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SB-376 Incomplete gift nongrantor trusts: Personal Income Tax Law. (2025-2026)

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Senate Bill No. 376

CHAPTER 410

An act to amend Section 17082 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 06, 2025. Filed with Secretary of State October 06, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

SB 376, Valladares. Incomplete gift nongrantor trusts: Personal Income Tax Law.

Existing law, the Personal Income Tax Law, in partial conformity with federal income tax law, imposes a tax on the taxable income of estates or of any kind of property held in trust. That law provides the taxable income of an estate or trust is computed in the same manner as in the case of an individual, except as provided, and the tax is paid by the fiduciary of the trust or estate. Existing law provides that, where the grantor or another person is treated as the owner of any portion of the trust, known as a "grantor trust," then items of income, deductions, and credits against tax of the trust are included in computing the taxable income and credits of the grantor or other owner. Existing law, for taxable years beginning on or after January 1, 2023, includes the income of an incomplete gift nongrantor trust, as defined, in the gross income of the grantor to the extent the income of the trust would be taken into account in computing the grantor's taxable income if the trust were treated as a grantor trust, except as provided.

This bill would amend the definition of incomplete gift nongrantor trust to specifically exclude a trust, or portion of a trust, that qualifies as a charitable remainder trust, as specified. The bill would include findings and declarations that this change does not constitute a change in, but is declaratory of, existing law.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that the amendments made to Section 17082 of the Revenue and Taxation Code by Section 2 of this act do not constitute a change in, but are declaratory of, existing law.

SEC. 2. Section 17082 of the Revenue and Taxation Code is amended to read:

17082. (a) For taxable years beginning on or after January 1, 2023, the income of an incomplete gift nongrantor trust shall be included in a qualified taxpayer's gross income to the extent the income of the trust would be taken into account in computing the qualified taxpayer's taxable income if the trust in its entirety were treated as a grantor trust under Section 17731.

(b) Notwithstanding subdivision (a), Section 17745 applies to distributions from an incomplete gift nongrantor trust.

(c) Notwithstanding subdivision (a), the income of an incomplete gift nongrantor trust shall not be included in a qualified taxpayer's gross income for a taxable year if all of the following apply:

(1) The fiduciary of the incomplete gift nongrantor trust timely files an original California Fiduciary Income Tax Return and makes an irrevocable election on that return to be taxed as a resident nongrantor trust, pursuant to Chapter 9 (commencing with Section 17731). The election shall be made in the form and manner prescribed by the Franchise Tax Board.

(2) The incomplete gift nongrantor trust is a nongrantor trust pursuant to Chapter 9 (commencing with Section 17731).

(3) Ninety percent or more of the distributable net income of the incomplete gift nongrantor trust, pursuant to Chapter 9 (commencing with Section 17731), is distributed, or treated as being distributed pursuant to Section 17752 or 17731, including subdivision (a), for purposes of Chapter 9 (commencing with Section 17731), to a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code.

(d) For purposes of this section, the following definitions apply:

(1) (A) "Incomplete gift nongrantor trust" means a trust that meets both of the following conditions:

(i) The trust does not qualify as a grantor trust under Subpart E of Part I of Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to grantors and others treated as substantial owners.

(ii) The qualified taxpayer's transfer of assets to the trust is treated as an incomplete gift under Section 2511 of the Internal Revenue Code, relating to transfers in general.

(B) "Incomplete gift nongrantor trust" shall not include a trust, or portion of a trust, that qualifies as a charitable remainder trust under Section 664 of the Internal Revenue Code.

(2) "Qualified taxpayer" means a grantor of an incomplete gift nongrantor trust.

(3) "Resident nongrantor trust" means a trust that is not a grantor trust and where the tax applies to the entire taxable income of the trust based on the residency of the fiduciary or beneficiary in accordance with Section 17742.

(e) (1) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this section.

(2) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this section.