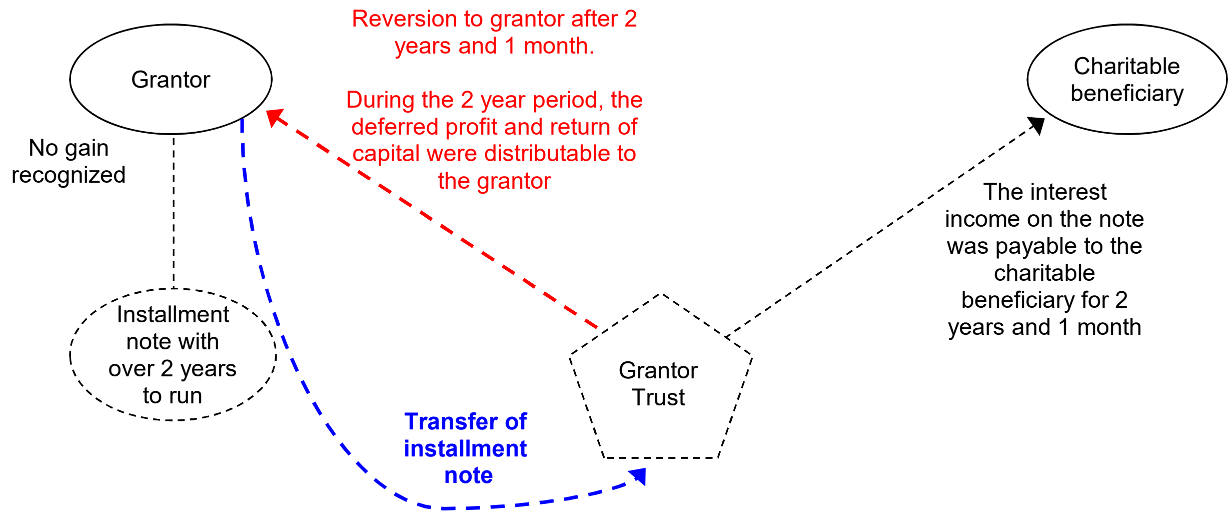
Rev. Rul. 67-70

Transfer of an Installment Note to a Grantor Trust Was Not a Disposition



The grantor sold property and accepted an installment note providing for payment in monthly installments over a number of years plus interest at 6% on the unpaid balance. He elected to report the gain on the sale on the installment method of accounting under section 453. The grantor, while the installment obligation still had over 2 years to run, transferred the installment note to a trust. The trust instrument provides that the term of the trust should be 2 years and 1 month; <u>that the income</u> of the trust, consisting solely <u>of the interest earned on the note</u> during the period it is trust property <u>be paid to a named charitable beneficiary</u> (which was of the type described in section 170(b)(1)(A)(ii)); and <u>that the deferred profit and return of capital (principal)</u> in the payments received by the trust, <u>be paid to the grantor</u>. On termination of the trust the installment note reverts to the grantor.

Section 453(d) provides, in part, that if an installment obligation is disposed of gain or loss shall result to the transferor in the taxable year in which the disposition occurs. Section 677(a) provides, in part, that the grantor of a trust shall be treated as the owner of any portion of a trust whose income, without the approval or consent of an adverse party or, in the discretion of the grantor or a nonadverse party, may be distributed to the grantor. Under the general rule provided in section 673(a), a grantor is treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust. Section 673(b) provides, however, that subsection (a) of that section shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least 2 years to certain charitable beneficiaries.

The grantor, by retaining a right to the deferred profit in the installments remains the owner of that portion of the trust under the provisions of section 673 and section 677(a)(1), and is taxable on the part of each installment which represents deferred profit. Accordingly, the transfer in trust of the installment obligation is not a disposition of the installment obligation since the grantor is treated as the owner of the portion of the trust consisting of the deferred profit included in the obligation.