



Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

July 2017

Decanted Trusts Wins IRS GST Tax Approval

By John R. Cummins, Jeremy P. Gerch and Eric J. Metzger of Bingham, Greenebaum Doll LLP*

In a departure from their previously announced position, the IRS recently ruled that trusts which were decanted into new trusts on slightly different terms preserved their favorable grandfathered status against the generation-skipping transfer (GST) tax (see [IRS Private Letter Ruling 201711002](#)).

The GST tax was enacted in its current form in late 1985. In general, trusts which were irrevocable prior to that date are grandfathered against the tax. If the GST tax applies to a trust, there is currently a 40 percent tax whenever distributions are made to beneficiaries who are two or more generations younger than the grantor of the trust. A grandfathered trust is not subject to this GST tax, so long as it retains its favorable grandfathered status.

The IRS has adopted regulations governing what changes can be made to a grandfathered GST Trust without

jeopardizing its grandfathered status. The general concept is that the modification of the trust must not shift any beneficial interest in the trust to any beneficiary who occupies a lower generation than the beneficiaries prior to the modification, and also the modification must not extend the time for vesting of any beneficiary's interest in the trust beyond the period provided for in the original trust.

Decanting a trust involves transferring some or all of the assets of an existing trust into a new trust created on different terms. Many states, including Kentucky, have enacted statutes expressly authorizing trust decanting. The decanting statutes allow a range of trust changes to be made, depending on the particular state. It is not uncommon to be able to change the trustee or the administrative provisions of the trust, to change the date or event of trust termination, to delete a beneficiary, or to give a

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Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

Tech Tip: Phishing awareness

By Systems Librarian, Julie Koehne

Phishing attacks use email or malicious websites to collect personal and financial information or infect your machine with malware and viruses. The emails appear to look like they come from a financial institution, e-commerce site, government agency or any other service or business. Malicious websites offer links to click on to “Win” something, all the while collecting any information you provide. If you click on a link to win you may be clicking on a link to download software that could be harmful.



Pay attention to the website's URL. Malicious websites may look identical to a legitimate site, but the URL may use a variation in spelling or a different domain (e.g., .com versus .net).



Protect Yourself with these STOP. THINK. CONNECT. Tips:

- **When in doubt, throw it out:** Links in email, tweets, posts and online advertising are often how cybercriminals try to compromise your information. If it looks suspicious, even if you know the source, it's best to delete or, if appropriate, mark it as junk.
- **Think before you act:** Be wary of communications that implores you to act immediately, offers something that sounds too good to be true or asks for personal information.
- **Make your password a sentence:** A strong password is a sentence that is at least 12 characters long. Focus on positive sentences or phrases that you like to think about and are easy to remember (for example, "I love country music."). On many sites, you can even use spaces!
- **Unique account, unique password:** Having separate passwords for every account helps to thwart cybercriminals. At a minimum, separate your work and personal accounts and make sure that your critical accounts have the strongest passwords.

For more on security see StaySafeOnline.org

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
Registration is required.

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/calendar/>

Legal Issues in Boxing

Presenter: Carl Lewis

Wednesday, July 12

Noon-1pm

The program will include a general review of Ohio's Athletic Commission rules and regulations governing promoters, managers and fighters, as well as contractual issues and recent litigation involving boxing and mixed martial arts. Approved for 1.0 hour of general CLE credit in Ohio and Kentucky.

CLE: Profiles in Courage: How Lawyers Can Be Inspired by Two Centuries of Leadership

Presenter: Chuck Strain

Thursday, August 10

Noon-1pm

1.0 hour of professional conduct CLE pending in Ohio. Approved for 1.0 hour of general CLE credit in Kentucky.

Law Library Board Meeting

The next quarterly meeting of the Hamilton County Law Library Resources Board will be held on Thursday, July 13, 2017 at 12:00 noon in the Robert S. Kraft Board Room. Meetings are open to the public.

Renovations

Big things are happening at the Law Library! You may have noticed the many empty shelves in our main room, or seen some of us pushing unwieldy carts loaded down with books from room to room. This is to make room to shift all of the books out of our state room, for a very exciting reason. Renovations! We will be renovating that space (the blue room) and the storage area behind it, to include a conference room suite and new subscriber lounge. We're thrilled to be able to make these improvements for our subscribers and will share more details about the space and plans as the project progresses. We owe a big thank you to the Cincinnati Law Library Association, the Law Library Resources Board, the Board of County Commissioners and County Administration and Facilities (and others!) for helping us to get this off the ground.

The renovation work won't be starting for several months, but we want to establish new homes for the books now so that things will be in place and accessible for our patrons during the renovation process with minimal disruption. We're working hard to create a streamlined space for all of these materials so you can efficiently locate and access what you need. We'll share detailed info about where things are located once we've completed shifting. In the meantime, if you can't find something, please don't hesitate to ask!

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beneficiary a new power of appointment over the trust, for example. The Uniform Trust Decanting Act was recently promulgated by the Uniform Law Commissioners, and may ultimately increase greatly the uniformity of trust decanting laws among the states.

In the obviously ancient trusts involved in this IRS Ruling, the modification potentially extended the termination date of the trust. Under the old trusts, the termination date was the date of death of the survivor of two great-grandchildren of the grantor of the trust. Under the new trusts after decanting, each trust would last until the death of a specified great-great-grandchild. However, each new trust still remained subject to termination under the state's trust rule against perpetuities in effect on the date the original trusts were established. The rule against perpetuities is a trust law limiting the maximum period for the duration and vesting of trust interests. This rule varies widely from state to state. In the classic formulation, the rule against perpetuities limits the duration of trusts by requiring the vesting of all trust interests within twenty-one years after lives in being at the time that the trust was created.

There was a second mitigating factor cited in the Service's analysis of the GST grandfathering the trust. The new trusts gave each of the great-great-grandchildren a testamentary general power of appointment over his or her trust. A general power of appointment is one exercisable in favor of yourself, your estate, your creditors or the creditors of your estate, which means that the powerholder can vest the Trust assets in

himself or his estate.

Although the IRS ruling did not cite to the GST tax regulations regarding general powers of appointment, there is a specific provision in those regulations that the grandfathered status of the trust ends upon the exercise, release or lapse of the general power of appointment over the trust that is treated as a taxable transfer under the estate and gift tax system.

When this happens, the holder of the general power of appointment is deemed to be the transferor of the trust for future GST tax purposes. This change means that there can be no generation-skipping taxable transfers from any trust created by the exercise of the general power until distributions are made to beneficiaries at least two generations below the power holder. That also means that the power holder can apply his or her own generation-skipping tax exemption (currently \$5,490,000) to the trust.

The IRS concluded that the retention of the trust perpetuities law limitation on the duration of the trusts, together with the general powers of appointment over the new trusts given to the great-great-grandchildren that would cause the great-great-grandchildren to become the transferors of the trust for GST tax purposes, essentially vesting the assets in that generation, were sufficient to bring the decanted trusts within the limitations required to preserve the grandfathered GST tax status of the trusts. As a result, even though the new trusts will now last until the death of the great-great-grandchild, subject to the perpetuities law limitation and the great-great-grandchildren's general powers of appointment, the new trusts will remain grand-

fathered against the GST tax.

As much as the substance of the ruling is interesting and helpful, the mere fact that the IRS ruled on a trust decanting is perhaps a more significant development. The IRS had previously indicated that it would not issue tax rulings on the decanting of trusts (see [IRS Rev. Proc. 2016-3](#)). It should be noted that the ruling does not use the word “decanting.” However, the substance of the trust action, the creation of new trusts and the merger of the existing trusts into the new ones, is clearly a decanting in substance. We will all stay tuned to see whether further rulings on trust decantings will be forthcoming, whether actually using the “D” word or not.

[To learn more about John R. Cummings and his practice, please visit his profile.](#)

[To learn more about Jeremy P. Gerch and his practice, please visit his profile.](#)

[To learn more about Eric J. Metzger and his practice, please visit his profile.](#)

[Read "IRS Private Letter Ruling 201711002"](#)

[Read "IRS Rev. Proc. 2016-3"](#)

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Library Book Sale

We still have lots of great titles available for purchase from our library’s withdrawn materials collection and will continue to add to them as we routinely weed our collection. These include superseded, but recent, versions of several very popular books from the Baldwin’s series. The materials are located in the copy room near the reference desk. Stop by and take a look!

New Hours Reminder

Beginning July 24, 2017 and continuing for several months, the Law Library will be closing to both the public and subscribers at 4pm. Any patrons in the library will need to finish their work before that time. Any reference requests by subscribers off-site should be submitted by 3:30pm for consideration the same day. Solo subscribers, full-firm subscribers and county government employees are encouraged to use our online databases, which are available 24/7 for your ease of use. If you need information about how to access these databases, please feel free to contact our reference librarians at reference@cms.hamilton-co.org or by calling 513.946.5300.

[You and the Legal System: Immigration Law-The Path to Citizenship](#)

The You and the Legal System Program on Immigration, previously scheduled for May 19, has been rescheduled for Friday, July 14 from Noon-1pm. During this event, attorney Thomas Geygan Jr. will discuss obtaining a green card and the necessary steps to becoming a U.S. Citizen. This program is free and open to the public. Please note that this is not a CLE event; However, attorneys are welcome to attend. You can register [online](#), call 513.946.5300. If you have questions, contact [Vanessa Seeger](#).

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, IntelliConnect, Lexis Digital Library e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and IntelliConnect Law, Business, Tax, and Accounting

An add-on plan for Lexis access is available for subscribers in solo practice

You and the Legal System: Ohio Lemon Law

Attorney Ronna Lucas will discuss Ohio Lemon Law on Friday, July 21 at noon in the Law Library. The session will cover questions about a consumer's rights when purchasing an automobile with defects.

To register, call 513.946.5300 or register via our website at

<https://lawlibrary.hamiltoncountyohio.gov/event-registration/?ee=115>

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact [Vanessa Seeger](#).

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event in our You and the Legal System series, Alison De Villiers and Kristen M. Myers of Beckman Weil Shepardson will discuss wage and hour issues on Friday, August, 18.



Automobile Law Resources

Law Library subscribers have remote access to a variety of resources on Automobile Law. If you have questions, or have a suggestion for a title to add, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Advanced uninsured/underinsured motorist law
KFO297.7 A383 2014

Attacking and defending drunk driving tests
KF8925.T7 B3

Auto injury litigation from start to finish [in Ohio]
KFO191.A4 A98 2014

Automobile fraud : odometer, salvage, and lemon laundering fraud, title abuses and yo-yo sales
KF1040.Z9 S54 2015

Blashfield automobile law and practice
KF1290.A8 B57

Consumer warranty law : lemon laws, Magnuson-Moss, UCC, manufactured home, and other warranty statute
KF1040.Z9 C57 2015

Kentucky driving under the influence
KFK1497.8 .K46

Kentucky motor vehicle insurance law : with forms
KFK1391.A4 M66

Ohio driving under the influence law
KFO297.8 .P34

Ohio OVI defense : the law and practice
KFO297.8 .H84 2016

Scientific automobile accident reconstruction,
KF1290.A8 S5

Online Resources-Remote Access*

Fastcase Loislaw Treatises

Drunk Driving Defense, 8th edition

Links

[Advance roadside impaired driving enforcement \(ARIDE\) : instructor guide.](#)

[Part 2](#)

[Advance roadside impaired driving enforcement \(ARIDE\) : participant manual](#)

[Fuel Economy Guide](#)

[Kentucky Department of Motor Vehicles](#)

[Ohio Department of Motor Vehicles](#)

[Ohio State Highway Patrol](#)

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.



Upcoming Events:

- July 12: CLE: Legal Issues in Boxing
- July 13: Law Library Board Meeting
- July 14: You and the Legal System: Immigration Law
- July 21: You and the Legal System: Ohio Lemon Law
- August 10: CLE :
- August 18: You and the Legal System: Wage and Hour Issues

Law Library Holidays

The Law Library will be closed on Tuesday, July 4 in observance of Independence Day.



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