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Ownership Disputes**

CAN MY REVOCABLE TRUST OWN S-CORPORATION STOCK

A Revocable Trust (“Trust”) is a common tool utilized by individuals when creating their estate plans. A Trust is designed to hold assets during the Grantor (the individual who creates the Trust) lifetime and then dispose of those assets at their death (the terms of the Trust will contain the individual’s specific directions as to how the assets will be distributed). In order for a Trust to accomplish its objective it must be funded (assets retitled into the name of the Trust) with all of the Grantor’s assets during their lifetime.¹ This will require the Grantor to retitle real property, bank and investment accounts, and any business interests (LLC interests or stock in an S-Corporation) into the Trust.

If a Grantor intends to title S-Corporation stock into the name of their Trust there are specific guidelines which must be adhered to. While a Trust is a permitted shareholder of an S-Corporation, Section 1361 of the Internal Revenue Code only permits certain kinds of trusts (a Qualified Subchapter S Trust or Electing Small Business Trust) from owning the stock. If an unauthorized Trust becomes a S-Corporation stock shareholder, the Corporation will cease to be a qualified S-Corporation and will be taxed as an ordinary C Corporation.

Additional pitfalls must be avoided when a married Grantor dies. Upon a Grantor’s death, the Trust assets may be divided and distributed into separate trusts (share for the surviving spouse and one for the deceased spouse). The deceased spouse’s share is typically held in an irrevocable trust for the survivor’s benefit (a “Credit Shelter Trust” or “Bypass Trust”). If the S-Corporation stock is utilized to fund the Credit Shelter Trust, not a grantor trust, then it must qualify as either a Qualified Subchapter S Trust or Electing Small Business Trust and make a timely election with the IRS.

¹ Some assets, such as retirement accounts and life insurance policies, are not titled in the name of a Trust, but can be listed as a beneficiary of a Trust.