

## **Internal Revenue Code and Legal Compliance**

### **Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust**

Many questions and concerns have been communicated related to the tax laws, legal aspects and structures that legally lessen tax, defer tax, reduce tax, and, at the same time, limit or eliminate liability. This overview specifically addresses and answers these questions with legal cites, the Internal Revenue Code and the IRS Agent's Handbook.

Not everyone is familiar with the options available to accomplish the lessening, deferment, and reduction of taxes individuals and businesses can legally take advantage of to accomplish this. It requires a very special structure to be in legal compliance with the Internal Revenue Code and laws governing business.

A Trust is created by a declaration of Trust, made by a **Settlor** who appoints a Trustee(s) to manage the trust for the benefit of named and identified beneficiaries. The outline of our trusts, and provisions thereof, are taken directly from Scott on Trust Law. Our trusts are registered with the IRS and receive a tax-exempt Employee Identification Number (EIN).

The structure that is legal to achieve this is a **Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust Organization**. This unique type of Trust was designed and **copyrighted** to control assets and to defer, reduce, or lessen taxes. It also eliminates liability and provides for beneficiaries without legality affecting the corpus of the Trust. The corpus of a Spendthrift Trust is not subject to turn over orders by any court or judge federal, state or local.

The income or endowments, designated to the corpus of the Trust, are not income to the Trust. Other income designated as Extraordinary Dividends by the Trustee, through rules of the Internal Revenue Code, which is paid to the corpus of the Trust, by law, is not income to the Trust.

The Trustees of the Trust are the sole and absolute managers of the Trust and determine distributions of the Trust to Beneficiaries and the management of the assets and liquidity of the Trust. These types of Trusts are also not subject to capital gains when assets and properties, subject to capital gains taxes, are sold.

These are the basic outlines of the characteristics of the Trust. They have been well established by the law and court related cases. The following refers to the legal structure of the Trust:

A "Trust" is defined by Black's Law Dictionary "as right of property, real or personal, held by one party for the benefit of another." The trustee(s) hold the legal and equitable title to the property for the benefit of the beneficiaries. Although the trustees hold the property title, they do not own the property. The trustee(s) is/are designated the management authority for the Spendthrift Trust Organization.

The beneficiaries also do not own the property, but they have the right to all the benefits, proceeds, and profits of it. This is called the "beneficial interest" in the Spendthrift Trust Organization. The "beneficial interest" is contractually non-assignable and for that reason a creditor may not legally attach it. The beneficiaries do not have any management control of the property. A **Spendthrift Trust Organization** is "created" and given life, through a "*Contract in the form of a manifestation of intention in the Terms and Conditions of the trust of a Spendthrift Trust Organization*" which is often referred to as the "instrument".

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*" by the Constitution of the United States, Art. S10 cannot be impaired. 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. Also, assets conveyed to trusts are not gifts and may not be considered as such because there is no equitable title conveyed to any person or entity; all assets are held in the corpus of the trust for the benefit of the beneficiaries, who even though hold a beneficial interest, hold no title to said asset.

In **Weeks v. Sibley** DC 269F. 155, Edwards V. Commissioner. 415 F. 2d, 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 RI 371, 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.*"

A **Spendthrift Trust Organization** 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, With no equitable title and beneficial interest held by no one individual, there is no gift therefore no gift tax consideration to any asset conveyed to the Trust.

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.

Property held by a properly structured contract in the form of a Spendthrift Trust Organization is immune from tax liens, levies, and seizures, lawsuits, divorce claims and bankruptcy. The Spendthrift Trust Organization is not liable for the debts of the Trustee, or the beneficiaries and the assets held by the trust cannot be seized to satisfy their debts. Further, the trustees and beneficiaries are not liable for the debts of the Trust Organization. "Trust property cannot be held under attachment nor sold upon execution for the trustees personal debts" *Hussey v. Arnold* 182 U.S. 461, 21 S. Ct 645.

The fact that the trustees hold the property does not mean that the trustees own the personal property. Trust property cannot be held under an attachment nor sold upon the execution of trustee's personal debts. Trustees and beneficiaries cannot be held liable for debts incurred by the trust. If in fact, a trust has been created, the certificate holders are not liable on the obligation incurred by the trustees or managing agents appointed by the trustees. **Hussey V. Arnold** 70 NE 87; *Mayo V. Morin*, 24 NE 1083.

Pursuant to 695.30(a) of the CPC for the State of California and similar Civil Procedure Codes of other states; " Property of the judgment debtor that is not assignable or transferable is not subject to the enforcement of a money judgment". This information on case law is irrefutable and not subject to debate.

As to the Internal Revenue Code, the Trusts were all written to be in full compliance with the Code and operate within the law and its guidelines. The rules and laws that govern the described operation of the Trust is contained in various sections of the Code but particularly in the following:

**Internal Revenue TITLE 26**, Subtitle A, CHAPTER 1, Subchapter J, PART I, Subpart A, **Sec 643**

(a)(3), (4), (7) and (b) states: "(3) **Capital gains and losses.** Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of the gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account. (4) Extraordinary dividends and taxable stock dividends for purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law. (7) Abusive transactions The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes. If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes. (b) Income for purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross

income constituting **Extraordinary Dividends** or taxable stock dividends which the fiduciary acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law, shall not be considered income."

The Internal Revenue Manual plainly states the rights afforded to individuals and businesses as to what means can be legally taken to accomplish the outlined actions the Trust accomplishes. They state: 25.1.1.2.4 (01-23-2014) **Avoidance vs. Evasion**

1. Avoidance of tax is not a criminal offense. Taxpayers have the right to reduce, avoid, or minimize their taxes by legitimate means. One who avoids tax does not conceal or misrepresent but shapes and pre-plans events to reduce or eliminate tax liability within the parameters of the law.

2. Evasion involves some affirmative act to evade or defeat a tax, or payment of tax. Examples of affirmative acts are deceit, subterfuge, camouflage, concealment, attempts to color or obscure events, or make things seem other than they are.

3. Common evasion schemes include:
- \* Intentional understatement or omission of income
  - \* Claiming fictitious or improper deductions
  - \* False allocation of income
  - \* Improper claims, credits, or exemptions; and/or
  - \* Concealment of assets.

Also,

9.1.3.3.2.1 (05-15-2008)

### **26 USC §7201- Avoidance Distinguished from Evasion**

I. Avoidance of taxes is not a criminal offense. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible. The distinction between avoidance and evasion is fine, yet definite. One who avoids tax does not conceal or misrepresent. He/she shapes events to reduce or eliminate tax liability and, upon the happening of the events, makes a complete disclosure. Evasion, on the other hand, involves deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events or to make things seem other than they are. For example, the creation of a bona fide partnership to reduce the tax liability of a business by dividing the income among several individual partners is tax avoidance. However, the facts of a particular investigation may show that an alleged partnership was not, in fact, established and that one or more of the alleged partners secretly returned his/her share of the profits to the real owner of the business, who, in turn, did not report this income. This would be an instance of attempted evasion.

Considering all these facts, laws, and regulations, the structure of the Trust operates well within the guidelines of the Internal Revenue Code and Federal, State, and Local laws. These regulations and laws are not subject to interpretation by individuals. Therefore, we find the Trust to be one of the very few structures for individuals and business that fulfill completely the needs of these entities.