NEW YORK CITY BAR

FACT SHEET:
CLARIFYING SECTION 672(E) OF THE INTERNAL REVENUE CODE

The Problem

- **Section 672(e)** ("spousal unity rule") imputes powers or interests held by a grantor's spouse to the grantor for purposes of the grantor trust rules.
- The statute **continues to apply** this rule after divorce or legal separation.
- **Repeal of Section 682** in 2017 removed prior protections, creating unintended consequences: divorced taxpayers may be taxed on trust income payable to former spouses.

Why It Matters

- **Contrary to Congressional intent**: Section 672(e) was designed to prevent abuse during marriage, not after economic unity ends.
- **Conflicts with general tax principles**: Marital status is determined annually under Section 7703.
- **Potential constitutional issue**: Supreme Court's *Moore v. United States* decision suggests arbitrary attribution of income may violate due process.
- **Practical impact**: Taxpayers can be taxed on income they do not benefit from or control.

Key Consequences

- Ambiguity affects multiple Code sections (§§ 673–677), creating uncertainty for estate planners and taxpayers.
- Treasury regulations under § 677 currently limit application to periods of marriage, but § 672(e) may override this.
- Repeal of § 682 exacerbates risk of inequitable taxation.

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Recommended Action

- **Amend Section 672(e)** to clarify that the spousal unity rule applies only during marriage and terminates upon divorce or legal separation.
- **Issue Treasury Regulation** confirming that powers or interests held by a former spouse are not imputed to the grantor after marriage ends.
- Proposed statutory and regulatory language is included in the attached report.

Benefits of Clarification

- Aligns Code with original legislative intent.
- Eliminates uncertainty for taxpayers and practitioners.
- Prevents arbitrary and potentially unconstitutional tax attributions.
- No revenue loss: income would be taxed under general trust rules instead.

For more information, read the Estate & Gift Taxation Committee report "Clarifying Section 672(e) of the Internal Revenue Code, the "Spousal Unity" Rule" (Dec. 2025), available here.

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