commissioner v. Newman "There is nothing sinister in arranging one's affairs to keep taxes as low as possible. Nobody owes any public duty to pay more than the law demands."

To pay minimum (not maximum) income, estate and gift taxes (and protect assets from 3rd party creditors), the foreign (i.e.. Chinese or other) investor should implement the following US Pre-Immigration Tax Planning Strategy: Prior to US immigration, the foreign investor should fund an off-shore trust (non-US) trust (irrevocable trust) whose assets contributed plus earnings will be exempt from US estate and gift taxes (2015:40% tax rate on assets over $5.43m)

Passive Investments (e.g. stocks, bonds, hedge funds et al.) should be owned by a Puerto Rico Private Placement Variable Life Insurance Policy so: earnings are exempt from income tax/income tax reporting, compound tax-free, and are not subject to creditor attachment (both assets and earnings on those assets).

A California structure should include a Limited Liability Company (99% owned by S-Corporation, which is the Manager of the LLC, which S-Corporation is owned by a California Trust, see my article ABA/Practical Tax Lawyer (Winter 2013) "US Tax Planning for Passive Investments" which includes a flow chart describing the entities.

The Chinese (or other foreign investor) gets their EB-5 Visa/Green Card, saves significant US taxes (federal/CA), creates many jobs for Americans, and spreads California wines around the world. As we say in New York, "What's not to like."

Chapter 2 – International Tax Planning For US Exports (IC-DISC)

In 2013, after a five-year (plus) "Great Recession", America needs jobs (since 2007, millions of U.S. jobs have been lost). One solution is to propagate international export of U.S.-made products, which may both accelerate new U.S. hiring and increase U.S. jobs.

Under the Internal Revenue Code, a special type of U.S. corporation, an "IC-DISC" provides significant tax benefits for closely-held, small and mid-size U.S. corporations who export U.S.-made products. By use of an IC-DISC, U.S. manufacturers who internationally export U.S.-made products may annually, indefinitely defer tax on between $400,000-$2.5 million of foreign sales revenues.

Under the IC-DISC tax rules, up to $10 million in annual foreign sales is subject to a formula, which limits the tax deferral (i.e. the greater of: four percent of foreign sales (up to $10 million; i.e. $400,000), or 50 percent of net income (on $10 million in foreign sales), which is computed: $10 million less expenses (e.g. $5 million) = $5 million net income x .50 percent = $2.5 million (or more if net income is higher than 50 percent).

Under the IC-DISC tax rules:

- No corporate income tax (for IC-DISC);
- Indefinite tax deferral (subject to a less than 1 percent interest charge, annually; i.e. in 2013, 16 basis points (.0016%), which on $2.5 million is $4,000 per year);
- Reduced tax on distributions (20 percent not 39.6 percent);
- No tax on distributions (with international tax planning).

In addition, the U.S. manufacturer, who exports the U.S.-made products, receives a corporate income tax deduction for the annual IC-DISC "sales commission" paid, (up to $2.5 million per year or more, subject to the 50 percent net income test) which may be worth nearly $1 million annually in tax savings. For example, if the IC-DISC is paid $2.5 million and the U.S. manufacturer pays the top corporate income tax rate (38 percent)= $950,000 corporate tax savings, with no corresponding income declared by the IC-DISC (since their income is indefinitely tax-deferred).

The proposed international tax planning strategy includes an IC-DISC which receives $2.5M yearly as "tax-free" income from the export of U.S. made products and with the IC-DISC shares are owned and held by a Puerto Rico-issued private placement variable life insurance policy. This policy contains two component parts:

- A “MEC frozen cash value” and a “non-MEC”. The annual $2.5 million shareholder distributes trust fund non-MEC (which has tax-free withdrawals of both basis and earnings) and then funds a MEC (which has tax-free withdrawals of basis, with earnings applied to increase the policy death benefit);

- If the IC-DISC distributes $2.5 million per year (over 15 years), total: $37.5 million, the IC-DISC annual distribution requirement will be satisfied and a $37.5 million shareholder dividend may be paid tax-free, plus a tax-free distribution (by loan) of any non-MEC earnings.

In summary, $37.5 million plus tax-free withdrawal of basis, plus investment earnings (tax-free for the non-MEC, MEC earnings apply to insurance policy death benefit (tax-free).

Judge Learned Hand, dissenting in *Commissioner v. Newman*, 159 F.2d 848, 850-851 (2d Cir. 1947), stated:

“Over and over again the courts have said there is nothing sinister in arranging affairs to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands...”

Companies who export U.S produced goods may significantly reduce their U.S. taxes by establishing an Interest Charge Domestic International Sales Corporation (“IC-DISC”). Congress encourages the export of U.S produced goods via an export incentive under IRC Sec. 991, an “arcane provision” of the Internal Revenue Code. IRC Sec. 991 provides a powerful tax incentive to promote the export of U.S produced goods through a Domestic International Sales Corporation, including:

- Lower Income Tax Rate. A 19.6 percent tax rate savings, IC-DISC income is taxed at 20 percent not 39.6 percent (a favorable “tax arbitrage”), IRC Sec. 1(h)11.

- Tax Deferral. For a miniscule annual interest charge of less than 1 percent (computed on the base period T-Bill rate for the period ending September 30, 2012, i.e., 0.16%), IC-DISC corporate commission income on the first $10 million of export sales shall not be taxed until an actual distribution is made to shareholders. Based on experience IC-DISC corporate commission income will usually range anywhere from $400K to $2.5 million on the first $10 million of export sales. Until an actual shareholder distribution, the IC-DISC commission income compounds almost “tax free” (i.e., subject to 0.16 percent annual interest charge). The tax deferral is indefinite (i.e., no tax until an actual shareholder distribution). IRC Sec. 995(f).

- No Corporate Income Tax. An IC-DISC pays no corporate income tax, IRC Sec. 991.

Since 95 percent of global consumers are international (i.e., outside the U.S.), U.S. exports have a “wide International audience” (See: Bloomberg Business Week 4/1/13). Leading U.S. experts include:

- Information Products. Films, sound recordings (i.e., music), software.

- Entertainment Products. Toys, videogames, DVDs, posters, watches, clocks, jewelry.

- Clothing. Fashion apparel, celebrity merchandising; e.g., T-shirts, jeans, et al.

For exporters of U.S produced goods, the world is a big market.

History of the IC-DISC

The Domestic International Sales Corporation ("DISC") regime was enacted by Congress to stimulate exports in 1971. U.S. exporters were allowed to avoid U.S. tax on a portion of their profits by allocating those profits to a DISC subsidiary. U.S. trading partners filed complaints with the provisional organization of General Agreement on Tariffs and Trade ("GATT"), now know as WTO, that the DISC regime was an "illegal export subsidy".

Under pressure from GATT, the U.S. Congress then passed the Foreign Sale Corporation ("FSC") regime in 1984, which replaced the DISC regime. The DISC regime was not repealed entirely; it was altered and became the IC-DISC regime.

The IC-DISC regime was unattractive compared to the FSC regime because it provided only a temporary tax benefit (i.e., tax deferral) versus a permanent tax benefit provided under the FSC regime. The FSC regime responded to controversy about the subsidy claims by U.S. trading partners by requiring a U.S. exporter to establish a foreign corporation and that foreign corporation had to perform certain foreign economic processes and activities to obtain the U.S. tax benefit. U.S. trading partners objected to the FSCs as being conduits having no substantial economic substance or purpose other than to subsidize U.S. exporters, and the FSC regime was an "illegal export subsidy".

In response, Congress passed the Extraterritorial Income ("ETI") regime, which replaced the FSC regime and repealed the FSC regime. The ETI regime did not require a separate legal entity but rather excluded a portion of an exporter's income from taxation.

After complaints from the World Trade Organization ("WTO"), Congress then repealed the ETI regime in 2004 over a three-year period (2004-2006).

At this time, the IC-DISC became an attractive tax planning vehicle when the 2003 Tax Act ("Jobs and Growth Tax Relief Reconciliation Act of 2003") was enacted and the IC-DISC income was classified under very favorable dividend tax rules (i.e., the IC-DISC income was taxed at the new qualified dividend tax rate (in 2004—15 percent, in 2013—20 percent).

The result of the 2003 Tax Act was that by creating an IC-DISC, exporters of U.S produced goods may obtain a permanent tax savings of up to 50 percent on U.S. income from foreign exports (based on net export income). The tax benefits are also available for companies when products are exported by another party (i.e., reseller/distributor), or "ultimately used" outside the U.S.

IC-DISC Tax Strategy

Permanent tax savings start with the U.S. exporting company declaring a tax deduction on the commission it pays to the IC-DISC from its ordinary income, which is taxed at a maximum tax rate of 39.6 percent.

Federal tax law (IRC Sec. 994) establishes the commission rate, which is based on export sales revenue (maximum $10 million in annual export sales; i.e., qualified export receipts). The commission rate, which is based on up to $10 million (export sales revenue) is the greater of: 50 percent of net export income, or 4 percent of export sales revenue Since the IC-DISC is tax-exempt (i.e., no corporate income tax), tax is only paid on distributions to shareholders. The tax is imposed at the tax rate of 20 percent (2013) (i.e., the qualified dividend tax rate), not the current ordinary income tax rate (maximum) of 39.6 percent (2013).

The commission income is tax-deferred while held in the IC-DISC, until distributed to the shareholders. The deferral of U.S. tax on the commission income (for up to $10 million in annual export sales; i.e., qualified export receipts), can be indefinite, is only subject to a minimum interest charge (as previously referenced 0.16 percent (2013), on the deferred tax liability (IRC Sec. 995(f)).

The ultimate tax benefits:

- The 19.6 percent differential between the qualified dividend tax rates and the ordinary income tax rates;

- An income tax deduction for the exporting company, on the commission paid to the IC-DISC;

- No corporate income tax for the IC-DISC;

- For U.S. exporters who operate their business via a sole proprietorship or pass- through entity (e.g., limited liability company (LLC), S-Corporation or limited partnership (LLP)), the IC-DISC benefit is the difference between the qualified dividend tax rates and the ordinary income tax rates;

- Exporters who operate their business via a C-Corporation can benefit by using the IC-DISC to eliminate double taxation on a majority of their export income, as well as to reduce additional payroll taxes on income paid to their shareholders/officers.

IC-DISC Qualification

To qualify an IC-DISC, a domestic corporation must pass two main tests:

- The qualified export receipts test; and
- The qualified export assets test.

Qualified export receipts include gross receipts from the sales or exchange of export property, rents for the use of export property outside the U.S., services related to export sales or rents, engineering or architectural services for projects located outside the U.S. and commissions thereon. (IRC Sec. 993(a)).

The qualified export assets test requires that 95% of the assets of the IC-DISC be qualified export assets (IRC Sec. 992(a)(1)(B), which include: accounts receivable, temporary investments, export property and loans to producers (IRC Sec. 993(b).

The export property must:

- Be manufactured, produced, grown or extracted in the U.S. by a person other than the IC-DISC;
- Be held primarily for sale, lease or rental for use, consumption or disposition outside the U.S;
- Have a maximum of 50% foreign content (IRC Sec. 993(b).

IC-DISC Structure

The IC-DISC is a domestic corporation which is a "paper" entity used as a tax-savings vehicle. The IC-DISC does not require office space, employees or tangible assets; instead it is a "conduit" for "export tax savings". IC-DISC shareholders may be: corporations, individuals, limited liability companies, limited partnerships, trusts or estates.

The IC-DISC structure is as follows:

1. The owners of the U.S. exporting company form a special U.S. corporation that elects to be an IC-DISC. The IC-DISC election is made on IRS Form 4876-A. The IRS Form 4876-A must be filed within 90 days after the beginning of the tax year. For any tax year that is not the corporation's first tax year, the election must be made during the 90-day period immediately preceding the first day of that tax year.

2. The U.S. exporting company pays the IC-DISC a commission.

3. The U.S. exporting company deducts the commission from ordinary income taxed at up to 38% (top federal tax rate-- $15M-$18.33M).

4. IC-DISC pays no tax on the commission as long as the qualification standards are met: the 95% qualified export assets, and the 95% qualified export receipts (IRC Sec. 992(a)(1). The U.S. exporter qualified export receipts in excess of $10M per year are not eligible for deferral of tax (IRC Sec. 995(b)(1)(E).

5. IC-DISC shareholders are not taxed until the earnings are distributed as dividends. The shareholders must pay annual interest on the tax deferred (IRC Sec. 995(f)(1)). The interest charge is computed on IRS Form 8404. Shareholders that are individuals (or pass-through entities) pay income tax on qualified dividends at the capital gains rate of 20%. Corporate shareholders are automatically considered to have received 1/17th of the IC-DISC's taxable income even if no distributions are made.

6. Foreign Persons may receive a larger benefit than U.S. persons if their country of tax residence has a tax treaty with the U.S. that was ratified after 1984.

Additionally, three tests must be passed:

- Content Test. Qualifying Foreign Trading Gross Receipts (i.e. export sale) includes property: manufactured or produced within the U.S.; held for use or disposition outside the U.S. Foreign content (i.e. cost based on import value) cannot exceed 50 percent of Fair Market Value (i.e. sales price); Content can include related and subsidiary services as well as engineering and architectural services;

- Production Test. Property is considered manufactured or produced if it is "physically manufactured," that is, it is substantially transformed prior to the sale, or the process to convert is substantial in nature and considered within the industry to be manufacturing or production, or if conversion costs (i.e. direct labor and factory burden) account for 20 percent or more of the total cost of goods sold.

- Destination Test. The property's use or disposition must be outside the U.S., delivery must be made by a seller in the U.S. to a carrier or freight forwarder for ultimate delivery outside the U.S. Delivery must be made to a purchaser in the U.S. if the property is ultimately delivered outside the U.S. within one year of sale ("One Year Rule"). Delivery can also be to another U.S. entity that incorporates product into product used/sold outside the U.S.

Investment Tax Planning

If the U.S. taxpayer's shares in the IC-DISC are owned and held by a Puerto Rico-issued private placement variable life insurance policy then:

1. Under IRC Sec. 72(e)(5), income from assets (i.e. IC-DISC) are not subject to income tax, nor is there tax reporting. Effectively, the IC-DISC taxable income received by the U.S. taxpayer shareholder is not subject to U.S. income tax or tax reporting.

2. Policy lifetime withdrawals may be tax-free and not subject to tax reporting (as either a return of premium/basis or a loan). The MEC rules may or may not apply depending on policy design. IRS Private Letter Ruling 200244001 (May 2, 2002). IRS audit risks are minimized since assets held under a qualifying life insurance policy are neither subject to investor income tax, nor is there any required income tax reporting (IRC Sec. 72(e)(5), reference: Rev. Rul. 81-225 (Situation #5), Rev. Rul. 82-54, 1982-1, C.B.11.

3. For IRS audit purposes, there would be no presumed IRS tax avoidance, due to the fact that life insurance has been granted an "angel exception" (i.e. is an IRS approved transaction) (IRS Revenue Procedures 2007-20, 2013-11, 2004-67, 2004-68).

4. As a U.S. territory, Puerto Rico life insurance policies do not require filing of "FBAR" Form TDF 90-22.1 (Report of Foreign Bank and Financial Accounts), for accounts over $10,000).

Regarding IRS Form 8938, Statement of Specified Foreign Financial Assets for specified foreign financial assets (over $50,000), if the policy is owned by a U.S. limited liability company, Form 8938 is not required to be filed (only applies to individuals), (See IRS Form 8938 instructions, p. 2).

Effectively, all IC-DISC shareholder distributions may be U.S. income tax free, not subject to tax reporting, if the U.S. taxpayer's IC-DISC shares are owed by the U.S. taxpayer's Puerto Rico life insurance policy.

Asset Protection

Under Puerto Rico law, the cash value benefits of a life insurance policy are expressly exempt from seizure by creditors (absent fraudulent conveyance funding of the policy). Act No. 399 of September 22, 2004, as amended by Act No. 98 of June 20, 2011. Under Act No. 98 (June 20, 2011), which amended Act. No. 399 (September 22, 2004), the policy owner and policy beneficiary are statutorily protected from seizure.

Conclusion

The tax strategy for export of U.S-made products includes an IC-DISC owned by a Puerto Rico private placement life insurance policy. The tax planning strategy:

1. Reduced Tax/Tax Arbitrage. A lower tax rate on income (in 2013, income is taxed at 20 percent, not 39.6 percent);

2. Tax Deferral. For an annual interest charge of 0.16 percent (as of 9/30/12) between $400,000-$2.5 million of IC-DISC, corporate income is not taxed until distributed to shareholders, until then income annually compounds "tax free" (subject to 0.16% interest charge).

3. No corporate income tax on IC-DISC earnings.

4. For IC-DISC shares held by U.S. taxpayers, Puerto Rico Life Insurance Policy, IC-DISC income distributed to shareholders is not subject to U.S. income tax or tax reporting, minimizing IRS tax audit risks.

5. In addition, the tax strategy includes asset protection planning for the IC-DISC shares, which are held by the Puerto Rico Life Insurance Policy "cash value" (premiums paid plus earnings) are expressly exempt from creditors, and the policy owner and beneficiary(s) are statutorily protected from seizure.

Based on Ryan Losi CPA's IC-DISC tax projections, the tax planning strategy has significant income tax benefits:

- The $37.5 million distributions to the Puerto Rico Private Placement Life Insurance Policy (15 years) if invested may grow in value, and with compounded annual tax-free earnings, may be worth (in 15 years) $83,310,954 (if invested in a S&P 500 index fund; the S&P 500 has averaged an annual 10.6 percent return with cumulative dividend, over the last 30 years) or $118,951,027 (if invested in a hedge fund whose annual return are 15 percent, which is the hedge fund annual yearly projected yield).

- U.S. Exporter ("ABC, Inc."): No IC-DISC, $5million [Annual Net Export Income], $2,637,800 [Combined Federal Tax, All Income], $2,362,200 [Net Annual After-Tax Income] x 15 years = $35,433,000 [Net Aggregate After-Tax Return];

- U.S. Exporter ("ABC, Inc."): IC-DISC**,** $5M [Annual Net Export Income], $1,913,900 [Combined Federal Tax on All Income], $3,086,100 [Net Annual After-Tax Income] x 15 years = $46,291,500 (Net Aggregate After-Tax Return);

- U.S. Exporter ("ABC, Inc."): IC-DISC Owned by PPLI, $5 million [Annual Net Export Income], $1,318,900 [Combined Federal Tax on All Income], $3,681,100 [Net Annual After-Tax Income] x 15 years = $55,216,500 [Net Aggregate After-Tax Return];

- The proposed tax planning strategy may save the U.S. client $19,783,500 in income taxes over 15 years (i.e. $55,216,500- $35,433,000].

- If the U.S. client only uses the IC-DISC planning (without the PPLI), they may save $10,858,500 in income taxes over 15 years (i.e. $46,291,500-$35,433,000]. The PPLI saves additional income taxes of up to $8,925,000.

Chapter 3 - Tax Planning Strategy

Client transfers $5.34 million to irrevocable trust (husband and wife, $10.68 million/2014 estate and gift tax exclusion). The transfer triggers a gift tax, the Form 709 (Gift Tax Return) is filed, the appreciation escapes gift tax and IRS audit risk (i.e. gift tax returns audit risk/2011: 1.42%, Estate tax returns audit risk/2011 29.9%, estates $5m-$10m 60% audit rate, estates over $10m 100% audit rate).

The assets in the irrevocable trust are not subject to creditor attachment unless prior lien or fraudulent conveyance. Trust assets upstreamed to California LLC (which holds investment portfolio), these assets not subject to creditor attachment, creditor sole remedy in California is "charging order."

In addition attaching creditor may be set-up for a "tax problem" (ie. "phantom income" a tax liability re: LLC/K-1 "income" distribution with no cash distribution from LLC to pay tax).

The attaching creditor is subject to California "spendthrift" trust provisions, i.e. creditor cannot attach trust assets only trust distributions (which if made as either a loan or to 3rd party nominee entity are not subject to attachment).

For assets over $5.34m ($10.68m h&w), assets may be sold to the trust for a note (self-cancelling on death, so not includable in estate, not subject to estate tax), which sale is not subject to capital gains. The sale is to an intentionally defective grantor trust, which has no capital gains tax on transactions between grantor and the trust (the trust assets excluded from grantor's estate after gift tax return is filed).

For additional investment tax planning/asset protection, client may purchase a Puerto Rico Private Placement Life Insurance Policy (PR/PPLI). The Trust is owner and beneficiary (client or designated party is insured) which is funded by conditional premium either in one lump sum (frozen cash value) or as a non-mec (over 5 years, so basis and earnings may be withdrawn tax free as a loan repaid by life insurance proceeds re: death benefit).

The PR/PPLI owns IC-DISC shares (along with other investments) so the DISC annual income is tax free. Assets held in the PPLI, which is a "tax-free wrapper" (i.e. earnings compound tax free), no IRS tax reporting (cash value earnings not subject to tax reporting, minimize audit risk), "bullet proof" asset protection (i.e. PR/PPLI cash value exempt from creditors, CA LLC charging order protection, California spendthrift trust provision.)

Chapter 4 – Grantor Trust (Income Tax Rules)

Under Chapter 4, tax planning strategy a Grantor Trust is required.

(Subpart E of Subchapter J of Chapter 1 of Subtitle A IRC 1954)
IRC Sec. 671-679 determines whether a trust is a "grantor trust" for U.S. federal income tax purposes. If a trust is a grantor trust, all items of income, deduction and credit in respect of the trust property will be reported on the grantor's U.S. federal income tax return, and any income tax liability will be paid by the grantor and not from the trust (Treas. Reg. 1.671-3 (a)(1).

IRC Sec. 673-679 identifies persons as "owners" of portions of trusts with which they have relationships. IRC Sec. 671 specifies the consequences of being treated as the owner [IRC Sec. 671: The neck of the funnel through which Sec. 673-678 passes].

Tres. Reg. 1.671-2(e)(1)

"A grantor includes any person to the extent such person either creates a trust or directly or indirectly makes a gratuitous transfer of property to a trust." (A Settlor is the person who intentionally causes the trust to come into existence.)

IRC Sec. 671 identifies a grantor as owner of any "portion" of a trust; items of income, deductions and credits attributable to that portion of the trust are taken into account in computing the grantor's taxable income and credits.

A "Portion" includes:
- Ordinary income;
- Income allocable to corpus;
- An entire trust;
- An undivided fractional interest in the trust;
- An interest represented by a dollar amount;
- Specific trust property.

IRC Sec. 671: Grantor Trust Status

The person designated by Subpart E as "owner" of a portion of a trust must take into account in computing their tax liability the items of income, deductions and credits attributable to that portion of the trust (that would otherwise be reportable by the trust itself).

Tax Compliance

IRC Sec. 6012(a)(4) requires an income tax return from "every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income. Subpart E may attribute part or all of a trust's income to the grantor.

IRC Sec. 6501 statute of limitations protects a taxpayer against assessments occurring later than three years after the filing of the relevant tax return. For the statute of limitations, in the case of a grantor trust the statute begins to run only on the filing of the grantor's return (not the filing of any trust tax return). (See: Lardas v. Commr., 99 T.C. 490 (1992); Olson v. Commr., 64 T.C.M. 1524 (1992), Bartol v. Commr., 63 T.C.M.2324 (1992), Field Serv. adv. 200207007 (Nov. 6 2001).

Under Treas. Reg. 1.671-4(a), items attributed to a grantor are not to be reported by the trust on Form 1041; instead such items should be "shown on a separate statement attached to Form 1041, and reported by the grantor".

Grantor Trust

If the trust is a grantor trust for income tax purposes, a sale of assets to the trust by the grantor is disregarded. (See Rev. Rul. 85-13, 1985-1 C.B. 184).

If the non-contributing spouse has a discretionary interest as to both income and principal, the trust is a grantor trust under IRC Sec. 677(a)(1) to the contributing spouse. No income tax realization event occurs and the policy proceeds are excluded from both estates (Ltr. Rul. 9413045).

Intentionally Defective Grantor Trust

An "Intentionally Defective Grantor Trust" ("IDGT") takes advantage of the differences between the estate tax inclusion rules of IRC Sections 2036-2042, and the grantor trust income tax rules of IRC Sec. 671-678. An IDGT is an irrevocable trust that effectively removes assets from the grantor's estate. As a result, a sale of assets to an IDGT can freeze an individual's estate by converting appreciating assets into a non-appreciating asset with a fixed yield.

For income tax purposes, the trust is "defective" and the grantor is taxed on the trust's income. Accordingly, sale of assets between the IDGT and the grantor are not taxable. The grantor is treated for income tax purposes to have made a sale to himself eliminating capital gain tax on sale. (Additionally, interest payments by the IDGT to the grantor are not income.)

Since the IDGT is "defective" for income tax purposes, all of the trust's income is taxed to the grantor, which produces an additional "tax-free gift" to the IDGT (Rev. Rul. 2004-64, 2004-2(C.B. 7).

As a grantor trust, the IDGT:
- Can be the owner of S-corporation stock (it is a permitted shareholder);
- Can purchase an existing life insurance policy on the grantor's life, without subjecting the policy to taxation under the transfer for value rule;

The sale of the policy is a sale to the grantor-insured and the transfer for value exception under IRC Sec. 101 (a)(2)(B) should apply.

If the IDGT is structured as a "Crummey Trust", the contribution will qualify for the IRC Sec. 2503(b) gift tax annual exclusion. Under IRC Sec. 678(b), a grantor will be treated as the owner of the trust, rather than the beneficiary with respect to power over income (and corpus), which are subject to "Crummey Withdrawal" rights (See IRS PLR 200606006, 200603040, 200729005, 200942020).

Under an IDGT, Grantor Trust Status:

1. Power of Substitution: The Grantor (or spouse) has the power to reacquire trust assets in a non-fiduciary capacity (IRC Sec. 675(4); Treas. Reg. Sec. 1.675-1(b)(4). In Rev. Rul 2008-22, 2008-1 CB 796, the IRS ruled that a grantor's retained power, exercisable in a non-fiduciary capacity, to acquire trust property by substituting property of equivalent value will not by itself cause estate tax inclusion under IRC Sec. 2036 or 2038.

2. Swapping Assets: If the grantor sells assets to the IDGT, the trust assets are excluded from the grantor's estate at death, but the IDGT assets would not receive a tax basis step-up under IRC Sec. 1014. If the assets sold to an IDGT have a low basis, the lack of basis step-up is an income tax disadvantage which may be ameliorated by the grantor exchanging high-basis outside of the IDGT, with low-basis assets inside of the IDGT, achieving a "basis step-up". The swap of assets with an IDGT should not be treated as a gift for purposes of IRC Sec. 1014(e).

3. Power to Make Loans without Adequate Security: The power exercisable by a grantor or a non-adverse party that permits the grantor or the grantor's spouse to borrow trust property without adequate security (IRC Sec. 675(2). Grantor trust status is achieved if the grantor's spouse holds such power under IRC Sec. 672(e). Unlike Sec. 675(3), which requires an actual borrowing by the grantor, the existence of a power under IRC Sec. 675(2) may cause grantor trust status.

Even if the loan provides for adequate interest, grantor trust status is secured if the trustee has the power to lend unsecured. To avoid estate tax inclusion, the lending power should not include the authority to make loans without adequate interest. In order to minimize the risk of estate tax inclusion, the power to lend without security should be held by a non-adverse party and not the grantor (e.g. a trust protector).

4. Power to Add Beneficiaries: The power to add to the class of beneficiaries (other than the grantor's after-born or after-adopted children) to receive the trust's income or corpus held by the grantor, or a non-adverse party will cause grantor trust status. To avoid estate tax inclusion, the grantor should not hold such a power, but the power could be held by the grantor's spouse without inclusion if the spouse did not contribute to the trust and is not

controlled by the grantor. A marital agreement should be entered into in advance of the transfer to ensure that the spouse did not make a contribution to the IDGT. The IRS has privately ruled that the power to add beneficiaries held by a trustee triggers grantor trust status (IRS PLR 199936031; 9709001; 9010065).

5. Payment of Life Insurance Premiums: A grantor is treated as the owner of any portion of the trust whose income may be applied to the payment of premiums of life insurance policies on the grantor or the grantor's spouse (IRC Sec. 677(a)(3). IRS Field Attorney Advice 20062701 F indicates that the power to purchase life insurance on the grantor's life results in grantor trust status. Treasury Regulations establish that the grantor is taxed on any trust income actively used to pay premiums. Under PLR 8852003, the IRS has privately ruled that the power to pay premiums is sufficient.

Income Tax - Transfer for Value (IRC Sec. 101(a)(2)

If insurance policy transferred for valuable consideration, unless exception applies, general rule that policy proceeds are not includable in gross income does not apply.

Not Income Tax Realization Event
- Rev. Rul. 85-13 (1985-1 CB 184): Transfer between grantor and his grantor trust, not an income tax realization event;

- IRC Sec. 1041: Transfers between spouses (if no NRA spouse), no income tax realization, transferee spouse "carry-over" income tax basis.

Exceptions from application of the transfer for value include transfers where the transferee takes a carry-over basis (IRC Sec. 101(a)(2)(A), transfers to the insured, a partner of the insured, a partnership in which the insured is a partner and a corporation in which the insured is a shareholder or officer (IRC Sec. 101(a)(2)(B).

Under Rev. Rul. 2007-13, 2007-11 IRB 684, a transfer to a grantor trust with respect to the insured qualifies as a transfer "to the insured" for purposes of the transfer for value rule. Under this Revenue Ruling, a grantor who is treated for federal income tax purposes as the owner of a trust (that owns a life insurance contract on the grantor's life) is treated as the owner of the contract for purposes of applying the transfer for value limitations under IRC Sec. 101(a)(2).

Grantor Trust - Avoids Application of Transfer for Value Rules

Treas. Reg. 1.671-2 (e)(1): A grantor includes any person to the extent such person either creates a trust or directly or indirectly makes a gratuitous transfer of property to a trust.

Under IRC Sec. 671-677, only a person who makes a gratuitous transfer to a trust can be treated as an "owner", necessary to engage in disregarded transactions with the trust. The Trust Donor is treated as the owner for grantor trust purposes.

Grantor Trust Status

IRC Sec. 677 (a)(3): Trust is a grantor trust to the extent trust income may be used to pay premiums on insurance policies on the grantor's life, or the grantor's spouse. However, grantor trust status may apply only to the portion of the trust the income from which is currently used to pay premiums (See: Weil, 3TC 579 (1944); Iverson, 3 TC 756 (1944).

Settlor power, held in a non-fiduciary capacity, to substitute property of equivalent value under IRC Sec. 675(4)(C), causes a trust to be a grantor trust.

Estate Tax

Where trust assets consist of an insurance policy on the grantor's life, a power to substitute assets may not result in estate tax inclusion under IRC Sec. 2042(2), if the grantor held the power in a fiduciary capacity (See: Estate of Jordahl, 65 TC 92 (1975); Aug. 1977-1, (CB 1) (See: Ltr. Rul. 200603040).

IRS

Trust property may not be includable in the gross estate under IRC Sec. 2035, 2036, 2048 or 2039 if the power of substitution is held in a fiduciary capacity.

Grantor Trust Rules - IRC Sec. 672(e)

Spousal Unity Rule; i.e., grantor is treated as holding any power or interest held by the grantor's spouse.

Gift Tax

Creation of an irrevocable trust may subject the grantor to the gift tax: Treas. Reg. 25.2511-2(d).

Grantor Trust Status (ILIT)

A related and subordinate party could be named as trustee with the power to make discretionary distributions, not on an ascertainable standard, in order to make the ILIT a grantor trust. If the grantor cannot remove and replace the trustee, the initial appointment of a related and subordinate party trustee may not cause the powers of the trustee to be attributed back to the grantor for estate tax purposes (Ltr. Rul. 9636033).

Grantor trust status confirmed if a person who is not a contributor to, or beneficiary of, the trust, has the power to add to the class of beneficiaries (e.g. charity or other descendants (IRC Sec. 674(b)(5), 674(b)(6). See: Madorin, 84 TC 667 (1985)).

Grantor Trust - (Ownership of Assets)

Under Rev. Rul. 85-13, and Proposed Treas. Reg. Sec. 1.671-2(f) "a person that is treated as the owner of any portion of a trust under subpart E is considered to own the trust assets attributable to that portion of the trust [See: REG- 209826-96, 1996-2 (C.B. 498)].

Termination Grantor Trust Status

A grantor trust loses its status as a grantor trust on the death of its grantor (D.G. McDonald Trust, 19 TC 672 (1953), acq. 1953-2 C.B.3 (Chase Nat'l Bank v. Commr., 225 F.2d 621 (8th Cir. 1955)); Proposed Treas. Reg. Sec. 1.671-4(h)(2)).

Adverse Party

IRC Sec. 672(a) defines an "adverse party" as "any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or non-exercise of the power which he possesses respecting the trust."

A trustee may be an adverse party if the trustee has the power to distribute all of the trust income and property to himself but is not an adverse party if the trust terms fix all the beneficial interests even if the trustee is a beneficiary (See: Johnson v. Commr., 108 TC 448 (1957), Floyd G. Paxton, 57 TC 627 (1972).

Beneficiaries can be adverse parties if they have a power the exercise or non-exercise of which would adversely affect the beneficiary's own beneficial interest.

IRC Sec. 672(b) defines a "nonadverse party" as "any person who is not an adverse party".

A trust is classified as a grantor trust if more than half of the trustees are related or subordinate to the grantor.

IRC Sec. 674(a) provides that the grantor of a trust is to be treated as the owner of any portion of such trust, in respect of which the beneficial enjoyment of such portion is subject to a power of disposition, exercisable by the grantor or a non-adverse party, or both, without the approval or consent of any adverse party.

IRC Sec. 674(c) provides an exception to the general rule of IRC Sec. 674(a) for distribution powers of the "independent trustee", none of whom is the grantor, and no more than half of

whom are related or subordinate to the grantor or are subservient to the wishes of the grantor (IRC Sec. 672(c) defines: "related or subordinate party".)

Related or Subordinate Party

IRC Sec. 672(c) defines a "related or subordinate party" as any "non-adverse party" which includes:

1. IRC Sec. 672(c)(1): The grantor's spouse (only if they are living together);

2. IRC Sec. 672(c)(2): Grantor's father, mother, children, brother, sister (including half-brothers/sisters). See: Rev. Rul. 58-19, 1958-1, CB 251);

3. IRC Sec. 672(c)(2): An employee of the grantor, or the grantor's corporation.

Not Related or Subordinate Party

Under IRC Sec. 672(c) the following are not related or subordinate parties:

1. Nieces, nephews, grandparents, spouses of children, spouses of grandchildren, spouses of brothers and sisters;

2. Partners of the grantor;

3. Director of a corporate grantor (i.e. stock holdings of the grantor and the trust are significant, re voting control). See: Rev. Rul. 66-160, 1966-1, CB 164;

4. The grantor's lawyer, accountant or trust company (See: Zand v. Commr., 71 TCM 1758 (1996), 143 F.3d 1393 (11th Cir. 1998); Estate of Hilton W. Goodwyn, 35 TCM 1026, 1038 (1976) re lawyers-trustees not "related or subordinate parties" and lawyer-trustees were independent trustees under IRC Sec. 674(c).

Power Subject to Condition Precedent

IRC Sec. 672(d) states that a person is deemed to have a power described in subpart E "even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power".

Grantor's Spouse

The Tax Reform Act of 1986 added IRC Sec. 672(e), which treats the grantor as holding any power or interest held by the grantor's spouse if the grantor's spouse was living with the

grantor at the time of the creation of the power or interest (i.e., if the spouse and the grantor are eligible to file a joint return with respect to the period in question).

Grantor as Foreign Person - ("Inbound Trusts")

If a foreign person is an "owner" of any portion of a trust, and the trust has as a beneficiary a U.S. person who has made one or more gifts to that foreign person, IRC Sec. 672(f)(5) designates the U.S. beneficiary, not the foreign grantor-donee, as the owner of the trust to the extent of the gifts (with an exception for gifts that qualify for the annual exclusion under IRC Sec. 2503(b)).

IRC Sec. 672(f)(5) precludes foreigners immigrating to the U.S. from giving property to another foreigner, who agrees to use the property to fund a U.S. trust for the benefit of the immigrating foreigner, who then denies he was the grantor of the trust. Under IRC Sec. 672(f)(5), the immigrating foreigner receives the same treatment he would have received had he created the trust directly (Treas. Reg. Sec. 1.672(f)-5(a)(1)).

In the Small Business Job Protection Act of 1996, Congress expanded IRC Sec. 672(f) so that subpart E now generally applies only when its effect is to designate as owner of part or all of a trust a U.S. citizen, resident or domestic corporation (IRC Sec. 672(f)(1), a "controlled foreign corporation", defined in IRC Sec. 957 is treated as a domestic corporation. IRC Sec. 672(f)(3)(A).

IRC Sec. 672(f) reverses prior law under which subpart E designated non-resident aliens as owners of trusts, thereby allowing U.S. beneficiaries to receive the income from such trusts tax-free.

Grantor Trust: Co-ownership and Reversionary Interest

IRC Sec. 673(a) now treats the grantor who retains any reversionary interest as owner of the entire trust (Treas. Reg. 1.671-3(b)(3)); Priv. Ltr. Rul. 9519029 (Feb. 10, 1995). IRC Sec. 672(e) treats the grantor as owner of any interest their spouse owns. Unless the value of the reversionary interest at inception is less than 5% of the value of the property transferred. (IRC Sec. 673(b) excepts from the general rule any reversionary interest that follows the death before attaining age 21 of a lineal descendant of a grantor.)

A grantor who has retained a reversionary interest in the corpus of a trust is treated as owner of the corpus portion of that trust (Treas. Reg. Sec. 1.673(a)-1(a), 1.677(a)-1(g) Ex. (2).

IRC Sec. 674: Powers over Beneficial Enjoyment

IRC Sec. 674(a) treat any grantor as owner of any portion of any trust "in respect of which the beneficial enjoyment of the corpus or income is subject to a power of disposition, exercisable

by a grantor or non-adverse party, or both, without the approval or consent of any adverse party."

IRC Sec. 674, 677: Power to Apply Income to Support of a Dependent

A grantor is not subject to tax under neither IRC Sec. 677(b) nor Sec. 674(a) merely because in the discretion of another person, the trustee or the grantor (or the grantor's spouse, IRC Sec. 672(e)), acting as trustee, income may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain. Under IRC Sec. 677(a), the grantor is treated as the owner of the income portion, to the extent of the grantor's obligation of support.

Grantor Trust - Power to Distribute Corpus

IRC Sec. 674(b)(5) provides two exceptions (to IRC Sec. 674) for powers to distribute corpus:

1. Power to distribute corpus to or for one or more beneficiaries if the power is limited by a reasonably definite standard in the trust instructions (IRC Sec. 673(b)(5)(A), i.e. a "clearly measurable standard under which the holder of a power is legally accountable (Treas. Reg. Sec. 1.674(b)-1(b)(5)(i)). Examples of reasonably definite standards are standards relating to a beneficiary's "education, support, maintenance or health", "reasonable support or comfort", to enable a beneficiary to maintain an "accustomed standard of living", to allow a beneficiary to "meet an emergency", or to pay a beneficiary's "medical expenses" (Treas. Reg. Sec. 1.674(b)-1(b)5(iii), Ex. (1)).

2. Power to distribute corpus to or for any "current income beneficiary", whether subject to a standard or not, if the distribution must be chargeable against the proportionate share of corpus held in trust for payment of income to the beneficiary "as if the corpus constituted a separate trust" (IRC Sec. 674(b)(5)(B).

Grantor Trust - Exception: (Independent Trustee)

Exceptions to the general rule of IRC Sec. 674(a) are contained in IRC Sec. 674(c), which provides exceptions if the powerholder is an "independent trustee"; i.e. not the grantor, grantor's spouse, no more than half of whom are related or subordinate parties who are subservient to the grantor's wishes.

The exceptions:
1. The power of a trustee to distribute, apportion or accumulate income to or for one or more beneficiaries (IRC Sec. 674(c)(1).

2. The power of a trustee to sprinkle corpus to or among one or more beneficiaries, regardless of whether they are income beneficiaries (IRC Sec. 674(c)(2).

Grantor Trust/Exception: (Powerholder is a Trustee, other than the Grantor or the Grantor's Spouse)

IRC Sec. 674(d) protects a power to distribute, apportion or accumulate income to or for the beneficiaries if the power is limited by a "reasonably definite external standard" (Treas. Reg. 1.674(d)(1), 1.674(b)-1(b)(5) which "defines a reasonably definite standard"). The "standard" must be set forth in the trust instrument.

Grantor Trust - Power to Remove Trustee

Under Treas. Reg. Sec. 1.674(d)-2(a), W. Clarke Swanson, Jr. 1950 Trust, 33 TCM 296, 302 (1974), aff'd 518 F.2d 59 (8th Cir. 1975), if the grantor or the grantor's spouse has the power to remove the trustee and make either of them the trustee, neither the exception under IRC Sec. 674(c) or IRC Sec. 674(d) applies.

Grantor Trust - Power to Add Beneficiaries

A power to add beneficiaries does not qualify under IRC Sec. 674 exceptions if any person has the power to add to the group of beneficiaries, other than providing for after-born or after-adopted children. A power in a non-adverse party to add charitable beneficiaries or trigger IRC Sec. 674 (See: Madorin v. Commr., 84 TC 667 (1985). Priv. Ltr. Rul. 9838017 (6/19/98), Priv. Ltr. Rul. 9710006 (11/8/96), Priv. Ltr. 97090001 (11/8/96)).

IRC Sec. 675 - Grantor Administrative Powers

IRC Sec. 675 contains provisions designed to prevent a grantor from maintaining dominion and control over a trust through certain types of administrative powers vested in either the grantor or others.

1. Power to Deal with Trust Property for Less Than Adequate and Full Consideration.
IRC Sec. 675(1) describes a power exercisable by the grantor or any non-adverse party to enable the grantor or any person to "purchase, exchange or otherwise deal with or dispose of the corpus or the income there from for less than an adequate consideration in money or money's worth."

2. Grantor Borrowing. IRC Sec. 675(2) relates to a power enabling a grantor to borrow without adequate interest or security. IRC Sec. 675(3) relates to actual borrowing.

Power to Borrow without Adequate Interest or Security

IRC Sec. 675(2) describes a power exercisable by the grantor or any non-adverse party to enable the grantor to borrow either principal or income "directly or indirectly, without adequate interest or adequate security". If so, grantor is treated as the owner of some portion of the

trust. If the trustee (who is not the grantor or the grantee's spouse) has the power to lend on such terms to anyone, the power is disregarded for purposes of IRC Sec. 675(2). In addition, there are no other restrictions on the trustee's identity; even a related or subordinate party may serve as trustee.

Actual Borrowing

IRC Sec. 675(3) states that actual borrowing by the grantor causes grantor trust status, if the grantor has "directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year." IRC Sec. 675(3) does not apply to a loan to a grantor that provides for adequate interest and adequate security if made by a trustee "other than the grantor and other than a related or subordinate trustee subservient to the grantor". If a loan to a grantor provides for adequate interest and adequate security, and is made by a non-captive trustee, there are no grantor trust consequences.

In *Zand v. Commr.,* 71 TCM 1758 (1996), 143 F.3d 1393 (11th Cir. 1998), the court held that certain loans qualified under the exception of IRC Sec. 675(3) because they provided for adequate interest and security and a majority of the trustees who made them were neither related nor subordinate to the grantor under IRC Sec. 672(c), despite the fact these two trustees were also the grantor's lawyers.

General Powers of Administration

IRC Sec. 675(4) describes three powers of administration and treats the grantor as owner of a portion of the trust if any of these powers is exercisable in a "non-fiduciary capacity" by any person without the approval or consent of any person in a fiduciary capacity. Treas. Reg. Sec. 1.675-1(b)(4) limits the applicability of the provision to powers held by a "non-adverse party". If a power is exercisable by a trustee, it is presumed to be exercisable in a fiduciary capacity.

The three powers:

1. The power to vote or direct the voting of stock or securities of a corporation in which the holdings of the grantor and the trust are "significant from the viewpoint of voting control."

2. The power to control the investment of the trust funds either by directing investments or by retaining proposed investments "to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control".

3. The power to reacquire trust property by substituting other property of an equivalent value.

Revocable Trusts

If a trust is wholly revocable by the grantors, IRC Sec. 676 treats the grantor as owner of the entire trust because the grantor has the power to revest in himself all of the trust property.

IRC Sec. 677
Income for Benefit of Grantor or Grantor's Spouse

1. Income Distributable to the Grantor or Grantor's Spouse.
If a grantor retains a mandatory income interest, or creates a mandatory income interest in the grantor's spouse, IRC Sec. 677 treats the grantor as owner of the income portion of the trust, under IRC Sec. 677(a)(1), the "income is distributed to the grantor or the grantor's spouse." IRC Sec. 677(a) requires that the income be distributed "without the approval or consent of any adverse party."

2. Income Accumulated for the Grantor or Grantor's Spouse
IRC Sec. 677(a)(2) applies if income may be accumulated without the consent of an adverse party for future distribution to the grantor or the grantor's spouse.

3. Income Applicable to Payment of Life Insurance Premiums
IRC Sec. 677(a)(3) applies if income is or may be applied without the consent of an adverse party to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse. The grantor is treated as the owner of some portion of any trust required or permitted to pay premiums on policies of life insurance on the life of either the grantor or the grantor's spouse. The courts have limited the amount of income on which a grantor is subject to taxation to that which the trustee actually uses to pay premiums on specified policies (Joseph Weil, 3 TC 579 (1944)).

4. Income Applicable to Discharge of Indebtedness
IRC Sec. 677(a) treats the grantor as owner of a portion of a trust if its income can be used to pay off debts of the grantor such as rent, household expenses or mortgage debt (See: Treas. Reg. Sec. 1.677(b)-1(d); Jack Wiles, 59 TC 289 (1972), Jenn v. U.S. 70-1 USTC Para. 9264 (S.D. Ind. 1970).

5. Income Applicable to Discharge of Support Obligations
IRC Sec. 677(b) is an exception to the general rule of IRC Sec. 677(a). According to IRC Sec. 677(b), IRC Sec. 677(a) does not apply if trust income may be "applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support".

Under Treas. Reg. Sec. 1.677(b)-1(f), if income must be applied in discharge of a support obligation of the grantor, IRC Sec. 677(b) does not apply; instead IRC Sec. 677(a) applies. For IRC Sec. 677(b) to apply, the power to use trust income to discharge the grantor's support obligations must be that of "another person, the trustee, or the grantor acting as trustee or co-trustee". Under Treas. Reg. Sec. 1.677(b)-1(e), if the power is that of the grantor acting in a

non-fiduciary capacity, the grantor is treated as owner of the trust's income, to the extent of his or her dischargeable obligations, regardless of whether the trust discharges them.

Under IRC Sec. 677(b), for trust distributions in discharge of a grantor's support obligations:
- If a distribution comes out of current income, the grantor is treated as owner of the trust, but only to the extent of the obligation discharged (Brooke v. U.S., 300 F.Supp. 465 (D. Mont. 1969), aff'd 468 F.2d 1155 (9th Cir. 1972).

- If the distribution comes out of either principal or accumulated income, IRC Sec. 677(b) treats the amount distributed as deductible by the trust under IRC Sec. 661(a)(2) and taxable to the grantor under IRC Sec. 662, (Rev. Rul. 74-94, 1974-1 C.B. 26); Treas. Reg. Sec. 1.677(b)-1(c).

IRC Sec. 678 - Non-Grantors Treated as Grantors

Under IRC Sec. 678, one other than the grantor is treated as owner of any portion of a trust that he can by exercise of a power exercisable by himself, vest in himself a portion of a trust.

Released or Modified Power

IRC Sec. 678(a)(2), applies if a person other than the grantor has "previously partially released or otherwise modified" a power described in IRC Sec. 678(a)(1), and "retains such control as would subject a grantor of a trust to treatment as the owner thereof", IRC Sec. 678(a)(2) treats anyone who has released or modified an IRC Sec. 678 power as though he created a continuing trust.

Obligations of Support

IRC Sec. 678(a), if a powerholder can direct a trust to expend either its income or its principal to discharge a legal obligation, he is treated as the powerholder, if principal or accumulated income is used to discharge the powerholder's support obligation, the powerholder is treated as a beneficiary who receives a taxable distribution under IRC Sec. 661 and 662.

IRC Sec. 679

<u>Foreign Trusts with U.S. Beneficiaries ("Outbound Trusts")</u>
If a U.S. person transfers property to a foreign trust that has one or more U.S. beneficiaries, IRC Sec. 679 treats the transferor as owner of the portion of the trust attributable to the property transferred (IRC Sec. 679(a)(1)). There are exceptions:

1. A transfer by reason of the death of the transferor (IRC Sec. 679 (a)(2)(A));
2. A transfer "in exchange for consideration of at least the fair market value of the transferred property" (IRC Sec. 679(a)(2)(B).

If a foreign trust accumulates income during a year in which it has no U.S. beneficiary, if the trust acquires a U.S. beneficiary in a later year, a U.S. transferor (who would have been treated as owner of a portion of the trust during the prior year, but for the fact that it had no U.S. beneficiary) is taxable in the first year IRC Sec. 679 applies, on additional income equal to the trust's undistributed net income for all prior taxable years (to the extent such undistributed net income remains in the trust at the end of the taxable year immediately prior to applicability of IRC Sec. 679) attributable to the portion to which IRC Sec. 679 applies (IRC Sec. 679(b).

Direct/Indirect Transfers

Under the IRC Sec. 679(a)(1) a U.S. person's transfer to a foreign trust includes both indirect and direct transfers, either of which classifies the U.S. person as the owner of the trust attributable to the property transferred if the foreign trust has one or more U.S. beneficiaries. Indirect transfers include:

1. A transfer by either a foreign or domestic entity in which a U.S. person has an interest "may be regarded as an indirect transfer to the foreign trust by the U.S. person if the entity merely serves as a conduit for the transfer by the U.S. person or if the U.S. person has sufficient control over the entity to direct the transfer by the entity rather than himself." (S. Rep. 938, 94th Cong., 2d Sess. 219 (1976)).

2. If a foreign trust borrows money or property and a U.S. person guarantees the loan, the U.S. person is making an indirect transfer to the trust.

3. An intermediate transfer to either another person or an entity that makes the actual transfer to the foreign trust is to be disregarded "unless it can be shown that the ultimate transfer of property to the trust was unrelated to the intermediate transfer. In such a case, the person making the intermediate transfer would be treated as having made the ultimate transfer directly." See: Haeri v. Commr., 56 TCM 1061 (1989) (transfer by agent). Treas. Reg. Sec. 1.679-3 provides elaborate guidance with respect to indirect transfers.

IRC Sec. 679: U.S. Persons

IRC Sec. 679 applies only to a "U.S. person" which IRC Sec. 7701 (a) (30) defines as "a citizen or resident of the U.S.", including a resident alien (See: Treas. Reg. Sec. 1.679-1(d); Haeri v. Commr., 56 TCM 1061 (1989); Rev. Rul. 90-106, 1990-2 (B162)). A "U.S. person" includes: a U.S. partnership or corporation, any estate other than a foreign estate (defined in IRC Sec. 7701(a)(31)(A). A U.S. person includes a "U.S. Trust" (i.e. a domestic trust) which is a trust if "a court within the U.S. is able to exercise primary supervision over the administration of the trust", and "one or more U.S. persons have the authority to control all substantial decisions of the trust". (Treas. Reg. Sec. 301.7701-7(a)(1).

IRC Sec. 679 only applies to transfer to a "foreign trust" (i.e. not a domestic trust) only if a trust has a U.S. beneficiary. (IRC Sec. 7701(a) (31)(B) defines a foreign trust as any trust that does not qualify as a U.S. person.

U.S. Beneficiary

Under IRC Sec. 679(c), a foreign trust always has a U.S. beneficiary unless "under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a U.S. person (IRC Sec. 679(c)(1)(A). Under Treas. Reg. Sec. 1.679-2(a)(2)(i), this determination is independent of whether there is an actual distribution of income or corpus to a U.S. person during the year. If the trust authorizes accumulations for possible distributions to any U.S. person in the future, the trust has a U.S. beneficiary throughout the intervening period. Treas. Reg. Sec. 1.679-2(a)(2)(iii), (Ex 2). Even if the only interest a U.S. person has a right to receive is corpus upon termination, the trust has a U.S. beneficiary. Treas. Reg. 1.679-2 (a)(2)(iii), Ex (3).
In addition, a foreign trust always has a U.S. beneficiary if "no part of the income or corpus" of the trust could be paid to or for the benefit of a U.S. person "if the trust were terminated at any time during the taxable year". (IRC Sec. 679(c)(1)(B).

If any person has the authority to distribute trust income or corpus to unnamed persons generally or to any class of persons which include "U.S. persons", the trust has U.S. beneficiaries (Treas. Reg. 1.679-2(a)(2)(i), this determination is independent of whether a U.S. person's trust interest is contingent).

If any person has a power of appointment pursuant to which income or corpus may pass to a U.S. person, the trust has U.S. beneficiaries (Treas. Reg. Sec. 1.679-2(a)(2)(iii), (Ex 11).

If any person has the power to amend the trust so as to include U.S. persons as beneficiaries, the trust has U.S. beneficiaries (S. Rep 938, 94th Cong., 2d Sess. 219 (1976)).

Under Treas. Reg. 1.679-2(a)(4), the determination of whether income or corpus may be paid to or for the benefit of a U.S. person, the IRC consults "writings, oral agreements between the trustee and persons transferring property to the trust, local law, and the trust instrument".

IRC Sec. 679(c)(2) provides attribution rules that can cause income paid to or accumulated for a foreign corporation, partnership, trust or estate to be treated as though it were paid to or accumulated for the benefit of a U.S. beneficiary: these attribution rules apply if a corporation is a controlled foreign corporation, as defined in IRC Sec. 957(a) (See: IRC Sec. 679(c) (2)(A).

If a U.S. person is a partner of a foreign partnership (IRC Sec. 679(c) (2) (B), or if a U.S. person is a beneficiary of a foreign estate or trust (IRC Sec. 679(c)(2)(C). See: Treas. Reg. Sec. 1.679-2(b)(2) and (3), (Ex. 4 & 5).

A foreign trust has U.S. beneficiaries the day after the trust beneficiaries move to the U.S. (Treas. Reg. Sec. 1.679-2(a)(3)(ii), (Ex 1). Under IRC Sec. 679(c)(3), a beneficiary who first becomes a U.S. person more than 5 years after the date of a transfer to a foreign trust is not a U.S. person with respect to that transfer (See: Treas. Reg. Sec. 1.675-2(d)(3)(ii), (Ex 2).

The determination whether a trust has a U.S. beneficiary for purposes of IRC Sec. 679 occurs on an annual basis (Treas. Reg. 1.679-2(a)(1).

If a foreign beneficiary becomes a U.S. person, IRC Sec. 679 begins to apply with the transferor's first taxable year in which the foreign beneficiary is a U.S. person. The U.S. transferor has "additional income" pursuant to IRC Sec. 679(b) in the taxable year in which the trust acquires a U.S. beneficiary. Treas. Reg. 1.679-2(c)(1)(3), (Ex 1).

When a trust ceases to have any U.S. beneficiaries, the U.S. transferor continues to be treated as owner until the beginning of the following taxable year (Treas. Reg. Sec. 1.679-2(c)(2)(3), (Ex 2).

Under IRC Sec. 679, with respect to a foreign trust, to which no U.S. resident has ever transferred anything, if a non-resident alien becomes a U.S. resident within 5 years of an actual transfer (Treas. Reg. 1.679-5), it is a U.S. grantor trust.

If a non-resident alien transfers property to a foreign trust and during the succeeding 5 years becomes a U.S. resident, IRC Sec. 679 applies as though the transferor had, on that later date, transferred "an amount equal to the portion of such trust attributable to the property actually transferred". (IRC Sec. 679(a)(4)(A), which includes undistributed net income of the trust for periods before the transferor became a U.S. resident (IRC Sec. 679(a)(4)(B).
If a U.S. trust becomes a foreign trust, under IRC Sec. 679 the trust becomes a foreign grantor trust (Treas. Reg. 1.679-6) and IRC Sec. 679 applies as though the grantor had on that date transferred "an amount equal to the portion of such trust attributable to the property previously transferred (IRC Sec. 679(a)(5), including undistributed net income of the trust for periods before the trust became a foreign trust." (IRC Sec. 679(a)(5)).

Conclusion

Based on the tax strategy proposed in our American Bar Association/Practical Tax Lawyer Summer 2013 Article: International Tax Planning For US Exports (IC-DISC), by Gary S. Wolfe, Esq. & Ryan Losi, CPA, the $2.5million commission for the DISC may be received annually tax-free (saving up to $1.4million in tax on the $2.5million) and if invested under an S&P 500 index funds (historical returns 30 year average including dividends: 10.6%) may be worth $83million+ (for 15 years of $2.5million payments equals $37.5million plus compounded tax free earnings).

If properly structured the total tax savings/investment yields may be received estate and gift tax free and be worth in excess of $100million (after 15 years) i.e. annual income tax savings $16.5m over 15 years ($1.1million x 15 years), plus $83million+, plus death benefit (under the PR/PPLI).

If all of the above is implemented correctly, this tax strategy creates the large-scale benefits worthy of the California wine industry: it creates jobs for American citizens, makes California wines available to more consumers around the world, allows offshore investors to acquire EB-5 Visa/Green Cards, and ultimately, it enables California wine producers to legally reduce their tax liability and enjoy a greater share of the financial benefits they so well deserve.

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Ryan Losi is a shareholder and Executive Vice President of PIASCIK, in Glen Allen, Virginia, and leads the firm's international tax practice and business development efforts. He is a nationally published author and has presented at numerous organizations and universities, including Virginia Society of CPAs, Virginia International Business Council, Virginia Leaders of Export Trade, VirginiaBio, U.S. Export-Import Bank, Virginia Conference on World Trade, South Carolina International Trade Conference, Virginia General Assembly, Council for International Tax Executives, Medical Society of Virginia, Ohio State university, Virginia Commonwealth University, University of Richmond, James Madison University, Virginia State University, Virginia Economic Development Partnership and many others.

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In 1997, Gary completed the Team Beverly Hills civic leadership training.

From 1997-1999 Gary was Vice-President and Member of the Board of Trustees of The Greystone Foundation, Beverly Hills, California.

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Since 2004, Gary has been conducting private seminars throughout California on the IRS, International Tax and Asset Protection.

Since 2004, Gary has been researching the IRS and International Tax (and other issues).

As of December 2014, Gary has written 13 articles and 11 books, and has been interviewed in 4 articles:

Articles by Gary S. Wolfe

EB-5 Investor Green Cards By Mark Ivener and Gary Wolfe
Offshore Investment (December 2014/January 2015 Edition)

EB-5 Investors & the Perils of U.S. Estate and Gift Taxes with Mark Ivener
EB-5 Investors Magazine (Winter/2014 Edition)

Self-Study Article: A Primer on Passive Foreign Investment Companies and Comparison to Controlled Foreign Corporations with Allen Walburn
California Tax Lawyer (Fall 2013)

EB-5 Investor Visa And U.S. Tax Issues with Mark Ivener
ABA/The Practical Tax Lawyer (Fall 2013)

U.S. Based Hedge Funds and Offshore Reinsurance with Allen Walburn
ABA/The Practical Tax Lawyer

International Tax Evasion and Money Laundering
ABA/The Practical Tax Lawyer (Summer 2013)

International Tax Planning for U.S. Exports (IC-DISC) with Ryan L Losi
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Why Tax Evasion is a Bad Idea: UBS & Wegelin Bank
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U.S. Tax Planning for Passive Investments with David E. Richardson
ABA/The Practical Tax Lawyer (Winter 2013)

FBARs and Offshore Hedge Funds
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Articles (Interviewed)

1. Learning From Gandolfini's Estate Plan 'Disaster' by Anthony Greco
Private Wealth Magazine (July 2013)

2. IRS Closes In On Secret Caribbean Accounts by Eric Reiner
Financial Advisor Magazine (June 2013)

3. Karate Enables Lawyers to Focus on 'the Task at Hand' by Eron Ben-Yehuda
Daily Journal (May 2005)

4. The Best Tax Haven Getaways by Christina Valhouli
Forbes.com (April 2004)

Books by Gary S. Wolfe:

The IRS and Defrauded Investors: Theft Tax Loss (2015)

Offshore Tax Evasion: The IRS and Swiss Banks (2015)

Expatriation: The IRS & U.S. Taxes (2014)

EB-5 Visas: International Investors & U.S. Taxes (2014) with Ryan Losi, CPA and Mark Ivener, Esq.

U.S. Pre-Immigration Tax Planning (2014)

Tax Planning for U.S. and State Exports: IC-DISC (2013) with Ryan Losi, CPA and Allen Walburn, Esq.

Offshore Tax Evasion: IRS Offshore Voluntary Disclosure Program (2013)

Asset Protection 2013: The Gathering Storm (2013)

Offshore Tax Evasion: IRS Tax Compliance FATCA/FBAR (2013)

International Tax Evasion & Money Laundering (2013)

Offshore Tax Evasion: U.S. Tax & Foreign Entities (2013) with Allen B. Walburn, Esq.

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