

Getting Rid of Abusive Trusts Act

Senator Ron Wyden

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GRATs (Grantor retained annuity trusts) create avenues for taxpayers to lower their federal income, gift, and estate taxes through tax planning. The average person has never heard the term “grantor retained annuity trust,” and yet the wealthiest Americans use them all the time to dodge millions of dollars in tax.

Senator Wyden’s *Getting Rid of Abusive Trusts Act (The GRATs Act)* addresses the most prevalent planning methods that grantors use to reduce the value of their estate, consequently lowering their estate tax burden, while avoiding additional income or gift tax. The *GRATs Act* would also modify the tax rules for grantor trusts by putting in place some downside risk on the use of GRATs so they are less likely to be used purely for tax avoidance purposes.

Additional Requirements for Grantor Retained Annuity Trusts

The bill adds the requirement that a GRAT must have a minimum term of fifteen years and a maximum term of the life expectancy of the annuitant plus ten years. Second, this section prohibits any decrease in the annuity during the GRAT term. Finally, this section adds the requirement that the remainder interest in a GRAT at the time of transfer must have a minimum value for gift tax purposes. The purpose of applying additional requirements is to impose costs on the use of GRATs, so they are less likely to be used entirely for tax avoidance purposes.

Transfers of Property Between a Trust and its Deemed Owner will be Treated as Sales

Transfers of property between a trust and the deemed owner of the trust will be treated as a sale or exchange for income tax purposes. This change is intended to address prevalent tax planning methods where a taxpayer’s appreciating assets can be transferred in and out of a GRAT without incurring income tax or capital gains tax.

Income Tax paid on the Trust’s Income will be Designated as a Gift

Any income tax paid on the GRAT’s income is designated as a gift for the purposes of the gift tax, unless the owner is reimbursed from the GRAT during the same calendar year. The gift amount cannot be reduced through the use of deductions such as the charitable deduction, marital deduction, or deductions for gifts of tuition or medical care. This change is intended to address prevalent tax planning methods where a grantor of a GRAT uses the trust to reduce the value of their estate, consequently lowering their estate tax burden while avoiding additional income or gift tax.