

**THE TAXATION OF SPECIAL NEEDS TRUSTS:**  
**WHAT EVERY SPECIAL NEEDS LAW ATTORNEY NEEDS TO KNOW**  
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Presented By:

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**TAXATION OF SPECIAL NEEDS TRUSTS**

I. Self-Settled Special Needs Trusts – Trusts funded with assets of the settlor (i.e., the special needs individual) for the benefit of the settlor.

A. Types of Self-Settled Special Needs Trusts

1. 42 U.S.C. § 1396p(d)(4)(A)
2. 42 U.S.C. § 1396p(d)(4)(B) – “Miller” trusts
3. 42 U.S.C. § 1396p(d)(4)(C) – pooled trusts

B. Funding Self-Settled Special Needs Trusts

1. Income Tax – Contributions to a self-settled special needs trust by the settlor, or someone on the settlor’s behalf (i.e., guardian, parent, court, etc.), are income tax neutral (no income tax consequences to the donor [settlor] and no income tax consequences to the donee [trustee/trust]). See Internal Revenue Code (“IRC”) §§ 102 and 1015 regarding income tax treatment of gifts (e.g., “carry-over basis” applies). Also, for reasons discussed below, grantor trust treatment will apply.

2. Gift Tax

a. Generally, contributions to a self-settled special needs trust by the settlor, or someone on the settlor’s behalf (i.e., guardian, parent, court, etc.), are incomplete gifts for gift tax purposes because trust assets are reachable by the settlor’s general creditors under the laws of most states (no spendthrift protection for settlors of self-settled trusts). See IRC § 2511 regarding completed gifts for gift tax purposes and Revenue Ruling 77-378.