

Advanced Income Solutions

Deferred Annuities and Trust Ownership

Can a trust purchase and own a NYL deferred annuity?

Yes, a trust can own a NYL non-qualified deferred annuity. In general, there are no NYL restrictions against the types of Trusts that can own the annuity. There are however, complexities, tax considerations and legal issues that make it difficult to provide general guidelines for these sales scenarios. **Therefore, it is highly recommended that the client or trustee rely solely on their Legal advisor when making decisions to purchase an annuity.**

Tax Deferral and the non-natural person rule

Under IRC Section 72(u), if an annuity contract is held by a person who is not a “natural person,” then such contract shall not be treated as an annuity contract for income tax purposes, and the income on the contract shall be treated as ordinary income received or accrued by the owner during such taxable year.

An exception is provided when a nonqualified annuity is held by a trust as an agent for a natural person. If an annuity contract is held by a trust or other entity as an “agent” for a natural person, then the contract should not lose its annuity contract status, and tax deferral would not be lost.

Whether or not a trust is acting as an agent for a natural person is a question for one’s legal advisor and must be determined on a case by case basis. However, one important indicator is that all trust the beneficiaries (primary, contingent, remainder, etc.) must be natural persons.

Note: NYL does not issue annual tax statements to trusts that are required to pay taxes each year on the “inside build-up.” The client should work with their tax advisor to appropriately report any applicable taxes.

Various trust structures

There are various trust structures which can further complicate the notion of purchasing annuities in a Trust. Trusts may be grantor or non-grantor, living or testamentary, revocable or irrevocable. And there are many types of irrevocable trusts that are commonly utilized for estate planning purposes, such as family trusts, Special Needs Trusts, Charitable Remainder Trusts (CRTs) and Irrevocable Life Insurance Trusts (ILITs), to name a few. However, the basic trust structures are described to the right.

Basic trust structures

Grantor trust – A grantor trust is one in which the grantor retains certain powers and control over the trust, such as the ability to revoke the trust. The grantor creates and funds the trust, is the owner of the assets and is taxed on its income.

Non-grantor trust – A non-grantor’s trust is one in which the grantor relinquishes control over the assets in the trust, which removes the assets from the grantor’s estate. An irrevocable trust is a form of a non-grantor’s trust. Any taxable income is taxed under a separate tax ID number.

Revocable trust – a revocable trust may be established to simplify management and distribution of assets. Most revocable trusts are grantor trusts. The grantor owns the trust assets and is treated as the owner for income tax purposes. The grantor is also typically the trustee. The terms of the trust generally provide that the assets be used for the benefit of the grantor while living.

Irrevocable trust – These trusts are commonly used for estate planning purposes since they can remove assets from one's estate. A trust is irrevocable when the grantor transfers property or assets to the trust and cannot alter, revoke or terminate the arrangement or reclaim property. In most cases it is treated as its own independent entity, which requires filing a separate tax return for the trust.

Living trusts – Living trusts are established during the individual's lifetime and may also be referred to as an "inter-vivos" trust. Living trusts can be revocable or irrevocable.

Testamentary trusts – A trust that is part of an individual's will and is established at the individual's death.

What are some advantages and disadvantages for having a trust own a NYL nonqualified deferred annuity?

There may be several reasons for having a trust own a non-qualified deferred annuity. A trust that owns an annuity may have growth potential, tax deferral, spendthrift protection, a diverse selection of investment options and income and death benefit guarantees.

On the other hand, there will be expenses associated with establishing and maintaining a trust. Non-grantor trusts may be subject to comparatively higher income tax rates. Additionally, if a trust is the beneficiary of an annuity there are limited distribution at death options for a trust; spousal continuation of the annuity would not be available and death benefit payouts over life expectancy are not available. NYL will report all distributions to the owner of the policy.

Annuity contract structure

NYL does not dictate the contract structure set up. If a trust is named owner on the annuity, there must be a living person named as the annuitant. Typically, since the assets are held in the name of the trust, the trust is named the beneficiary. This facilitates payment of the death benefit back to the trust at death of the annuitant. The annuitant and Grantor (if different) must meet the product's contract purchase requirements.

Summary

Annuities can offer advantages for some trusts, but trustees must be cautious. Trusts differ greatly, and some trusts should not purchase annuities.

Case Study

John and Jane Doe created a grantor's trust to simplify the administration of their assets while living and to ensure that their wishes are carried out upon their death. They have 2 children and a grandchild. Their goal is to continue to live off and grow their assets and to leave a legacy to their children and grandchild.

Goal: Growth of assets, while at the same time simplify administration of assets while living and upon death.

Owner – Grantor Trust | Annuitant – Grantor | Beneficiary – Grantor Trust

Results: The death of the annuitant will trigger payment of the death benefit to the beneficiary/trust. The trustee can then distribute the trusts assets according to the terms of the trust.

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