

# Welcome to TaxMama's® Place - Home of the



**Today's Topic:**

**September 2020  
Tax Roundtable**

- [https://wp1-ext.usps.gov/sap/bc/webdynpro/sap/hrrcf\\_a\\_unreg\\_job\\_search?](https://wp1-ext.usps.gov/sap/bc/webdynpro/sap/hrrcf_a_unreg_job_search?)
- Michaele Shapiro (Manavjeet Kaur) says if you want to use her a reference to get a job at the USPS – they are hiring.
- You can find her post here and drop her a note if you're interested
- <https://www.facebook.com/manavjeetkaur/posts/3210656992337012>



## Job Search

Are you looking for an interesting new job?

Full Text Search

Keywords:

Search Criteria for Employment Opportunities

Location:

Alabama  
Alaska  
Arizona  
Arkansas

Functional Area:

Administrative Support  
Communications  
Consumer Affairs  
Corporate/Government Affairs

**<https://www.prometric.com/test-takers/frequently-asked-questions>**

- **Site Openings List**: This list is updated daily to reflect any changes in status of test centers.
- **Social Distancing Policies**: Social distancing policies and test center procedures that candidates are expected to follow while at the test center.
- **Test-Taker FAQ**: Frequently asked questions.

<https://www.irs.gov/businesses/partnerships/bba-centralized-partnership-audit-regime>

The Bipartisan Budget Act of 2015 ([Public Law No. 114-74](#)) was signed into law on November 2, 2015. In part, the law replaced the auditing and tax collection procedures for partnerships under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the electing large partnership rules with the centralized partnership audit regime. The centralized partnership audit regime, also referred to as BBA or PBBA, is generally effective for tax years beginning January 2018.

<https://www.irs.gov/businesses/partnerships/bba-partnership-audit-process>

IRS Statement on Economic Impact Payments by state (as of Aug. 28, 2020)

[irs-statement-on-economic-impact-payments-by-state-as-of-aug-28-2020](#) alized-partnership-audit-regime Looks like Wyoming (\$504K) residents got even less than Alaska (\$605K)

IRS Statement on implementing a process to provide accessible tax notices to the blind

<https://www.irs.gov/newsroom/irs-statement-on-implementing-a-process-to-provide-accessible-tax-notice-to-the-blind>

The IRS is announcing that it has agreed to develop and implement a process to allow blind taxpayers to request post-filing tax notices—such as notices about additional taxes or penalties owed—in Braille, large print, or electronic formats. The new alternative media process (AMP) will be in place by January 31, 2022. The agency will also consider whether it can add audio notices to the alternative formats that can be requested, work with third-party entities to improve the accessibility of tax forms and documents and take other steps to improve the accessibility of interactions with the agency and its partners. For more information see the news release - [IRS to Implement Process to Provide Accessible Tax Notices to the Blind](#) from the National Federation of the Blind that was worked in coordination with the IRS.

Question on triple net lease vs just fixed rent.

- You may remember this mess. Taxpayers own the B&B in personal name
  - B&B is set up as an S corp. We talked about a triple net lease.
  - Because the utilities and maint are variable the owners don't want to have to split every month a portion paid from bus and portion paid from personal on those items.
  - We estimated the maint and utilities and set that as part of the monthly rent cost. They are paying the utilities from the personal account and the B&B pays for any maint on the business portion.
1. Wouldn't this just be a regular rental on the sch E with rent income and expenses?
  2. Is a triple net lease reported differently?
  3. remind me of the rules for an S corp renting from an employee.

1. Wouldn't this just be a regular rental on the sch E with rent income and expenses?

It's nice that the taxpayers don't want to bother with writing two checks for the utilities. That's their choice.

The method I suggested that you recommend to your clients would reduce the audit risk on the Schedule E.

It's just fine doing it the easy way. But now, ALL those expenses will appear on the Schedule E – and they still need to be split between personal and business.

And in the event of a personal audit – the IRS will want all the receipts and proof of the personal vs. business usage and how it was determined.

## 2. Is a triple net lease reported differently?

Absolutely.

Triple net (NNN) means that the tenant pays their share of ALL the expenses related to the property:

- Utilities
- Property tax
- Maintenance
- Insurance
- Security
- Etc.

The landlord simply gets a rent check. The only deductions on Schedule E?

- Mortgage interest and depreciation.

3. remind me of the rules for an S corp renting from an employee.

The employee cannot deduct any employee business expenses.  
(no more Schedule A misc deductions)

So the best way is to set up an accountable plan.

- The employee submits expense reports each month for utilities and other costs of the use of the home office.
  - The employer issues reimbursements – and nothing appears on the employee's W-2; but the employer gets to take the deductions.
- If the employer pays rent – then the employee reports rental income on Schedule E – and pro-rates the costs, only picking up the costs of the office area.



My Mom is elderly and lost her husband in 2019. In September of 2015, they put their 1-bedroom cottage here on Cape Cod in an Irrevocable Trust. It is the only thing in the trust. I am the trustee, and me and my five siblings are the beneficiaries. Mom lives in the cottage and she pays all bills related to the property - RE tax, utilities, association fees, R&M.

I want to purchase the cottage and put on an addition so that there is a place for a 24-hour caregiver when that becomes necessary as she is getting quite senile and really shouldn't be living alone. I live a few miles away and am her only caregiver as the other five siblings are all out of state. I have spoken with her estate attorney about this and he said I can do it as long as each beneficiary agrees in writing.

- What might the tax implications be to me, to my Mom, and/or to my siblings should I purchase the cottage and distribute the proceeds? Here are the numbers:
- I just got the cottage formally appraised (by a real appraiser not a realtor) at \$360,000. Attorney says my mom retains a life estate in the trust and will receive approximately \$120,000 from the sale, leaving \$240,000 to split between the 6 beneficiaries so, approximately \$40,000 each. (We have not yet decided whether or not Mom's \$120,000 will remain in the trust).
- When the cottage was put into the trust 4 years ago, it probably was worth about \$340,000 but no appraisal was done. Mom and my stepfather bought the property in 1997 for \$102,500 and rehabilitated it - I would guess they put in about \$75,000 in improvements. Since his death last year, Mom has put in an additional \$20,000 or so in improvements.
- From 1997 up until the time they put the cottage in the Irrevocable Trust in September 2015, they used the cottage as a second home with their primary residence in Florida. They changed their primary residence (with the IRS) in September of 2016 from Florida to the cottage, and Mom sold the Florida property in August of 2019 and was able to avoid capital gains since used the Florida property as their primary residence two of the five years before it was sold.
- Hopefully I have given you all the info you need to advise. As always, thank you so much!!!

There are two major concerns here:

1) It's an irrevocable trust

2) When the cottage was put into the trust 4 years ago, it probably was worth about \$340,000 but no appraisal was done.

Mom and my stepfather bought the property in 1997 for \$102,500 and rehabilitated it - I would guess they put in about \$75,000 in improvements. Since his death last year, Mom has put in an additional \$20,000 or so in improvements.

As a result – the basis did not get stepped up at the husband's death.

A REVOCABLE trust would have allowed for that (either his basis stepped up or both, depending on the way title was defined).

AND since it's in an irrevocable trust, it doesn't qualify for the personal residence exclusion (I don't believe).

<https://www.journalofaccountancy.com/issues/2001/jun/homesaleexclusionlimited.html>

<https://absolutetrustcounsel.com/disadvantages-of-owning-your-personal-residence-in-an-irrevocable-trust/>

BUT..... There are a few intentional violations of IRC 671-679 that attorneys utilize when creating an irrevocable trust that is a defective grantor trust for income tax purposes, but not for estate tax purposes. ... read this and talk to the estate attorney or estate tax expert

<https://premiertrust.com/2018/08/01/irc-671-679-is-not-an-easy-read-do-you-have-a-recommended-checklist-for-tax-review/>

Regardless, it appears that the basis will be:

\$102,500	Cost
\$ 75,000	Improvements
<u>\$ 20,000</u>	Additional improvements
\$197,500	

- What might the tax implications be to me, to my Mom, and/or to my siblings should I purchase the cottage and distribute the proceeds? Here are the numbers:
- I just got the cottage formally appraised (by a real appraiser not a realtor) at \$360,000. Attorney says my mom retains a life estate in the trust and will receive approximately \$120,000 from the sale, leaving \$240,000 to split between the 6 beneficiaries so, approximately \$40,000 each. (We have not yet decided whether or not Mom's \$120,000 will remain in the trust).

So the trust will have a sale of \$360,000

Basis is \$197,500

The gain will be \$162,500.

Mom gets  $1/3 = \$54,000$

The others split 6 ways = \$18,000 each

- From 1997 up until the time they put the cottage in the Irrevocable Trust in September 2015, they used the cottage as a second home with their primary residence in Florida. They changed their primary residence (with the IRS) in September of 2016 from Florida to the cottage, and Mom sold the Florida property in August of 2019 and was able to avoid capital gains since used the Florida property as their primary residence two of the five years before it was sold.

And then we have this.

Mom sold a residence in 2019.

So, even if she did qualify for the Sec 121 exclusion, she couldn't use it until 24 months after the August 2019 sale.

Let's go back to this:

<https://premiertrust.com/2018/08/01/irc-671-679-is-not-an-easy-read-do-you-have-a-recommended-checklist-for-tax-review/> Is there any way that this would meet the requirements for a defective grantor trust?

A: There are a few intentional violations of IRC 671-679 that attorneys utilize when creating an irrevocable trust that is a defective grantor trust for income tax purposes, but not for estate tax purposes. The most common intentional violations are the following:

**The Substitution Power.** Under IRC 675(4)(C), if the grantor or any person that is a non-adverse party retains the power, in a non-fiduciary capacity, to substitute assets of the trust with assets of equivalent value, the trust will be a grantor defective trust. Further, the IRS has issued a ruling that this grantor trust power, if drafted properly, will not cause inclusion of the trust in the grantor's estate for estate tax purposes.

**The Power of an Independent Trustee or Trust Protector to Add Beneficiaries.** Under IRC 674(c), if an Independent Trustee or Trust Protector has the ability to add to the class of beneficiaries of the trust, the trust will be a grantor defective trust. In order to avoid inclusion of the trust in the grantor's or the power holder's estate, the power holder should be precluded from adding to the class of beneficiaries the power holder, the power holder's estate, the power holder's creditors or the creditors of the power holder's estate.

**Inclusion of Grantor's Spouse as Beneficiary.** Under IRC 677, if the income of the trust may be distributed or accumulated for the benefit of the grantor's spouse, the trust may be considered a grantor defective trust for income tax purposes.

**Life Insurance on Grantor's or Grantor's spouse's Life.** Further under IRC 677, if the income of the trust may be utilized to acquire life insurance on the life of the grantor or the grantor's spouse, the trust may be a grantor defective trust. It is important to note that the grantor defective trust status under this provision alone is not guaranteed unless the trust actually utilizes income to purchase such life insurance. Therefore, it is important to combine this particular grantor trust power with other grantor trust powers.

**Non-Independent Distribution Trustee.** If the trust is a fully discretionary trust (not limited to the ascertainable standard of health, education, maintenance and support) and the Trustee that has discretion to make distributions is a related party or subordinate party (defined by IRC 672(c)), the trust should be considered a grantor defective trust.

In sum, when reviewing a trust document to determine if an irrevocable trust is an Intentionally Defective Grantor Trust, you should look for one or more of the foregoing provisions. Additionally, in order to ensure that the trust is an Intentionally Defective Grantor Trust, the trust itself should use a "belts and suspenders" approach and utilize more than one of the foregoing grantor trust powers.

# QUESTIONS

- You can find today's handout in the Board after the session

<http://irsexams.com/board/index.php?/topic/956-taxmamas-tax-roundtables/>

- And at the TaxMama site

<http://taxmama.com/tax-quijs/taxmamas-tax-roundtables-2018/>