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The IRS Shifts Its Approach to Incomplete Gifts and the Annual Exclusion

Few aspects of gift planning are as important as whether a gift is complete or incomplete for transfer tax purposes and whether a gift qualifies for the annual exclusion.

Recently the IRS Chief Counsel Office issued ILM (Internal Legal Memorandum, sometimes also cited as a CCA) 201208026. The ILM addresses a situation in which two donors, presumably a husband and wife, established an irrevocable trust naming their adult child as the sole trustee. The beneficiaries of the irrevocable trust were the donors' children, grandchildren and other lineal descendants and their spouses. The trust terminates as a single trust when neither donor is living.

Although the trust agreement states that the trust is irrevocable, each donor apparently had a testamentary limited power of appointment (the scope of which is not mentioned in the ILM). If neither donor exercised such donor's retained testamentary limited power of appointment the trust is to terminate at the death of the second donor and is to be distributed to the child who is the Trustee and to another child (presumably one half to each).

Neal Gerber Eisenberg Private Wealth Services partner and chair Lawrence I. Richman authored an

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article that appears in the May-June 2012 edition of *CCH's Journal of Passthrough Entities*.