



ELDER LAW AND ESTATE PLANNING

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Living trust requires no special tax treatment while grantor is alive

Question: I recently established a living trust. How is the income from it taxed? I am the trustee. Is there anything special I have to do when I file my income taxes next year? Are any special forms going to be required? Thank you for your input.

Answer: The Internal Revenue Service taxes a trust based on whether it is a grantor trust or a non-grantor trust. Since you are the trustee of your revocable living trust, it is considered a grantor trust. It is classified as such because as trustee (grantor), you control both the assets in the trust and any income generated. You can change beneficiaries, sell the assets, or even revoke the trust if you want.

Because yours is a grantor trust, you will not need to do anything out of the ordinary to file taxes. You will not need special forms. You will not need a new tax ID number. Just file your 1040 using your Social Security number as the trust tax ID number. Do what you have always done before the trust was established.

Although you haven't asked, a relevant point is what happens, from a tax perspective, when the trustee passes away. At that point, the trust becomes irrevocable. The IRS then treats it as a non-grantor trust, meaning the trust itself is considered the owner of the assets

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and income. Tax filing procedures change along with its reclassification as a non-grantor trust. The successor trustee must file a Form 1041 for any income earned by the trust, and a special EIN (tax number) must be obtained. And if any of the trust beneficiaries receives income from the trust, they must be issued a Form K-1 showing the taxable portion of the distribution, and the beneficiaries must report it on their own income taxes.

To learn more about living trusts, including taxes, see the Florida Living Trust FAQ under Florida Estate Planning at www.karplaw.com.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.