

TRUSTS AND THE INTERNAL REVENUE CODE

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Memorandum

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Trusts are legal entities that are used to transfer and manage property or assets. In our Copyrighted Spendthrift Trust the Compliance Overseer maintains Autonomy over whether or not the Property or Assets converted into the Trust are being properly administrated by the Trustee in accordance to the Settlor's will when they endowed it. In accordance with State Laws, a Trust may be created for any purpose, which is not illegal, or against public policy. The purpose for which a Trust may be created can be as unlimited as the imagination of its creators. There are no technical rules restricting the creation of Trusts provided that any such imagination and administration is in complete compliance to Scott on Trust Law and the IRS Statutes and Codes.

A Spendthrift Trust is not considered a taxable "Association" pursuant to tax law. Black's Law Dictionary defines Association as follows: "What is designated as a trust or a partnership may be classified as an association [only] if it clearly possesses [all] corporate attributes. Corporate attributes include: [1] centralized management, [2] continuity of existence, [3] free transferability of interest, [4] limited liability.

A Spendthrift Trust Organization is not an "association" or an "unincorporated association," because it does not possess the same attributes of a corporation, such as continuity of existence and free transferability of [beneficial] interest. Further, unlike a corporation, a Spendthrift Trust Organization is not an "artificial entity" nor does it owe its existence to the charter power of the State.

A Spendthrift Trust Organization is also not an alter ego or a nominee for any trustee or beneficiary because no one individual holds both legal and equitable title and beneficial interest.

Trusts are required to file federal income tax returns by the completion of a Form 1041.

Of particular importance to Lawyers is the realization that a Trustee not be considered as Grantor to a Trust. The IRS would translate this titled role as usurping the power of the Trustee, thus exposing all income to the Trust as personally taxable to its Grantor. This situation is overcome in the Copyrighted Spendthrift Trust by designating a unrelated party to the Grantor in the titled role as Compliance Overseer, which does not usurp the Trustee's power. However, he may elect to replace him should there be sufficient cause.

An important factor, that must be maintained, is that the Trustee concentrates on the sections 635 and 643 of the IRS code. This is the section of the IRS Codes that offset any potential problematic areas that might be construed by some accountants in section 641. They do tie together when properly structured and administrated. We have secured the services of Retiring Senior IRS Investigators to council with us on this and other matters.

It is critical that a Settlor not have any beneficial interest or ownership of the corpus of the Trust and that while management is possible in some rare cases, this management must not provide any beneficial interest or ownership in any manner and that would be construed as to the endowment(s) by the Settlor as to not being irrevocable and permanent.

FUNDS PAID TO THE CORPUS OF THE TRUST

If the Trust is constructed correctly and it is a Discretionary Trust, which does not require the distribution of current income, the Trustee may allocate earnings of the Trust to remain as part of its corpus without tax consequences. These earnings would then become taxable only when distributed to the beneficiary. The following examples are germane to this concept.

TRUST AS THE OWNER

If the Trust is the owner of the asset (stock, bonds, copyrights, insurance products, business, or etc.) and the Trust is a Discretionary Trust that does not require the distribution of current income then the income that the Trust earns and the Trustee acting in good faith according to the terms and conditions, governing instrument and applicable local law, determines that the income is attributable to corpus and is paid to corpus and not required to be distributed to any beneficiary, then this income is not taxable at that time.

A Trust owns the stock of a corporation and the corporation pays a dividend to the corpus of the Trust and the income to the Trust corpus of the dividend is not taxable at that time because the Trust owns the stock.

A Trust owns a copyright and a fee is paid to the Trust for the use of the copyright then the income to the Trust corpus is not taxable at that time.

Property held in Trust, when sold, is not subject to Capital Gains Tax when paid to the corpus and no distribution is required or any one Beneficiary designated to receive any percent of the corpus.

SPENDTHRIFT TRUST ORGANIZATION

A Spendthrift Trust Organization that conducts business in a Trust income is not a taxable event to the Trust unless the income is not distributed to the beneficiaries.

A contract in the form of a Spendthrift Trust Organization, does not owe its existence to any act of the legislature. The authority for its creation is the common law right of the parties to enter into a contract. According to American law, the government cannot regulate or impose a tax upon a right. Our "right to contract" according to the Constitution of the United States, Article. §10 is unimpaired. That means that it is not within the power of the government or even a judge to change one word of a Contract of Trust. Once the property is transferred into a Spendthrift Trust Organization, it is subject to its own indenture, which governs and, protects the property held by it. The government can ONLY regulate and tax entities it creates.

A Spendthrift Trust Organization has the income tax requirement to pay only the tax on the income money that the corpus or endowments of the trust earns and are not allocated to its corpus or passed through to its beneficiaries. Of course the initial endowments of the trust are always non-taxable as they are received as post tax contributions.

Like corporations, Revocable Living Trusts are statutory and are subject to legislative control and taxation. A Revocable Living Trust is required to file a 1041 Form each year. While the income in a corporation is taxable and the endowments to a Revocable Living Trust are taxable, the endowments to a Spendthrift Trust are not.

In *Weeks v. Sibley* DC 269£, 155, *Edwards V. Commissioner*. 41512£, 532 10th Cir. (1969) and *Philips v. Blanchard* 37 Mass 510, the courts ruled that a Spendthrift Trust Organization is not illegal even if formed for the express purpose of reducing or deferring taxes *Edison California Stores, Inc. v McColgan*. 30 Cal 26472.183 P2d 16. ruled that persons may adopt any lawful means for the lessening of the burden of income taxes; The Department of the Treasury, IRS

Handbook for Special Agents § 412, Tax Avoidance Distinguished from Evasion states; "Avoidance of Taxes is not a criminal offence. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible".

Pursuant to Narragansett Mut. F. Ins. Co. v. Burnhamun 51 r1371, 154 a 909, It is not an evasion of legal responsibility to take what advantage may accrue from the choice of any particular form of organization permitted by law.

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Another major advantage to operating a Spendthrift Trust Organization as a business is that, because it is not a creature of the legislature, it is not subject to the myriad of strangling legislative controls, rules and regulations that are applicable to corporations and other legislative entities. The Supreme Court case Eliot v. Freeman 220 US 178 ruled that a Spendthrift Trust Organization is not subject to legislative control. The Supreme Court holds that the trust relationship comes under the realm of equity based on common law and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority.

BOTTOM LINE ON TRUSTS

If a Trust is operated according to the Internal Revenue Code and the laws governing Trusts it is the most tax friendly of all entities to conduct business from or manage the assets of beneficiaries. The Asset protection is then complete and impenetrable.

Sincerely,



Robert N. Benson, Esquire