

D. Distributions from Self-Settled Special Needs Trusts

1. Income Tax

a. Inter Vivos – No income tax consequences to the settlor/beneficiary for receipt of a distribution or for a distribution made on the settlor's behalf, and no income tax consequences to the trustee (due to application of the grantor trust rules). Distributions from a self-settled special needs trust to the settlor/beneficiary, or someone on the settlor/beneficiary's behalf, are income tax neutral.

b. Post-Mortem – Application of traditional fiduciary income tax rules for trusts (distributable net income ("DNI"), etc.). See I.C.1.b. above.

2. Gift and Estate Tax – Gift and estate taxes should not be applicable to distributions from self-settled special needs trusts since trust distributions should be back to the settlor or on the settlor's behalf.

E. Termination of Self-Settled Special Needs Trusts – This outline assumes that termination occurs due to the settlor's death as opposed to exhaustion of trust assets during the settlor's lifetime.

1. Income Tax – Grantor trust rules become inapplicable upon the death of the settlor and traditional rules of fiduciary income taxation apply.

2. Estate Tax – Assets in a self-settled special needs trust will be included in the settlor's gross estate for estate tax purposes upon the settlor's death. See IRC §§ 2033 and 2036. "Stepped up" basis will be realized. See IRC § 1014.