

SB 376: Confirming non-application of Section 17082 to charitable remainder trusts

By Jacob V. Phillips

On Oct. 6, California enacted SB 376, which revises the rules governing taxation of incomplete gift non-grantor trusts to expressly exclude application to charitable remainder trusts (CRTs), conforming the statute with the Franchise Tax Board's interpretation. The revised rules are effective Jan. 1, 2026.

In 2023, California enacted Revenue and Taxation Code Section 17082, which provides that the income of an incomplete gift non-grantor trust (frequently referred to as an "ING" trust) would be taxable to the California resident grantor of such trusts. An ING trust is a non-grantor trust and thus a separate income taxpayer, so its income is generally taxable to the trust (or the beneficiaries), but not the grantor. Before 2023, savvy Californians sought to make "incomplete gifts" (a transfer that was not a completed gift for estate and gift tax purposes) to an ING trust in a jurisdiction with lower income

tax rates (frequently Nevada - a "NING," Wyoming - a "WING," or Delaware - a "DING"), thus avoiding California's high income tax rate on trust assets, while retaining certain powers for the grantor over trust assets so no gift transfer had occurred. Section 17082 essentially eliminated this state income tax planning technique for California grantors, providing the income of an ING trust is included in the gross income of the trust's grantor.

From the beginning, Section 17082 provided exceptions for certain charitable trusts to the general rule that the income of trusts described therein were taxable to the grantor. However, some experts still advised caution because Section 17082 could be construed as subjecting the grantors of certain CRTs to California income tax, though otherwise the CRT would be clearly exempt from both state and federal taxation. To be clear, the Franchise Tax Board has never taken this position, advising on their website that CRTs "are not subject to Section 17082."

In response to these concerns, SB 376 now includes a new exception clarifying that Section 17082 does not, as some worried it might, apply to CRTs. SB 376 revises Section 17082, effective Jan. 1, 2026, to add subdivision (d)(1)(b), affirming that the rule does not apply to "a trust, or a portion of a trust, that qualifies as a charitable remainder trust under Section 664 of the Internal Revenue Code" (the definition of a CRT under the Internal Revenue Code is found in I.R.C. Section 664(d)). Legislative materials acknowledge the intent of SB 376 is to "formally confirm what the [Franchise Tax Board] has consistently stated - that CRTs are not subject to Section 17082."

SB 376 is a common-sense patch for what could have led to unintended results. The outcome is likely to be uncontroversial among tax and estate planners, particularly as the Franchise Tax Board has never contended Section 17082 applied to CRTs. However, SB 376 puts any doubts to rest: The income of a trust that meets the definition of a CRT under the Internal

Revenue Code will not be taxable to the grantor, even if the trust otherwise satisfies the characteristics of an ING trust as described in Section 17082.

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