



# A Fiduciary Income Tax Potpourri

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# Agenda

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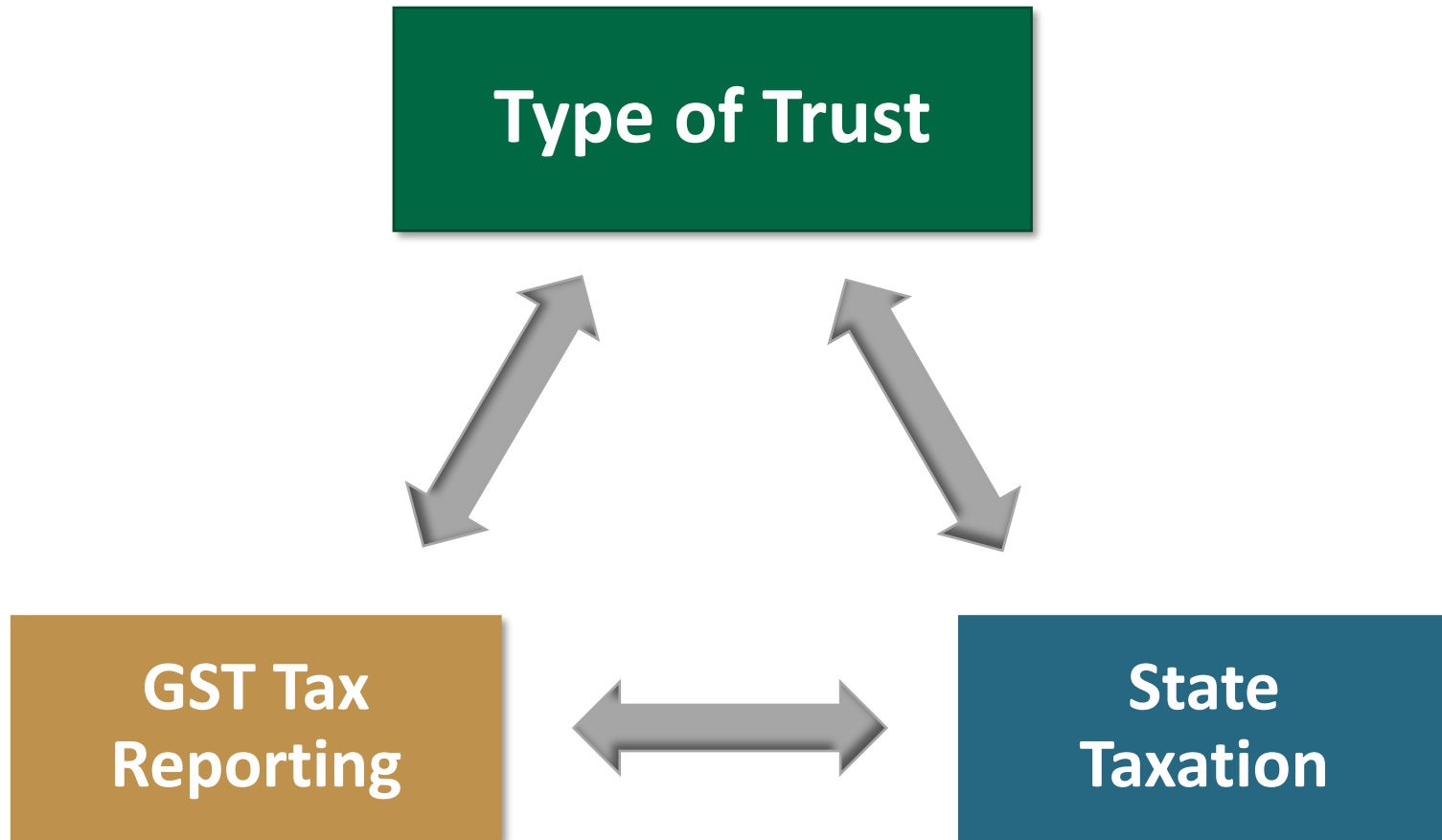
**Cornerstones of Fiduciary Taxation**

**Tips, Thoughts and Other Considerations**

**Fiduciary Tax 101**

## Cornerstones of Fiduciary Taxation

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# Grantor vs. Non-Grantor

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## Intentional Grantor Trusts

- The grantor intentionally drafts the trust to run afoul of the grantor trust rules (IRC § 671 – 679), resulting in the grantor being treated as the owner of the trust for income tax purposes
- Typical Powers
  - Power to reacquire assets (§ 675(4)(C))
  - Power to add to the class of beneficiaries (§ 674(a))
  - Power to lend to the grantor or the grantor’s spouse without adequate security (§ 675(2))
  - Spouse as discretionary beneficiary (§ 677)

# State Income Taxation

## Nexus Considerations

- Inter vivos vs. Testamentary
- Grantor
- Residence of Trustee
- Where the trust is administered
- Resident state of Beneficiary
  - Contingent vs. Non-Contingent
- Other Fiduciaries
- Governing Law
- Source Income

## Other

- Virginia Administration
- New York TSB
- Washington State – 1/1/2022
  - 7% tax on Long Term Capital Gains
  - Individuals
  - Gains above \$250,000

## Court Decisions

### North Carolina

- Kaestner; 2015, 2019 (SCOTUS)

### Massachusetts

- Bank of America; 2015

### Maryland

- Wynne; 2015

### New Jersey

- Kassner; 2013

### Illinois

- Linn; 2013

### Pennsylvania

- McNeil; 2013
- Hansjoerg Wyss 2004 Descendants Trusts

### Minnesota

- Fielding; 2017 (MN Rev. Notice #23-01)

### Ohio

- Legg; 2016

### South Dakota

- Wayfair; 2018

# Generation-Skipping Transfer Tax

	Current Law	Prior Law
<b>Generation-Skipping Transfer Tax</b> <b>Summary of Diff</b>	<ul style="list-style-type: none"> <li>Statutory exemption doubled for decedents dying after December 31, 2017 and before January 1, 2026</li> <li><b>2022 exemption</b> – \$12.06M as adjusted for inflation</li> <li><b>2023 exemption</b> – \$12.92M as adjusted for inflation</li> </ul>	<ul style="list-style-type: none"> <li><b>2017 exemption</b> – \$5.49M per individual as adjusted for inflation</li> <li><b>2018 exemption</b> – Was to be \$5.6M per individual as adjusted for inflation</li> </ul>

- GST tax not applicable — No GST tax; no tax reporting
- GST tax exemption allocated — Documentation necessary (709 or 706) and tax reporting required on Form 706–GS(D-1)
- Subject to GST tax — Form 706–GS(D-1) and/or Form 706–GS(T)
- Potentially subject to GST tax — may become subject to GST tax upon some occurrence of a future event — Possible Form 706–GS(D-1) and/or Form 706–GS(T)
- Waiting on documents
- GST tax exempt — Need annual documentation

# To Distribute or Not To Distribute — That Is the Question.



Taxes are not the end game — recognize that there are various benefits to trusts, including wealth transfer, tax planning, protection from spendthrift beneficiaries and creditors (and potential ex-spouses), ease of management, and combined investment opportunities.

Consider the following 5 “Trust” Factors:

1. **Acknowledge** taxes have increased; crunch the numbers.
2. **Understand** why the trust was created. Income taxes are not the only game in town. Critical aspects that favor retaining the trust include estate and GST tax planning, and preserving assets in the family line. Does the trust document provide authority for the trustee to distribute?
3. **Recognize** that distributing income may help in some cases, but not all, e.g., the kiddie tax, beneficiaries already at the highest tax brackets, etc. Additionally, since planning may have been done to eliminate state income taxation at the trust level, including the state income tax impact of distributions to the beneficiary must be part of the analysis.
4. **Honor** the fact that a “one-size-fits-all” approach often fails to capture the nuances in many family situations.
5. **Focus** on strategies that could minimize a trust’s exposure to the “new” taxes.



# 2023 Tax Rate Comparison

	Single Individual	Married Filing Jointly	Trusts/Estates
<b>Top Tax Rate (includes Medicare Tax)</b>	40.8%	40.8%	40.8%
<b>Ordinary Investment Income and Short-Term Gains</b>	Over \$578,125	Over \$693,750	Over \$14,450
<b>Qualified Dividends and Long-Term Gains</b>			
	Under \$44,625	Under \$89,250	Under \$3,000
	15%	\$44,626-\$492,300	\$89,251-\$553,850
	20%	Over \$492,300	Over \$553,850
<b>Medicare Tax 3.8%</b>	Over \$200,000 (Not Indexed for Inflation)	Over \$250,000 (Not Indexed for Inflation)	Over \$13,050 (Indexed for Inflation)

## 2023 Tax Rate Schedule

Estates and Trusts:			
Taxable Income Over –	But Not Over –	The Tax is:	Of the Amount Over –
\$0	\$2,900	10%	\$0
2,900	10,550	\$290.00 + 24%	2,900
10,550	14,450	2,126.00 + 35%	10,550
14,450	-----	3,491.00 + 37%	14,450

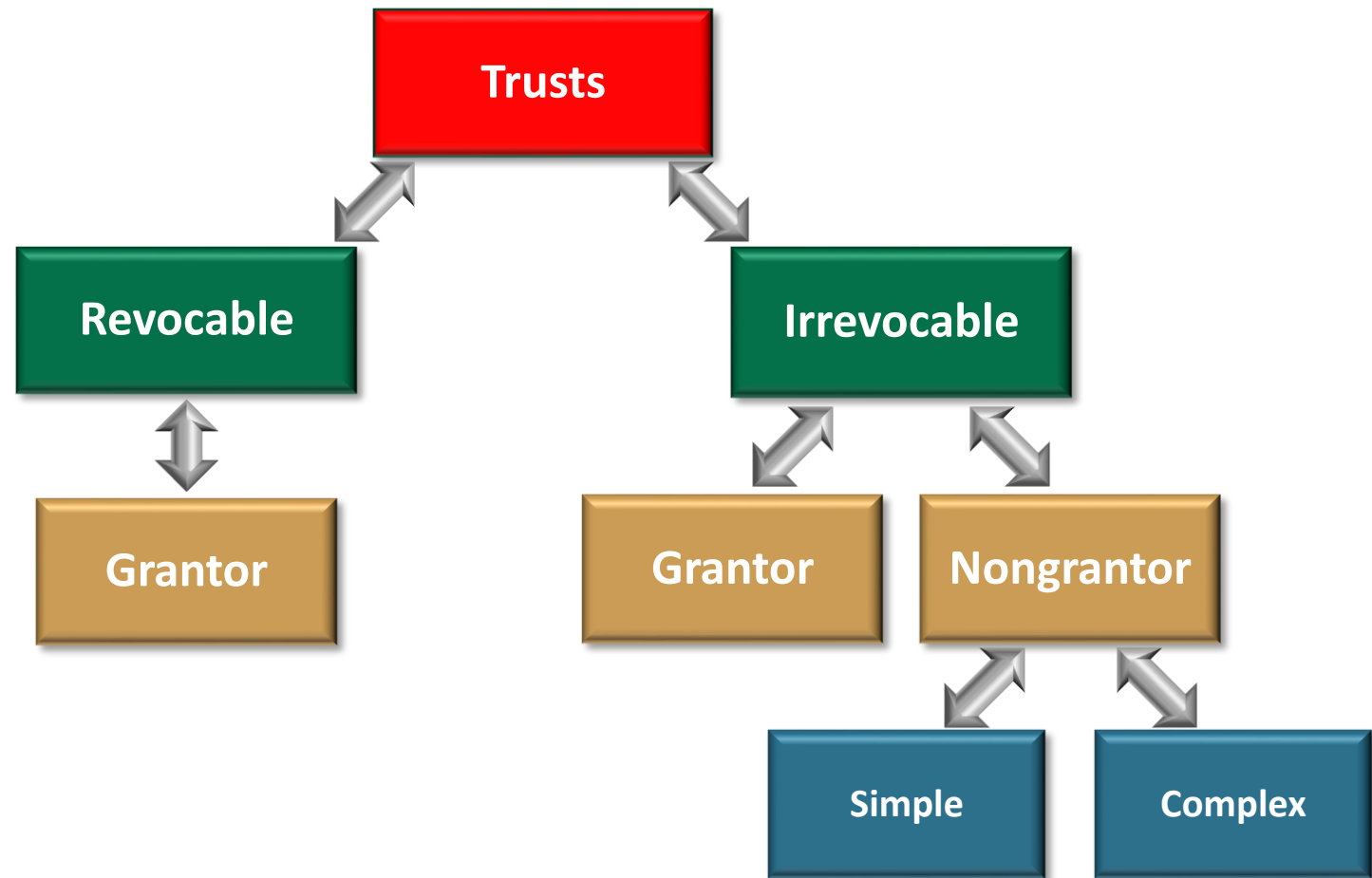
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# Tips, Thoughts and Other Considerations

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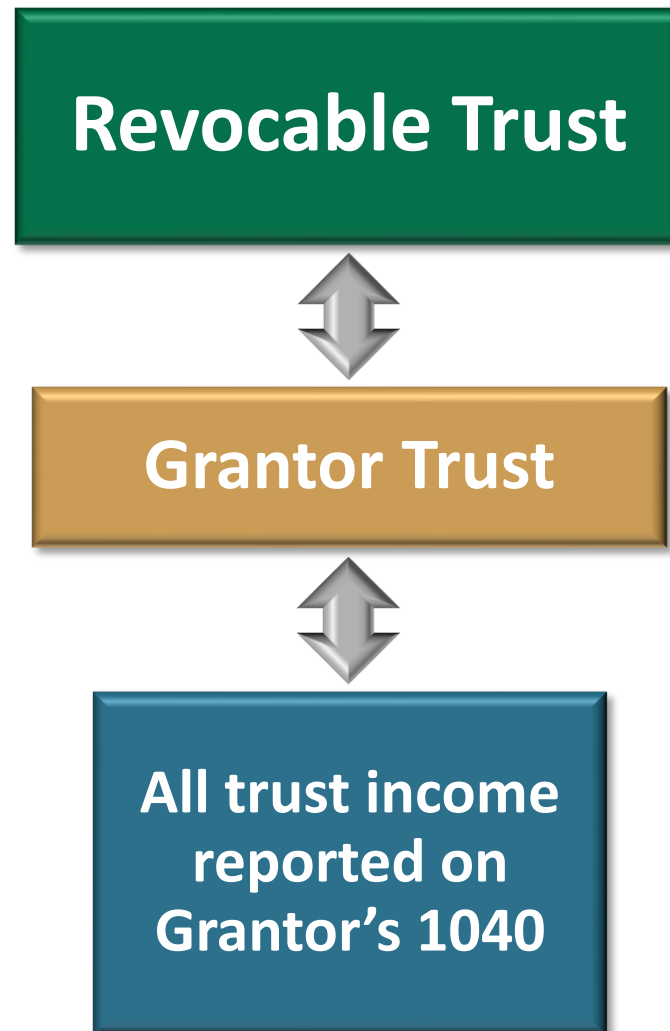
- Capital Gains in DNI 1.643(a)-3(b)(1)-3(b)(1)-(3)
- Partnership and LLC Interests
- Distribution of Low-basis Securities
- State Tax: Trust vs. Individual
- Passive Income/Material Participation (Aragona Case)

# Fiduciary Tax 101 – Overview of Trusts



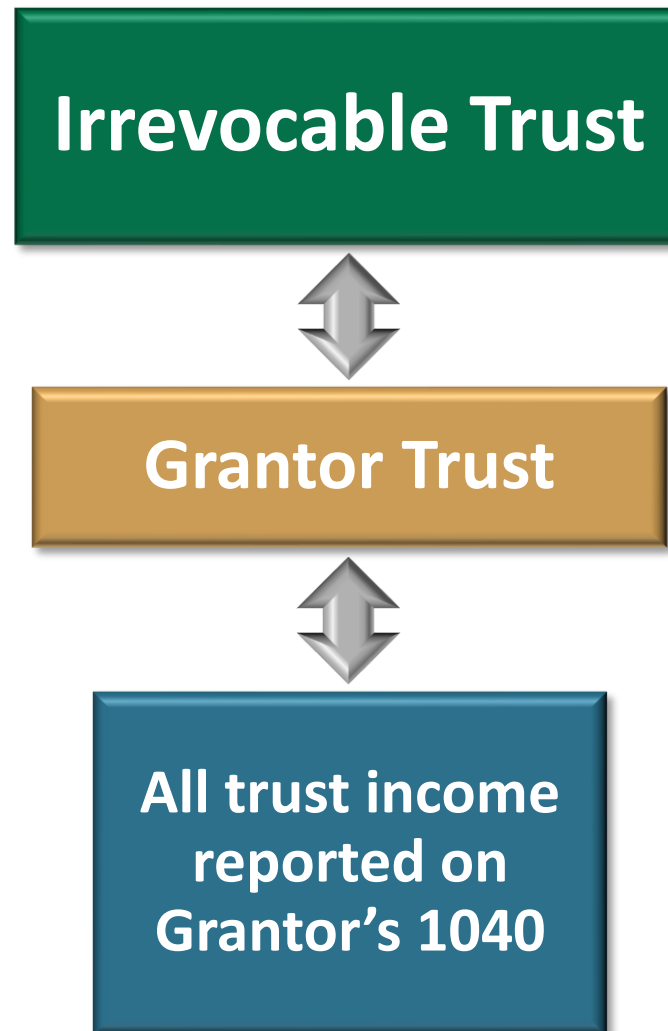
## Tax Reporting of Revocable Trusts

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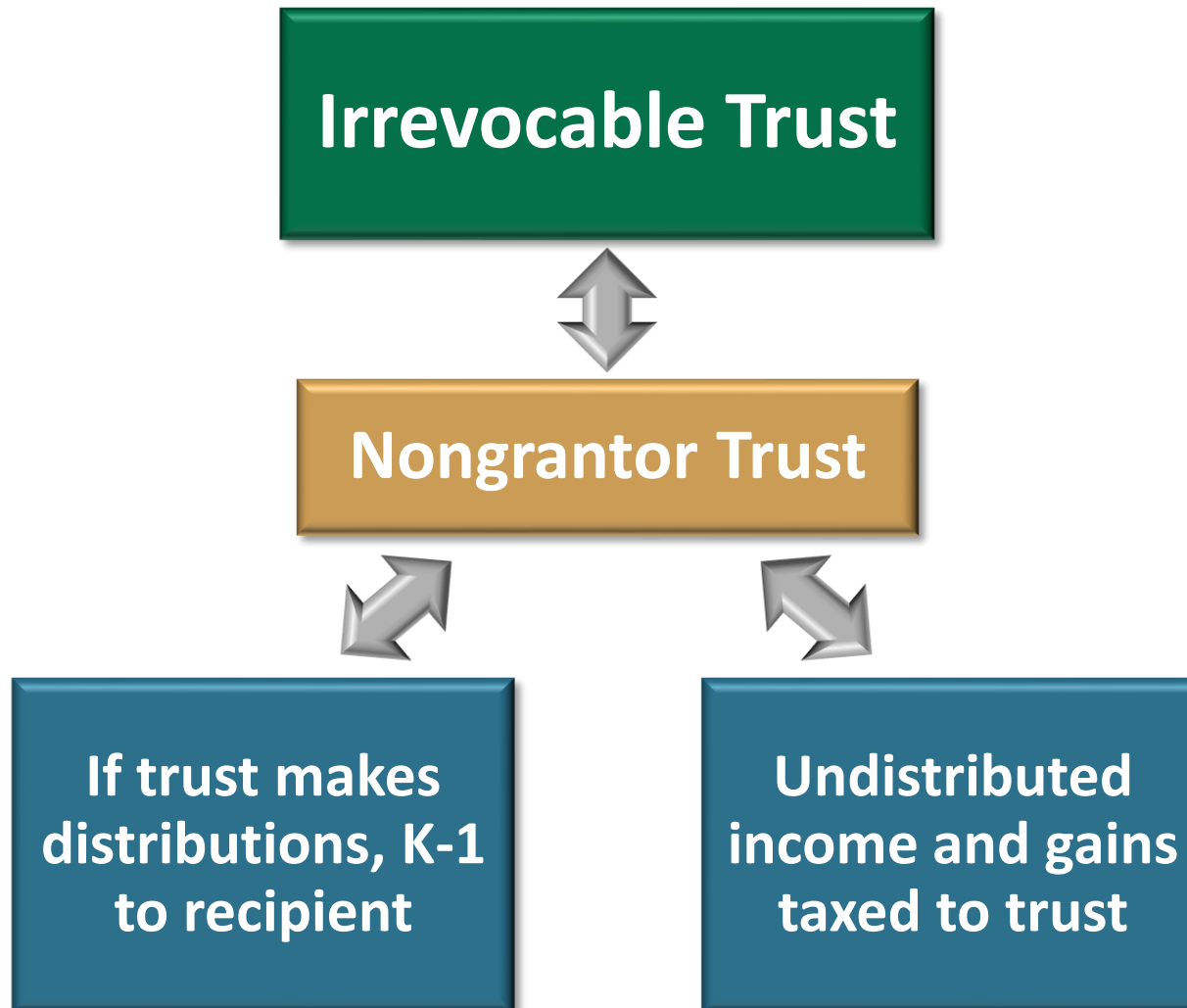


## Tax Reporting of Irrevocable Trusts - Grantor

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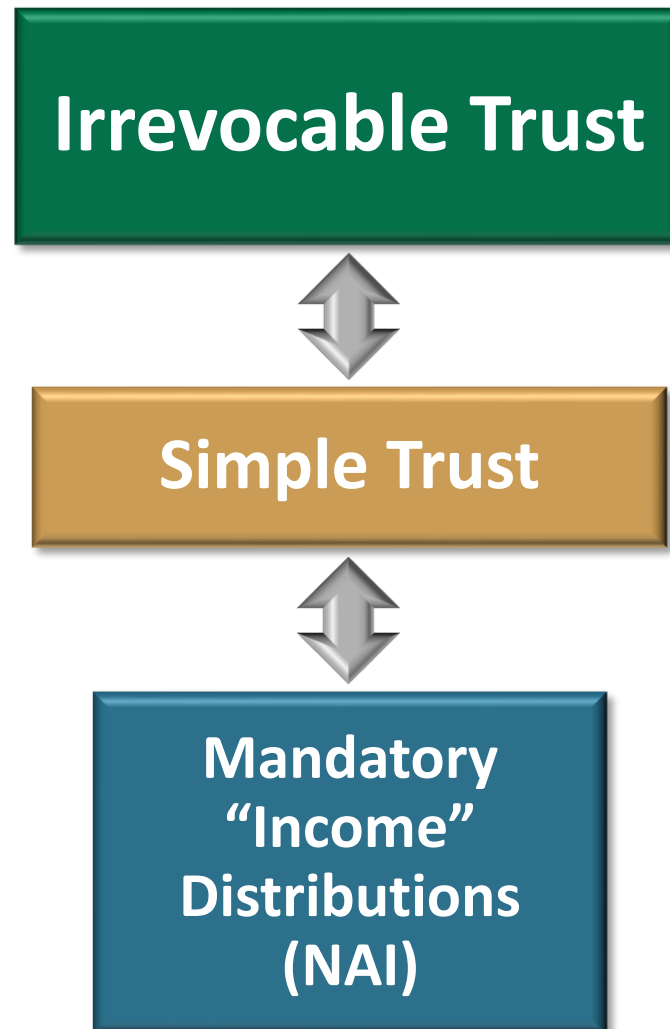


## Tax Reporting of Irrevocable Trusts - Nongrantor



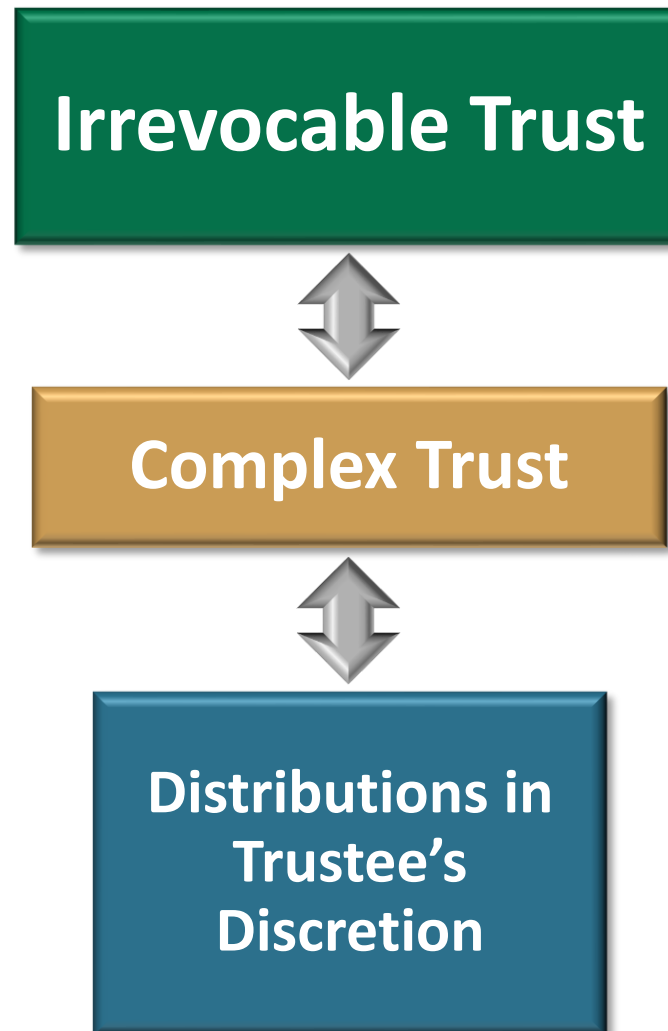
# Simple Trust

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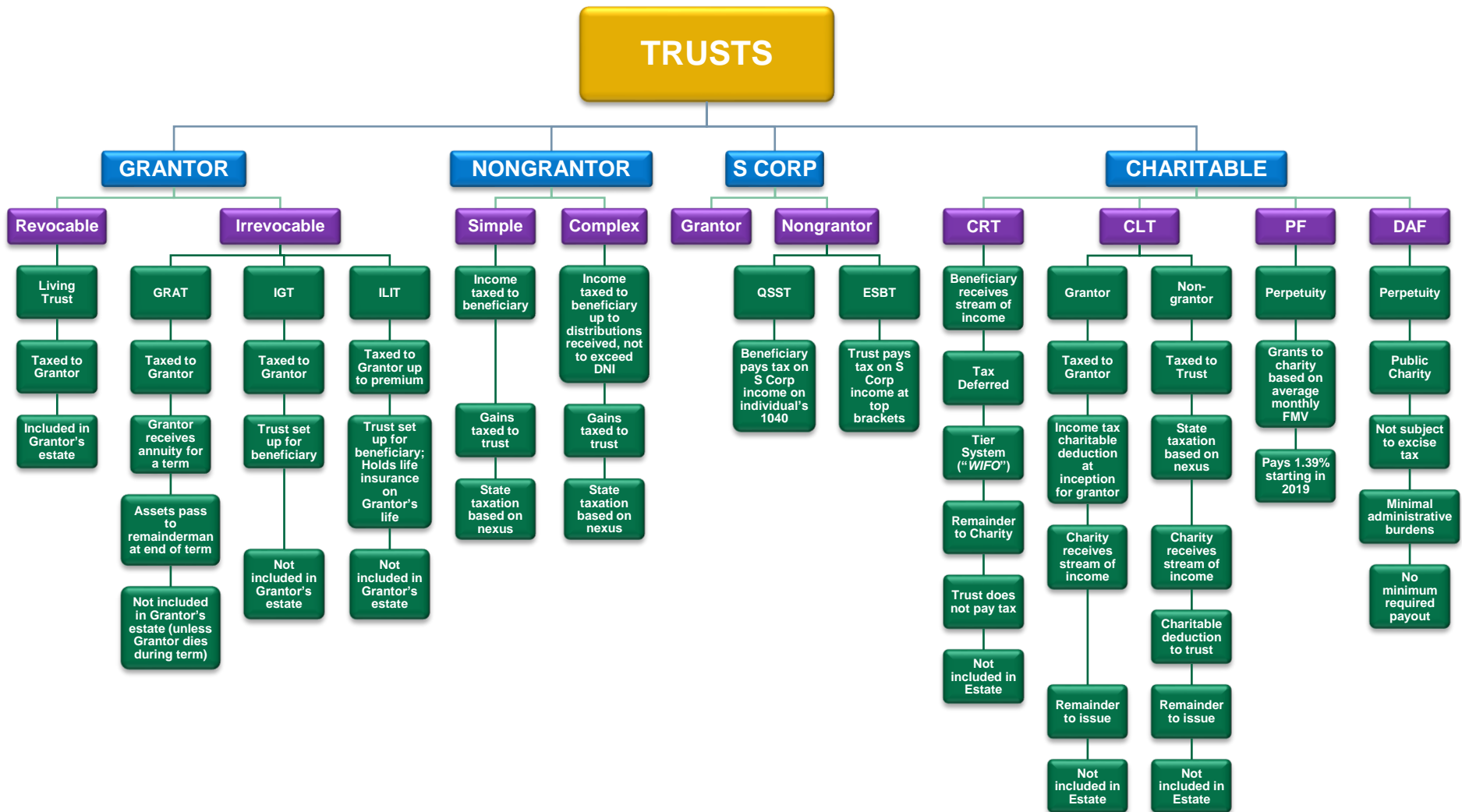
# Complex Trust

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# Trusts Flowchart



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## Selected Biographies

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### **Stephen A. Baxley, Managing Director and Head of Tax and Financial Planning**

Mr. Baxley is Managing Director and Head of Tax and Financial Planning at Bessemer Trust. In this role, he is responsible for delivering strategic tax consulting and tax management services to Bessemer clients and their related entities.

Prior to joining Bessemer, Steve was Assistant Director of Taxes at Rockefeller & Co., responsible for tax planning and compliance for Rockefeller family members and clients. Before that, he worked at Deloitte & Touche as Senior Tax Manager, responsible for client tax and financial planning services.

Steve earned an LL.M. in taxation from New York University School of Law, a J.D. from Buffalo Law School, and a B.S. in accounting from Binghamton University. He is a CPA and has been awarded the AICPA Personal Financial Specialist designation.

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## Selected Biographies

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**Jeffrey F. Winter, Managing Director and Director of Fiduciary Tax Services**

Mr. Winter is Director of Fiduciary Tax Services at Bessemer Trust. In this role, he is responsible for overseeing the income tax preparation, compliance and tax planning of trusts, estates, private foundations, charitable lead, and charitable remainder trusts.

Prior to joining Bessemer, Jeff was responsible for trust and charitable taxation matters in the Fiduciary Income Tax Departments of Citibank, N.A. and The Bank of New York.

He is a member of the New York Bankers Association Trust and Estate Tax Committee and the Society of Trust and Estate Practitioners. He is a former executive member of the Committee of Banking Institutions on Taxation.

Jeff earned a B.B.A. in accounting from Hofstra University. He is a proud father of three children and lives in Long Beach, NY.

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## Selected Biographies

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### **Kevin M. Barry, Principal and Director of Fiduciary Tax Consulting**

Mr. Barry is Principal and Director of Fiduciary Tax Consulting at Bessemer Trust. In this role, he is responsible for strategic tax consulting and tax management services for fiduciary and individual clients, and related entities.

Prior to joining Bessemer, Kevin was Senior Tax Associate at PriceWaterhouseCoopers in New York. Before that, he was an assistant vice president at U.S. Trust Company.

He is a former executive member of the Committee of Banking Institutions on Taxation, and is a current member of the Financial Planning Association.

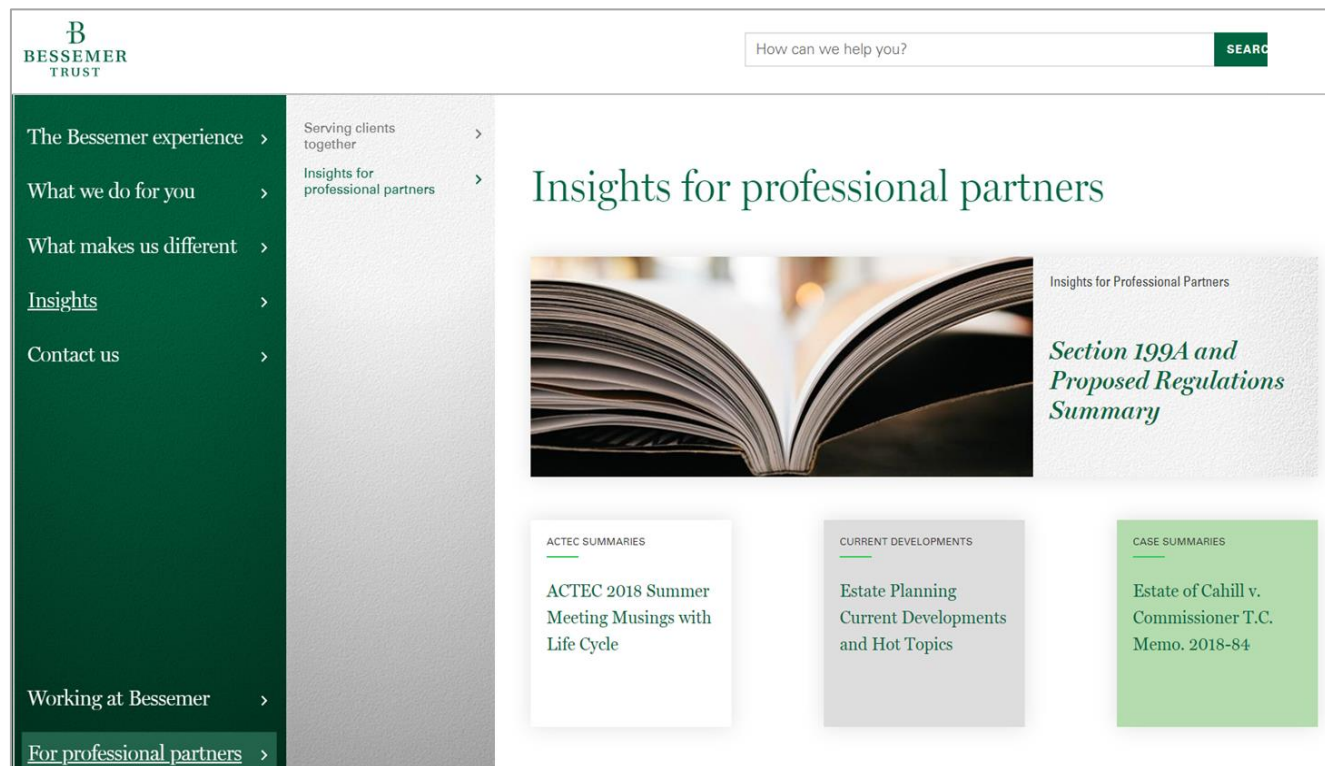
Kevin earned a B.A. in accounting from Queens College (CUNY). He is a CFP® professional.

# Bessemer Trust Professional Partners Website

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We are pleased to share our insights with our professional partners, including Heckerling and ACTEC meeting summaries, timely commentary on policymaking, and insights on a range of court cases.

Visit <https://www.bessemertrust.com/for-professional-partners/advisor-insights> for the latest insights.



The screenshot displays the website's interface. At the top left is the Bessemer Trust logo (a stylized 'B' above 'BESSEMER TRUST'). To its right is a search bar with the placeholder text 'How can we help you?' and a green 'SEARCH' button. A dark green navigation menu on the left lists: 'The Bessemer experience >', 'What we do for you >', 'What makes us different >', 'Insights >', 'Contact us >', 'Working at Bessemer >', and 'For professional partners >'. The main content area features a header 'Insights for professional partners' above a large image of an open book. Below the image is a featured article titled 'Section 199A and Proposed Regulations Summary' with the subtext 'Insights for Professional Partners'. Three content cards are positioned below: 'ACTEC SUMMARIES' (ACTEC 2018 Summer Meeting Musings with Life Cycle), 'CURRENT DEVELOPMENTS' (Estate Planning Current Developments and Hot Topics), and 'CASE SUMMARIES' (Estate of Cahill v. Commissioner T.C. Memo. 2018-84).

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