Realty411

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Realty411 Summit 2026



Hibs Exeter
EXETER 1031
EXCHANGE SERVICES



Alineh Mouradian
EXETER 1031
EXCHANGE SERVICES



Scott Pastel
MARSHALL REDDICK



Kris Miller
LEGACY WEALTH STRATEGIST



Merrill Chandler
GET FUNDABLE

Saturday, Sept.26th
9:00 AM

Crowne Plaza Costa Mesa
Orange County
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William Exeter
EXETER 1031
EXCHANGE SERVICES



Ken Letourneau
THE TAX SALE MASTER



Anthony Patrick & Mindy
NEW HARVEST VENTURES



DaShunda Morris
REALTOR/REHABBER



Amanda Hart
Easy Street Capital



Zach Henderson
ELUX HOMES



Manuel Angeles
GREENLIGHT MORTGAGES INC.

A Look Behind Realty411's News, Trends & Strategies Summit 2026

Irrevocable Spendthrift Trust

Pay No Capital Gains Tax

- Proprietary and Copyrighted Benson Financial Trust
- In Use for Over Half-a-Century with More Than 125,000 Sold
- 1999 Copyright Registration Number TXu928247
- Standing IRS Private Letter Ruling Number 133314-14

FREE Informational Package

How Much Money Will YOU Save?

Vs.

If you, as an Individual, were to sell an investment property, you will be subject to one of the following from that sale:

- Pay 20% Short-Term Capital Gains Tax
- Pay 15% Long-Term Capital Gains Tax
- *Defer* Taxation through 1031 Exchange

Are these your only options? Is there a way to legally and lawfully avoid paying capital gains tax? The answer is "yes".

If the same property were sold out of our Irrevocable Spendthrift Trust, there is no capital gains tax under IRC §643(a)(3):

"Gain 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..."

Of particular importance is the fact that the Trusts have withstood significant scrutiny and have been determined to be sound from a tax perspective. Similarly, the Trusts have been the focus of examination by the Internal Revenue Service and were held by the Internal Revenue Service to be legally sound. As such, the Trusts have proven to be an excellent method to ensure asset protection and sound tax policy, as a business motivated strategy." [24]

~ **Robert A. Desilets, Jr., J.D., LL.M., LL.M.**
Former Attorney / Advisor to the Office of Chief of Counsel of IRS in Washington, D.C., 1999-2004

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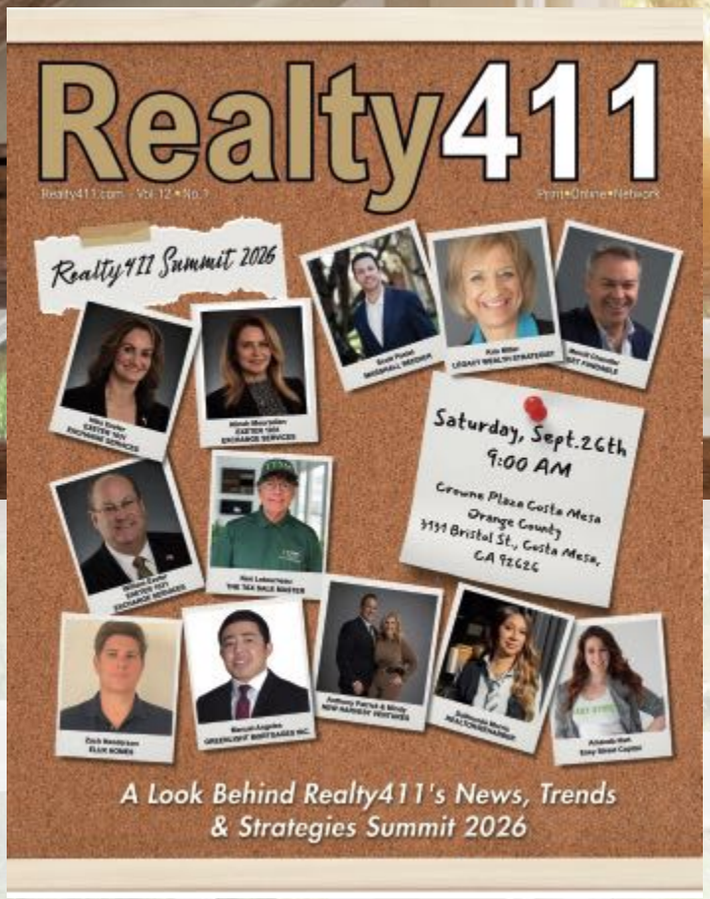
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Fiduciary Accounting First:
The Statutory Framework of IRC § 643 and Trust Tax Consequences

By Jay Butler

When a trust sells an appreciated asset, there is often an assumption that a taxable gain automatically arises simply because the sale occurred. Congress, through Subchapter J, approaches the issue differently. Before the tax consequences of a trust transaction can be determined, Congress required that the transaction be characterized under fiduciary accounting principles first. The central question is therefore not merely whether money entered the trust, but what that receipt is, how it is classified, and what consequences follow from that classification.



Congress deliberately incorporated trust-accounting principles into federal tax law through Subchapter J. Federal tax law did not create the fiduciary structure of a trust; it recognized and incorporated it. Internal Revenue Code § 643 (b) provides that trust accounting income is determined under the governing instrument and applicable local law. Congress did not create an independent federal definition of trust accounting income. Treasury Regulation § 1.643(b)-1 preserves this distinction between fiduciary accounting income and taxable income. As a result, fiduciary classification is the starting point for determining the tax consequences of trust transactions.

Under the governing instrument, gains arising from the sale or exchange of trust assets are required to be allocated to corpus rather than income. Corpus, sometimes referred to as principal, consists of the assets held within the trust and administered by the trustee pursuant to the governing instrument. It is the trustee who determines whether a receipt is allocated to corpus or income under the governing instrument and applicable law. The trustee then determines whether assets allocated to corpus remain accumulated within the trust estate, free from current trust-level tax consequences, or become distributable pursuant to the terms of the trust. Only then do the resulting tax consequences flow from that determination under Subchapter J.

When a trust asset is sold, one asset within corpus is exchanged for another asset within corpus. Real estate becomes cash. Cryptocurrency becomes cash. While the form of the asset changes, the asset remains within the trust estate and under the trustee's fiduciary control. Legal title remains with the trustee, who continues to administer the property pursuant to fiduciary duties imposed by the governing instrument and applicable law. No beneficiary has received a distribution, nor acquired possession or control of the proceeds, obtained constructive receipt, or acquired a present right to compel payment. The trust corpus remains intact notwithstanding the conversion of one asset form into another.



IRC § 643(a)(3) reinforces this framework by providing that gains from the sale or exchange of capital assets are excluded from Distributable Net Income ("DNI") to the extent they are allocated to corpus and are not paid, credited, or required to be distributed to any beneficiary during the taxable year. DNI serves as the statutory measure of income that may be carried out to a beneficiary for tax purposes. Gains properly allocated to corpus, and excluded from DNI, remain within the trust estate and continue to be administered as corpus until the trustee elects to make a discretionary distribution pursuant to the governing instrument.

This statutory structure reflects a logical sequence. Before the trustee performs the characterization required by § 643(b), it is impossible to determine what constitutes income, what constitutes corpus, what enters DNI, what remains principal, and what—if anything—is distributable to a beneficiary. Those determinations are not incidental; they are fundamental to the operation of Subchapter J. Any attempt to determine trust-level or beneficiary-level tax consequences before completing the fiduciary accounting process would bypass the sequence Congress established in § 643, which directs the fiduciary to determine the character of the receipt before the resulting tax consequences are calculated.

The statute operates in a straightforward order. First, the trustee characterizes the receipt under § 643(b) by allocating it between income and corpus. Second, the trustee determines whether the asset remains accumulated within corpus or becomes distributable under the governing instrument. Third, IRC § 643(a)(3) determines whether gains allocated to corpus are excluded from DNI. Only then can the resulting tax consequences be determined.

Properly understood, the issue is not whether a trust transaction has tax consequences, but when and how those consequences are determined under Subchapter J. Congress intended the fiduciary accounting characterization required by § 643(b) to govern that determination, and the statutory framework reflects that intent. By incorporating the governing instrument and applicable local law into the federal tax framework, Congress placed the trustee's fiduciary accounting determination at the beginning of the analysis. Until that determination has been made, one cannot know whether a receipt constitutes income or corpus, whether it enters DNI, whether it remains accumulated within the trust estate, or whether it becomes distributable to a beneficiary.

In conclusion, where gains are allocated to corpus pursuant to the governing instrument, and remain within the trust estate, they are excluded from DNI under IRC § 643(a)(3), so long as they are neither paid, credited, or required to be distributed. Therefore, no current trust-level tax consequence arises merely because the underlying asset was sold and the resulting gain was allocated to corpus, excluded from DNI, and retained within the trust estate. The trustee's determination comes first, not because the trustee supersedes federal law, but because Congress itself directed fiduciary accounting be applied first.

We welcome you to "Schedule Your Free 90-Minute Appointment" with us on the top right-hand corner of any page on our AssetProtectionServices.com website. We look forward to speaking with you, and working with you soon! Thank you~



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For more information about the Irrevocable Spendthrift Trust, please visit:

https://www.assetprotectionservices.com/apsa/trusts/irrevocable-spendthrift-trust.html