MEMORANDUM

DATE: November 30, 2021
TO: File
FROM: Wendy J. Manson, CPA, and William J. Palazzolo, Esq.
RE: Revocation of Irrevocable Trusts

Conclusion:

Under both New York and Pennsylvania law, an irrevocable trust can be terminated only if the grantor and all the beneficiaries involved consent to the trust termination.

Under NY law, the grantor and the beneficiaries must agree on the disposition of the trust assets after termination of the trust. Under PA law, the beneficiaries determine the disposition of the trust assets after termination of the trust. In both cases, the grantor needs the consent of the beneficiaries to terminate the trust and decide on disposition of the trust assets.

For federal tax purposes, the termination of the trust and the beneficiaries agreeing to give the assets back to the grantor is treated as a gift from the beneficiaries to the grantor. Gift tax returns would need to be filed and valuations done thereby using some or all of the lifetime exclusion of each of the beneficiaries depending on the value of the trust assets.

Discussion:

Per NY Estates, Powers and Trusts Law Section 7-1.9 *Revocation of trusts,* subsection (a) states that upon the written consent, acknowledged or proved in the manner required by the laws on this state for recording of a conveyance of real property, of all the persons beneficially interested in a trust of property, the creator of such trust may revoke or amend the whole or any part thereof by an instrument in writing acknowledged or proved in like manner, and thereupon the estate of the trustees ceases with respect to any part of such trust property, the disposition of which has been revoked.

Per PA Uniform Trust Act Section 7740.1 – *Modification or termination of noncharitable irrevocable trust by consent*, subsections (a) and (c) state that a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust and that upon termination of such trust, the trustee shall distribute the trust property as agreed by the beneficiaries.

According to the IRS, the termination of the trust and the beneficiaries agreeing to give the assets back to the grantor is treated as a gift from the beneficiaries to the grantor.

This would require gift tax returns to be filed and valuations done to value the trust assets. The gift from the beneficiaries to the grantor would use up some or all of the lifetime exclusion of each of the beneficiaries depending on the value of the trust assets.