STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Valladares Bill Number: SB 376

SUBJECT

Incomplete Gift Nongrantor (ING) Trusts

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), amend the definition of an ING trust to specifically exclude a trust, or portion of a trust, that qualifies as a charitable remainder trust (CRT).

REASON FOR THE BILL

The reason for the bill is to explicitly specify that CRTs are not treated as ING trusts.

ANALYSIS

This bill, under the PITL, would, for purposes of inclusion of ING trust income in the income of the grantor, amend the definition of ING trusts to specifically exclude a trust, or portion of a trust, that qualifies as a CRT under Internal Revenue Code (IRC) section 664.

Effective/Operative Date

This bill would be effective and operative on January 1, 2026.

Federal/State Law

Federal Law

Under federal law, there are two general types of trusts – grantor trusts and nongrantor trusts. Grantor trusts are revocable, and the grantor retains control over the trust. These trusts are not taxed as separate entities. All the items of income, deduction, and credit flow through to the personal return of the grantor. In addition, distributions from grantor trusts to its beneficiaries are not subject to tax because the trust is essentially disregarded as a taxable entity.

Nongrantor trusts are irrevocable, which generally means that the grantor does not retain control over the trust. They are taxed on their accumulated income as if the trust and the grantor were separate entities. When the trust makes a distribution to a beneficiary, the trust is allowed a distribution deduction, and the trust passes the income along to a beneficiary. The distribution from the nongrantor trust to its beneficiaries is subject to tax. The beneficiary reports the income and pays the tax.

A CRT is defined under IRC section 664 as an irrevocable trust that allows a taxpayer to transfer assets to a trust, receive annual payments for life or a specified term, with the remaining assets distributed to a charitable organization. CRTs are a type of nongrantor trust, relating to estates and trusts, which may accumulate income or distribute corpus. While distributions made by CRTs to its beneficiaries are subject to tax, the CRT is not subject to federal income tax.

An ING trust is also a type of nongrantor trust where the grantor establishes the trust for the benefit of the grantor and other discretionary beneficiaries. The grantor's transfer of assets to the ING trust is treated as an incomplete gift under IRC section 2511, and the regulations thereunder. Because the grantor's gift to the trust is incomplete, the grantor may fund the trust without using the lifetime estate tax exemption or incurring a federal gift tax liability. The trust is considered irrevocable. Within the ING trust structure, the trust maintains control over the assets and any distributions are controlled by the trust distribution committee. This distribution committee approves the distributions that the grantor receives. The result is that the grantor retains sufficient control over the assets to be treated as not having made a completed gift of the assets, while at the same time, being treated as having retained insufficient control over the assets to be considered the owner of the assets for income tax purposes.

There are many federal private letter rulings that conclude that ING trusts are not grantor trusts for federal income tax purposes. As a result, ING trusts are generally treated as taxable trusts rather than disregarded taxable entities.

State Law

California conforms, with modifications, to the federal treatment of trusts, including IRC section 664, regarding the treatment of CRTs.

For taxable years beginning on or after January 1, 2023, the income from an ING trust is included in a qualified taxpayer's gross income to the extent the income would have been taken into account in computing the qualified taxpayer's taxable income as if the trust, in its entirety, were treated as a grantor trust under Section 17731.

The ING trust income is excluded from the qualified taxpayer's gross income for a taxable year if all of the following apply:

- The ING trust's fiduciary timely files an original California Fiduciary Income Tax Return and makes an irrevocable election, in the form and manner prescribed by the Franchise Tax Board (FTB), on that return to be taxed as a resident nongrantor trust.
- The ING trust is a nongrantor trust.
- 90% or more of the ING trust's distributable net income is distributed, or treated as being distributed, to a charitable organization as defined in IRC section 501(c)(3).

The income from CRTs is subject to rules under Revenue and Taxation Code (RTC) section 17731, which conforms to IRC section 664, CRTs, and is not subject to the rules of RTC section 17082.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 131 (Senate Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023), among other provisions, required inclusion of ING trust income in the income of the grantor, as if the trust were a grantor trust, except as provided, for taxable years beginning on or after January 1, 2023.

PROGRAM BACKGROUND

FTB's public website provides information relating to estates and trusts, including ING trusts. The ING trust webpage provides an overview of how ING trusts are treated for California purposes, explains when certain exceptions apply, explains how nonresidents of ING trusts are treated, that CRTs are not subject to Section 17082, and contains links to applicable forms. In addition, there is a "help with incomplete nongrantor (ING) trusts" webpage that lists frequently asked questions with answers.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

FTB anticipates minimal costs to implement this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Floor analysis, dated September 10, 2025.

Support

California Lawyers Association, Trusts and Estates Section and Taxation Sections.

Opposition

None on file.

VOTES

Location	Date	Yes Votes	No Votes
Concurrence	September 11, 2025	40	0
Assembly Floor	September 10, 2025	79	0
Senate Floor	June 2, 2025	38	0

LEGISLATIVE STAFF CONTACT

FTBLegislativeServices@ftb.ca.gov

Nick Maduros
Agency Secretary, GovOps
Work (916) 651-9011

Luis Larios
Legislative Deputy, GovOps
Work (916) 651-9373

Selvi Stanislaus
Executive Officer, FTB
Work (916) 845-4543

Jennifer Barton
Legislative Director, FTB
Work (916) 845-6333