



# Informational Package

on the

## Benson Financial Trust

(Last Updated on April 30, 2025)

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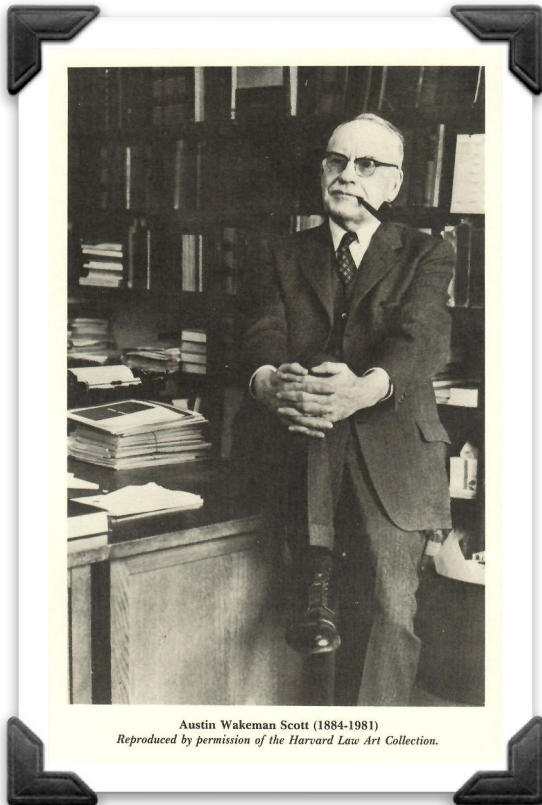
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## **Irrevocable Spendthrift Trust** <sup>1</sup>

Asset Protection Services of America Trust is a Distributor of [Benson Financial Trust](#) <sup>2</sup> copyrighted materials. On November 29, 1999, the first "Master Spendthrift Trust", a **"Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust"** was filed with the U.S. Copyright Office, and Copyright Registration Number [TXu928247](#) <sup>3</sup> was issued for it as an original work. The Copyright Office noted that it was the first and only trust in American history that had ever been copyrighted.

The substance and form of the original "Master Spendthrift Trust", and the current "Benson Financial Trust", were first constructed in the early 1970's. The original series of Master Trusts were created by Robert N. Benson Esq., who was a Harvard educated attorney and a protégé of **Professor Austin Wakeman Scott** who taught at Harvard Law School. Professor Scott is the renowned author of "Scott on Trusts" recognized as the leading treatise and authority on Trust Law in the United States. Mr. Benson studied and taught classes under the guidance of Professor Scott. After graduating from Harvard, Mr. Benson became a partner in a prominent Wall Street Law Firm providing his legal acumen to high-net-worth individuals to plan and protect their estates through various Irrevocable Spendthrift Trusts which are the predecessors to the subsequently copyrighted Master Trusts, copyrighted under the authority and approval of Mr. Benson.



In approximately 1995, Mr. Benson partnered with Tarrant County Judge George W. Boring who, utilizing paralegal Richard Ronald, formed a new Law Firm offering Trusts to everyone - not just the wealthy. Mr. Richard Ronald partnered with attorney Robert N. Benson to refine and copyright various trusts, including the "Master Spendthrift Trust", which subsequently became the current "Benson Financial Trust". Over 125,000 people have taken advantage of Mr. Benson's trusts created and sold over the last 50+ years. Read our [Client Testimonials](#) <sup>4</sup> today.

<sup>1</sup> <https://www.assetprotectionservices.com/apsa/trusts/irrevocable-spendthrift-trust.html>

<sup>2</sup> <https://bensofinancial.us>

<sup>3</sup> [https://publicrecords.copyright.gov/search?<br>page\\_number=1&query="txu928247"&field\\_type="keyword"&records\\_per\\_page=10&sort\\_order="asc"&highlight=](https://publicrecords.copyright.gov/search?page_number=1&query='txu928247'&field_type='keyword'&records_per_page=10&sort_order='asc'&highlight=true&model=') true&model=" "

<sup>4</sup> <https://www.assetprotectionservices.com/apsa/about/client-testimonials.html>



## Primary Trust Benefits

- Anonymity is maintained at the city, county, state and federal levels.
- The trust is impenetrable by creditors and immune from transfer by operation of law.
- Personal bankruptcy has no effect on trust assets.
- If the trust maintains compliance with IRC §643, there is no 20% short-term capital gains tax, no 15% long-term capital gains tax, nor taxation on extraordinary dividends or stocks.
- No capital gains tax upon sale of a principal residency, exceeding benefits of both \$250,000 individual and \$500,000 marital capital gains tax exclusions, without any 2-year seasoning.
- No need for 1031 exchanges, which only *defer* tax liabilities and entangle investment monies.
- Trustees may utilize trust assets for and on behalf of trust beneficiaries without limitation or exception, and such expenditures are neither a taxable event to the trust or beneficiaries.
- Cash distributions made from the trust to beneficiaries, are taxable events to the beneficiaries.
- For example, at the sole and exclusive discretion of the trustees, beneficiaries may be provided food, clothing, utilities, medical care, education, vacations, transportation and wellness, etc.
- Trustees are subject to similar benefits from the trust, but food, clothing, personal fitness, vacations and elective medical procedures are taxable events to the trustees.
- The trust follows contract law. Trustee personal assets are sold (at the trustee's basis) into the trust using "Bills of Sale" and "Promissory Notes". Assets are *not* gifted into the trust.
- For example, the basis of an investment property is deemed to be the current property owner's "Purchase Price + Improvements (Less Depreciation) = Basis"
- The trustee may use his or her promissory notes to "off-set" future taxable events as trustee.
- The trust is a legal and lawful instrument, but will *not* protect the trustees if engaged in any fraud or criminal activity. The trusts are obviously not a license to commit crimes.
- Absent fraud and criminal activity, the trust may *not* be sued.
- The courts cannot issue a [turn-over order](#) <sup>5</sup> regardless as to whether the [cause of action](#) <sup>6</sup> for litigation originates from an [inside lawsuit or outside lawsuit](#) <sup>7</sup>.
- While the trust does not "die", it expires every 21-years and may be renewed perpetually.
- The trust has no 5-year "look-back" with Medicaid.
- Assets belong to the trust on the day they were successfully sold into the trust. There is not even a 1-day "look-back", so long as no assets were fraudulently conveyed into the trust.
- The trust is *not* subject to taxation at the state level and does *not* file a state tax return.
- The trust only files a federal 1041 tax return, as a complex trust, from year-to-year.
- The trust may be a member in a Limited Liability Company, if circumstances require it.
- The trust experiences no probate court, death tax, estate tax or inheritance tax.

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<sup>5</sup> <https://definitions.uslegal.com/t/turnover-order/>

<sup>6</sup> <https://dictionary.thelaw.com/cause-of-action/>

<sup>7</sup> <https://www.assetprotectionservices.com/apsa/contact/videos/inside-and-outside-lawsuits.html>



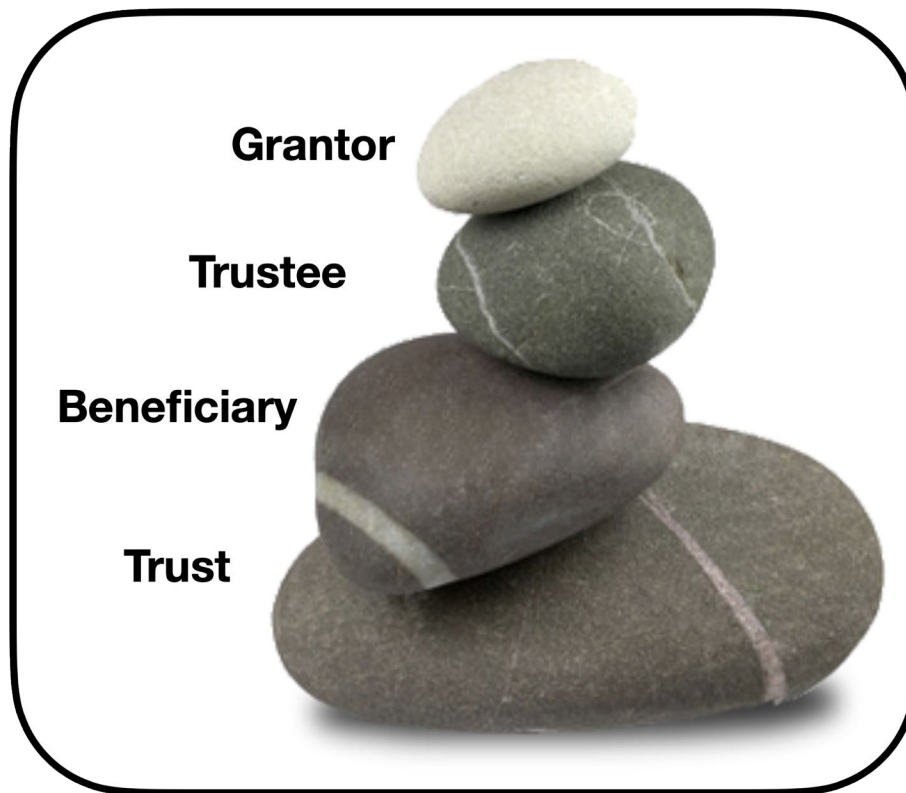
## Beneficial Ownership Information Report?

The U.S. Supreme Court case **Eliot v. Freeman 220 US 178 (1911)** ruled that a "Spendthrift Trust Organization is not subject to legislative control."

- The trust is **not** required to adhere to the recently enacted CTA (Corporate Transparency Act) compliance requirements.
- The trust does **not** file the BOIR (Beneficial Ownership Information Report) with FinCEN (the Financial Crimes Enforcement Network) under the United States Department of the Treasury.
- The trust does **not** meet the definition of a "Reporting Company" and, even if those definitions were to change, the Trust is exempt from legislative controls to which corporations and other organizations established by legislative authority are subject.

## **What is a Trust?**

There are four separate and distinct parts to a trust which, together, constitute a trust.



The **Grantor** "thinks up" the idea and creates the trust. The **Trustee** oversees the assets of the trust, and ordinarily has a fiduciary responsibility to the **Beneficiary** who benefits from the trust. Finally the **Trust** itself, known as the "Corpus" which is Latin for "body", holds the trusts assets.





## What Our Trust is **Not**

- ✖ This is **Not** a [Revocable Trust](#) <sup>8</sup>
- ✖ This is **Not** a [Grantor Trust](#) <sup>9</sup>
- ✖ This is **Not** a [Simple Trust](#) <sup>10</sup>
- ✖ This is **Not** a [Pure Trust](#) <sup>11</sup>
- ✖ This is **Not** a [Statutory Trust](#) <sup>12</sup>
- ✖ This is **Not** an [Implied Trust](#) <sup>13</sup>
- ✖ This is **Not** an [Express Trust](#) <sup>14</sup>
- ✖ This is **Not** an [Offshore Trust](#) <sup>15</sup>
- ✖ This is **Not** a [Self-Settled Trust](#) <sup>16</sup>
- ✖ This is **Not** a [Testamentary Trust](#) <sup>17</sup>
- ✖ This is **Not** a [Common Law Trust](#) <sup>18</sup>
- ✖ This is **Not** a [Non-Discretionary Trust](#) <sup>19</sup>
- ✖ This is **Not** a [Taxable Association or Corporation](#) <sup>20</sup>
- ✖ This is **Not** a Trust Formed under any State Laws
- ✖ This is **Not** a Trust Subject to Legislative Restrictions
- ✖ This is **Not** a Trust Subject to [Distributable Net Income \(DNI\)](#) <sup>21</sup>

<sup>8</sup> <https://legaldictionary.net/revocable-trust/>

<sup>9</sup> <https://www.investopedia.com/terms/g/grantortrustrules.asp>

<sup>10</sup> [https://www.law.cornell.edu/wex/simple\\_trust](https://www.law.cornell.edu/wex/simple_trust)

<sup>11</sup> <https://supremelaw.org/copyrite/goodbiz.com/alr.htm>

<sup>12</sup> <https://www.lawinsider.com/dictionary/statutory-trust>

<sup>13</sup> <https://dictionary.justia.com/implied-trust>

<sup>14</sup> [https://www.law.cornell.edu/wex/express\\_trust](https://www.law.cornell.edu/wex/express_trust)

<sup>15</sup> <https://thelawdictionary.org/offshore-trust/>

<sup>16</sup> <https://www.consumershield.com/dictionary/self-settled-trust>

<sup>17</sup> <https://legaldictionary.net/testamentary-trust/>

<sup>18</sup> <https://www.legalbriefai.com/legal-terms/common-law-trust>

<sup>19</sup> <https://www.lsd.law/define/non-discretionary-trust>

<sup>20</sup> <https://www.thetaxadviser.com/issues/2020/may/classifying-business-entities-check-box-regulations/>

<sup>21</sup> <https://www.investopedia.com/terms/d/distributablenetincome.asp>



## What Our Trust *IS*

Our proprietary and copyrighted non-grantor, irrevocable, complex, discretionary "Benson Financial Trust" with spendthrift provisions, *IS* best explained by:

### “Right to Contract” as Enshrined in the United States Constitution

Our Trusts are created based on your 'Right to Contract' as enshrined in the United States Constitution, under [Article 1, Section 10, Clause 1](#) <sup>22</sup>:

*"No State shall... pass any... law impairing the Obligations of Contracts."*

- The United States Supreme Court ruled in **Fetcher v. Peck (1810)** that a *"Contract no matter how obtained may not be invaded by State legislation."*
- The government is prohibited from regulating or imposing a tax on a “right”.

### Separation of Grantor and Corpus

The Creator / Settlor / Grantor is intentionally separated from the Trust's *corpus* (ie. assets), and the moment the first asset enters the Trust it becomes funded and valid. Legal separation occurs at this point, safeguarding the corpus from claims by Settlers, Trustees or others. In short, the irrevocable transfer of the assets cannot revert to the person making the sale, endowment or transfer.

### Lawful Tax Avoidance

Our Trusts are fully tax-compliant with the Internal Revenue Code.

- In **Weeks v. Sibley DC 269F. 155, Edwards V. Commissioner. 415F.2d, 578, 582 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."*
- *"Avoidance of Taxes is not a criminal offense. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible."*  
**The Department of the Treasury IRS Handbook for Special Agents p. 412**
- *"Persons may adopt any lawful means for the lessening of the burden of income taxes."*  
**Edison California Stores, Inc. v McColgan. 30 Cal 26472.183 P2d 16**
- *"It is not an evasion of legal responsibility to take what advantage may accrue from the choice of any form of organization permitted by law."*  
**Narragansett Mut. F. Ins. Co. v. Burnhamun 51 r1371, 154 a 909**
- *"A properly set up complex trust allows you to avoid capital gains tax..."* <sup>23</sup>  
**Article** “Eliminating Capital Gains Tax Using a Complex Trust” by Kurram Chohan

<sup>22</sup> <https://constitution.congress.gov/browse/article-1/section-10/clause-1/>

<sup>23</sup> <https://assetprotectionservices.com/resources/Eliminating-Capital-Gains-Tax-Using-a-Complex-Trust.pdf>



## **Is this Trust Structure Legal?**

***“The Trust structure which you have been settled into is a unique, proprietary legal instrument that provides exceptional asset protection, as well as eliminating significant tax at the Trust level. The Trust, a Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust, is specifically designed such that certain capital gains and extraordinary dividends are excluded from tax at the Trust level, thereby reducing the amount of tax to the Trust.*”**

*The governing law of the Trust is found at Internal Revenue Code section 643. Pursuant to section 643(a)(3), capital gains income, which is income that is earned through the disposition of capital assets, passes through the pass-through Business Trust and is allocated to the corpus of the Beneficial /Beneficiary Trust. By so allocating capital gains to the corpus of the Beneficial/Beneficiary Trust, this income is excluded from the definition of distributable net income of the Trust, as determined by Internal Revenue Code sections 643(a) and 643(b), and is not taxable income to the Trust until such time as a distribution outside of the trust has been allocated.*

*Similarly, pursuant to section 643(a)(4), an Internal Revenue Service Form K-1 is issued to the LLC. The Form K-1 indicates the amount of taxable income which is earned at the LLC level. This amount, which passes through the Pass-Through Business Trust, allows the Business Trust to legitimize K-1 distributions which may be allocated to the corpus of the non-self-settled Beneficial/Beneficiary Trust (an unrelated party), which is declared as an extraordinary dividend. Like the tax treatment of capital gains, the extraordinary dividends, which are allocated to the Trust’s corpus, escape the definition of distributable net income and are not taxable income to the Trust.*

*Not only does the Trust structure provide substantial tax benefit at the Trust level, it provides anonymity to the Compliance Overseer of the Trust. Because the Trust is settled through a Third-Party Settlor without the transfer of assets and established banking, the identity of the Compliance Overseer is not known. Rather, the Third-Party Settlor, an unrelated third party to the transaction, is identified as the Trust’s settlor.*

***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.”*** <sup>24</sup>

**~ 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

<sup>24</sup> <https://www.assetprotectionservices.com/resources/Robert-A.-Desilets,-Jr.,-J.D.,-LL.M.,-LL.M..pdf>





## Why is Our Copyrighted Trust Unique?

The **Grantor** is the person who sets up a Trust. Grantor status typically arises when the Grantor retains management of the corpus or benefits from the same trust, and can give an attorney or judge just cause to investigate and overturn that trust as an alter ego of the Grantor.

A **Non-Grantor** trust is a trust where the grantor is not a beneficiary of the trust, is typically not the trustee of the trust, and does not receive any benefit from the Trust assets.

- Our grantor has no ability whatsoever to amend or terminate the trust, is never the trustee or a beneficiary, receives no benefit from the trust and relinquishes full control of the trust property once the trust is established. Therefore, among other reasons, our Trust is designated as a Non-Grantor trust and is exempt from any alter ego status.
- The Grantor of our Trusts is a dis-interested third-party who transfer their interests (ie. \$10 of good and valuable consideration) to the incoming Trustee and then "Departs".
- All assets that enter our trusts follow a contract or "Bill of Sale" with an accompanying "Promissory Note". This practice prevents the trustee from inadvertently creating a Grantor Trust by giving or gifting assets after trust creation.

A trust is **Irrevocable** if the terms of the trust cannot be revoked or changed.

- The Trust is irrevocable by its express language. It cannot be revoked by the grantor or otherwise changed or modified.
- Irrevocable trusts do not pay taxes on capitalization, and endowments are almost always beyond the reach of creditors and judgements.

A **Complex** trust, by IRC (Internal Revenue Code) definition, is any trust that retains some of its income and does not distribute all of its income to beneficiaries, or which distributes some or all of the principal to the beneficiaries or charities. Our Trust provides that no income will be distributed unless directed by the trustee and the trustee must make sure the trust stays in compliance with IRC Section 643.

A **Discretionary** trust is one in which the Trustee in his sole and absolute discretion can determine when to make distributions, and no distributions may be forced by a beneficiary even in a court of law. Our Trust meets this standard and provides that the Trustee must conform with IRC Section 643 and allocate extraordinary dividends to corpus rather than distribute them to the beneficiaries.

A **Spendthrift** provision in a trust protects the assets of the trust from a beneficiary or their creditors. A beneficiary cannot assign their interest in the trust to any other person or entity before the interest is distributed and cannot be pledged as collateral or other security interest. The information on this case law is irrefutable and not subject to debate.

- *"Trust property cannot be held under attachment nor sold upon execution for the trustee's 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**
- "Property of the judgment debtor that is not assignable or transferable is not subject to the enforcement of a money judgment". **California Civil Procedure Code §695.30(a)**

## Protection for Distributions to Beneficiaries

→ **Distributions to Beneficiaries** from Spendthrift Trusts are protected from turn-over orders because the property is received from an "exempt source". The Texas Appellate Court case **Burns v. Miller, Hiersche, Martens & Hayward, P.C. 948 S.W.2d317 (Tex. App-Dallas 1997 writ denied)** reversed holding that beneficiary's interest in Spendthrift trust assets are exempt property under the turnover statute (**Civ. Prac. & Rem. Code §31.002**). The creditor pointed out that once the trustee pays or delivers the trust assets to the beneficiary, they are no longer exempt. **Trust Code §112.035 (a)**. However, the turnover statute provides that a court may not enter or enforce an order that requires the turnover of "the proceeds of, or the disbursement of, property exempt under any statute." **Civ. Prac. & Rem. Code §31.002(f)**. "Thus, even when property is no longer exempt under any other statute, if it represents proceeds or disbursements of exempt property, it is not subject to a turnover order." (Emphasis Added) **Burns at 323**.

## Who Does the Trust Structure Help?

|  |   |
|--|---|
| <div>10%</div> <div>W-2<br/>Wage Earner<br/>with <b>No Assets</b></div> <div>The Trust Structure<br/>Will Likely <u>Not</u> Help You</div> | <div>80%</div> <div>1099<br/>Independent Contractor<br/>or Business Owner<br/>with <b>No Assets</b></div> <div>Depends on the Amount of <u>Income</u></div> |
| <div>50/50</div> <div>W-2<br/>Wage Earner<br/>with <b>Assets</b></div> <div>Depends on the<br/>Amount of <u>Assets</u></div>               | <div>100%</div> <div>1099<br/>Independent Contractor<br/>or Business Owner<br/>with <b>Assets</b></div> <div>The Trust Structure <u>Will</u> Help You</div> |

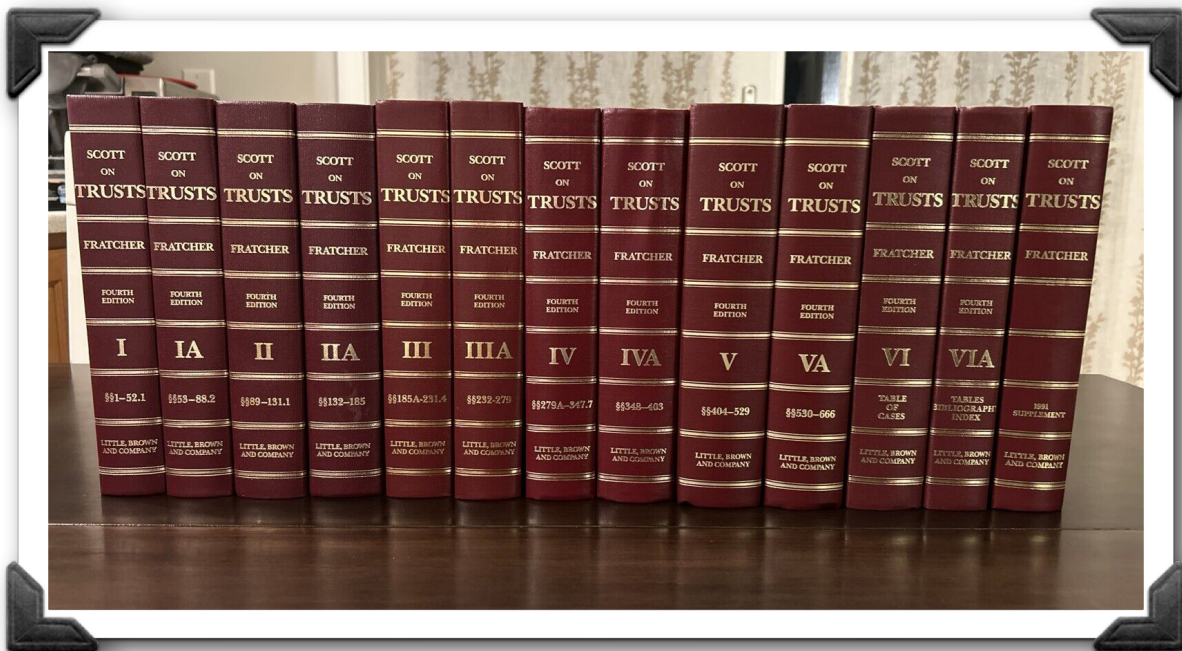


## Compliant with 8 Categories of Trust Law

These 8 categories played a crucial role in the shaping of our trusts and ensuring that trust corpus is safeguarded from turnover orders by any court or judge.

1. **Scott on Trust Law** – Insights from Scott's expertise guide the trust's foundations.
2. **Restatement of Trusts** – This authoritative document clarifies trust principles.
3. **Internal Revenue Code** – Tax regulations directly impacting the trust's structure.
4. **Uniform Trust Code** – Ensures uniformity across jurisdictions.
5. **Uniform Prudent Investor Act** – Balances prudence and investment choices.
6. **Uniform Commercial Code** – Governs transactions and fairness.
7. **Statute of Frauds** – Guards against receipt through written agreements.
8. **Rule Against Perpetuities** – Measures time preventing perpetual control.

### *Scott on Trusts* 4th Edition (13 Volumes)



*"With reference to the Trust Documents enclosed; it is my professional opinion that the Spendthrift Trust is consistent with Scott on Trust Law and meets all the provisions of the Internal Revenue Code. It is written in full accordance with Scott on Trust Law to be a legal Trust and is in compliance with all provisions of the Internal Revenue Code."* <sup>25</sup>

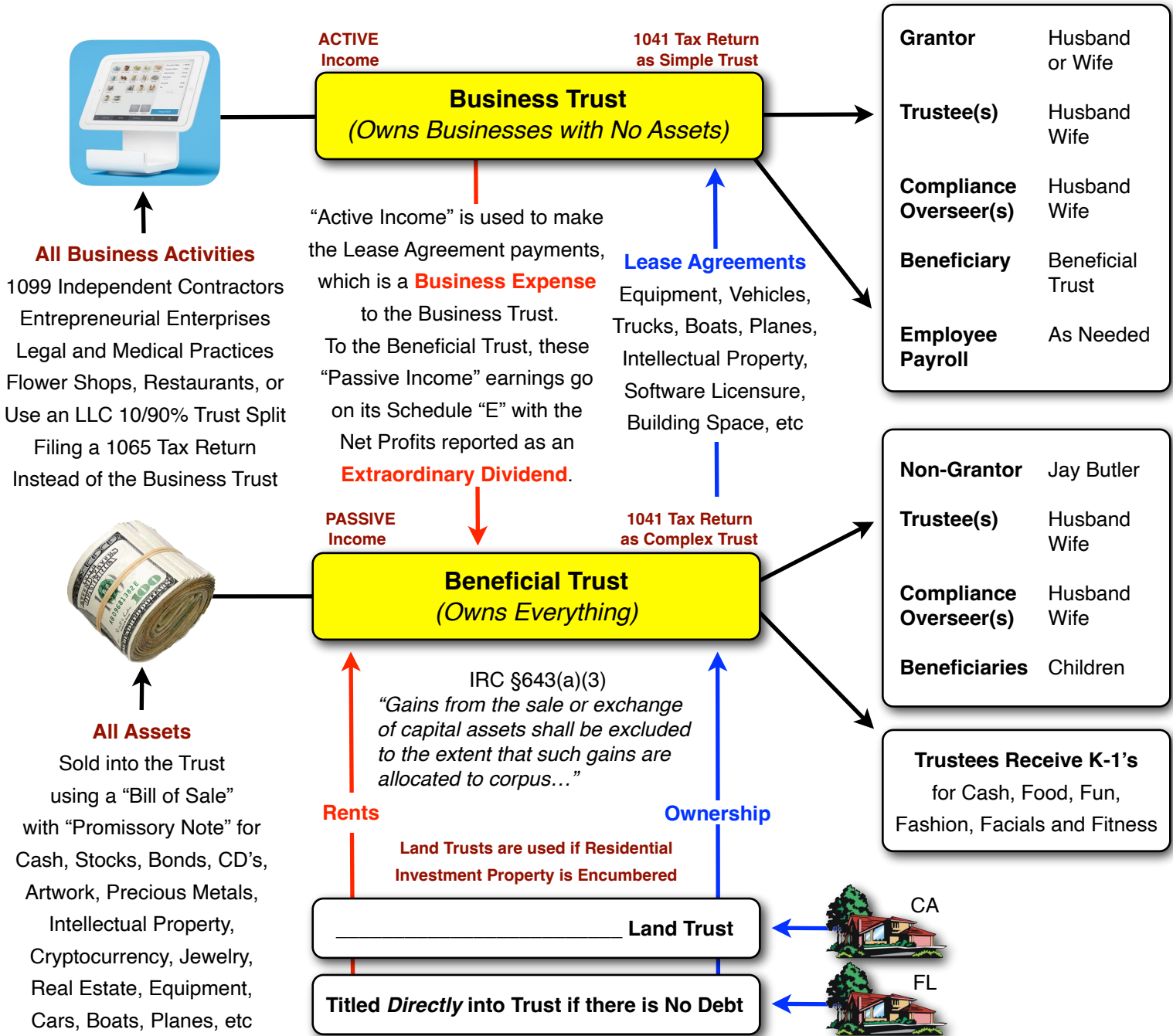
**~ Judge George W. Boring**  
Attorney-at-Law

<sup>25</sup> <https://www.assetprotectionservices.com/resources/Judge-George-W.-Boring,-Attorney-at-Law.pdf>



## Customized Flow-Chart

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







## Trust Assets Subject to Division in Divorce?

In **Pfannenstiehl v. Pfannenstiehl**, 475 Mass. 105, 55 N.E.3d 933 (2016), the Massachusetts Supreme Court held that the husband's interest in the irrevocable trust should not have been awarded to the wife in the divorce, because the husband does not have sufficient ownership and control over the trust. <sup>26</sup>

## Not a Taxable Association or Corporation

A Spendthrift Trust is *not* a taxable association or corporation pursuant to tax law, as it does not possess all-four required corporate attributes, being:

1. **Legal Entity Status** – Whereas a corporation is recognized as a separate legal entity from its owners (ie. shareholders) and can own property, enter into contracts, sue and be sued, an irrevocable spendthrift trust is an arrangement whereby the trustee manages assets for the benefit of beneficiaries and therefore does not have the same legal status as a corporation.
2. **Continuity of Existence** – Corporations typically have perpetual existence, meaning they continue to exist independently of changes in ownership or the status of shareholders. An irrevocable spendthrift trust does not have perpetual existence; it is often tied to the lifespan of the trust agreement or the life of the beneficiaries. While our trusts do expire, they can be renewed (for free) every 21-years.
3. **Transferability of Interest** – Corporations issue shares of stock that can be bought, sold or transferred, representing ownership interests in the entity. An irrevocable spendthrift trust does not issue ownership interests; it provides benefits to named beneficiaries rather than ownership stakes.
4. **Centralized Management** – Corporations are managed by a board of directors and officers, allowing for centralized decision-making and governance. In an irrevocable spendthrift trust, the trustee manages the trust assets according to the terms of the trust agreement and the beneficiaries have no say in the management of the trust assets.

Due to the absence of these four key attributes, an irrevocable spendthrift trust is *not* classified as a taxable association or corporation under tax law. Instead, it is treated as a separate legal entity for specific purposes, such as asset protection and controlling distributions, but does not carry the same tax implications as a corporation. For tax purposes, a spendthrift trust is subject to different rules than those which apply to corporations.

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<sup>26</sup> <https://assetprotectionservices.com/resources/Trust-Subject-to-Division-in-Divorce.pdf>





## **Tax Avoidance vs. Tax Evasion**

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. The IRS states in 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**

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.



## The Internal Revenue Code does **NOT** Determine Trust Accounting Income



### "Income" for Distribution Purposes

- Amount of income of the estate or trust for the taxable year determined under the terms of the *governing instrument* and *applicable local law* (IRC §643(b))
- Commonly referred to as trust accounting income
- IRC does not determine trust accounting income

8

## Which Internal Revenue Code Sections Regulate the Trust?

**United States Code** - Office of the Law Revision Counsel

**Title 26** - Internal Revenue Code

**Subtitle A** - Income Taxes

**Chapter 1** - Normal Taxes and Surtaxes

**Subchapter J** - Estates, Trusts, Beneficiaries, and Decedents

**Part 1** - Estates, Trusts, and Beneficiaries

**Subpart A** - General Rules for Taxation of Estates and Trusts

**Section 643** - Definitions Applicable to Subparts A, B, C, and D

**§643(a)** - Distributable Net Income

**§643(a)(3)** - Capital Gains and Losses

**§643(a)(4)** - Extraordinary Dividends and Taxable Dividends

**§643(b)** - Income <sup>27</sup>

<sup>27</sup> <https://www.assetprotectionservices.com/resources/26-USC-§643.pdf>



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Pub. L. 95-30, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENTS**

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(H)(i) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(B) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1952(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Section 2009(e)(4) of Pub. L. 94-455 provided that: "The amendment made by subsection (d) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

Section 2124(a)(4) of Pub. L. 94-455 provided that: "The amendments made by this subsection [enacting section 191 of this title and amending this section and sections 1082, 1245, and 1250 of this title] shall apply with respect to additions to capital account made after June 14, 1976 and before June 15, 1981."

Section 1(b) of Pub. L. 94-528 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1977, and shall apply to amounts distributed during taxable years ending after December 31, 1963."

**EFFECTIVE DATE OF 1971 AMENDMENT**

Section 303(d) of Pub. L. 92-178 provided that: "The amendments made by this section [enacting section 188 of this title and amending this section and sections 57, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971."

Section 703 of Pub. L. 92-178 provided that: "The amendments made by this title [enacting sections 24 and 218 of this title and amending this section] shall apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date."

**EFFECTIVE DATE OF 1969 AMENDMENT**

Amendment by section 201(b) of Pub. L. 91-172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5) applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 704(b)(2) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91-172, set out as an Effective Date note under section 169 of this title.

**EFFECTIVE DATE OF 1966 AMENDMENT**

Section 2(b) of Pub. L. 89-621 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date."

**EFFECTIVE DATE OF 1964 AMENDMENT**

Amendment by Pub. L. 88-272 applicable to dividends received after December 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 22 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87-834, set out

as an Effective Date note under section 1245 of this title.

**SAVINGS PROVISION**

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**§ 643. Definitions applicable to subparts A, B, C, and D**

**(a) Distributable net income**

For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

**(1) Deduction for distributions**

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

**(2) Deduction for personal exemption**

No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

**(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 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.

**(5) Tax-exempt interest**

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

**(6) Income of foreign trust**

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the





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United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(a)(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

## (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.

## (c) Beneficiary

For purposes of this part, the term “beneficiary” includes heir, legatee, devisee.

## (d) Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

## (e) Treatment of property distributed in kind

### (1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

### (2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

### (3) Election to recognize gain

#### (A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

#### (B) Election

Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

### (4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

## (f) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

### (g) Certain payments of estimated tax treated as paid by beneficiary

#### (1) In general

In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and



## **Has the Trust Structure Been Audited?**

*"This memo concerns endowments to the Copyrighted Spendthrift Trusts. Generally, funds or endowments conveyed to a trust have no tax consequences to the party contributing the funds or endowments, the beneficiaries, or to the trust itself.*

***Since the Copyrighted Spendthrift Trusts are written in compliance with the Internal Revenue Service (Statutes and Codes on Estates, Trusts and Beneficiaries) and are acceptable entities, they receive Employee Identification Numbers and file a Form 1041 as a Complex Trust each year. They must meet the compliance codes and filing requirements. Relevant code sections are Title 26, Subtitle A, Chapter 1. Subchapter J, Part 1, Sections 59, 67, 543, 553, 927, Subpart A, Section 641, Section 643, Subparts A, B, C, and D, and including Section 651, Sections 672, 673, 674, 675, 676, 677. and 678.***

***Title 26, Subtitle A, Chapter L, Subchapter I, Part I, Subpart A, Section 643, definitions applicable to Subparts A, B, C, and D clearly define and outline that gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to the corpus of a trust and are not required by the governing instrument to be distributed to the beneficiaries.***

*It further outlines that extraordinary dividends and taxable stock dividends are excluded as items of gross income constituting extraordinary dividends or taxable stock dividends. Whereas, the trustee, according to the terms and conditions of the trust in compliance with all applicable local laws and the trustee acting in good faith determines that such dividends are allocable to the corpus of the trust under the terms of the governing instrument and applicable local law shall not be considered income.*

*As you know I have served for many years as a Senior Revenue Agent with the Department of the Treasury responsible for the examination of Corporate tax returns, Real Estate Investment Trusts, High Income Individuals and related taxable entities and the accurate application of tax laws and related procedures created by the Congress of the United States."* <sup>28</sup>

**~ Mr. Everette J. Myers**  
Former IRS Senior Revenue Agent

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<sup>28</sup> [https://www.assetprotectionservices.com/resources/Everette-J.-Myers,-Senior-Revenue-Agent-\(IRS\).pdf](https://www.assetprotectionservices.com/resources/Everette-J.-Myers,-Senior-Revenue-Agent-(IRS).pdf)





## Has the IRS "Ruled" on this Trust Structure?

### Internal Revenue Service Private Letter Ruling: 133314-14 Ruling 3 (Pages 7 and 8)

*"Section 643(a) defines the term "distributable net income" as the taxable income of the estate or trust computed with certain modifications.*

*Section 643(a)(4) and the regulations thereunder exclude from the computation of distributable net income (with respect to trusts that qualify under subpart B) those items of gross income constituting extraordinary 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.*

*Section 643(b) and the regulations thereunder provide that for purposes of subparts A, B, C, and D, the term "income," when not preceded by the words "taxable," "distributable net," "undistributed net," or "gross," means the amount of the 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.*

***In this case***, Court determined that the governing instrument and State law would characterize the distribution from LLC to Trust as a return of corpus. As such, the distribution from LLC to Trust pursuant to Settlement Agreement meets the definition of an extraordinary dividend under §643(b) and is not considered income within the meaning of that section. Accordingly, based on the facts submitted and the representations made, ***we rule that the distribution from LLC to Trust is an extraordinary dividend excluded from the definition of "income" within the meaning of §643(b).***" <sup>29</sup>

**~ IRS Private Letter Ruling Number: 201519012**  
Lorraine E. Gardner, Senior Counsel, Branch 4

<sup>29</sup> <https://www.assetprotectionservices.com/resources/Lorraine-E.-Gardner,-Senior-Counsel,-Branch-4.pdf>



## **TRUSTS AND THE INTERNAL REVENUE CODE**

**Robert Benson**

**Tax, Bankruptcy, Trust and Business Attorney**

### **Memorandum**

**Date: July 2, 1999**

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 269F, 155, *Edwards V. Commissioner*. 41512F, 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



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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. Burnham* 51 F.3d 1371, 154 A.2d 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 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.

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

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June 3, 2002

Date: June 3, 2002

RE: Master Trust: Endowments, Capital Gains, Extraordinary Dividends, Taxable  
Stock Dividends and Compliance Overseer: Authorization to Copyright

This memo concerns cash endowments to our Copyrighted Master Spendthrift Trusts, capital gains, extraordinary dividends and taxable stock dividends, and the compliance overseer. Generally, funds or endowments put into a trust have no tax consequences to the party contributing the funds or endowments, the beneficiaries, or to the trust itself. Capital gains, extraordinary dividends and taxable stock dividends when allocated by the trustee to the corpus of the trust in good faith are not taxable income to the trust.

Trusts that are written in compliance with the Internal Revenue Service Statutes and Codes on Estates, Trusts and Beneficiaries, as well as with "Scott on Trusts" have this advantage. Relevant code sections are Title 26, Subtitle A, Chapter 1, subchapter 1, Part 1, Sections 59, 67, 543, 553, 927 Subpart A Section 641; Section 643, Subparts A, B, C and D, and including Section 651, 652, 672, 673, 674, 675, 676, 677 and 678.

TITLE 26, Subtitle A, Chapter 1, Subchapter J, Part 1, Subpart A, Section 643. Definitions applicable to subparts A, B, C, and D clearly define and outline that gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to the corpus of a trust.

It further outlines that extraordinary dividends and taxable stock dividends are excluded as items of gross income constituting extraordinary dividends or taxable stock dividends which the trustee, according to the terms and conditions of the trust, in compliance with all applicable local laws, acting in good faith, determines that such dividends are allocable to corpus under the terms of the governing instrument, and applicable local law shall not be considered income.

Scott on Trusts: Volume 1 Section 1-163, including, specifically Section 37., "Reservation and creation of powers." is very plain and explicit concerning the reservation of powers by the Settlor stating that "The surrender of control is sufficient even though the Settlor reserves power to reassume the control". And again, "There is sufficient surrender of control over the property if the Settlor transfers the title to it





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to the trustee, even though the Settlor reserves the power to undo what he has done” in the replacement of any trustee or beneficiary, the power reserved by the Settlor of the Trust through the office of the Compliance Overseer in our Copyrighted Spendthrift Trusts is in compliance with Scott on Trusts.

Furthermore, Scott on Trusts continues “The fact that the Settlor reserves power to revoke the trust does not invalidate the trust under a statute which provides that all transfers in trust for the use of the person making them shall be void against existing and subsequent creditors”. The fact that our Copyrighted Spendthrift Trusts does not allow for the revocation of the trust by the Settlor cements the powers of the trust and, therefore, is in legal compliance with all courts and the Internal Revenue Code.

In Scott on Trusts Volume 1 Section 1-164, including, specifically Section 164. “Duties and powers of the trustee.”, the extent of the duties and of the powers of a trustee depends primarily upon the terms of the trust. Insofar as the trust instrument expressly, or by implication, imposes duties or confers powers upon the trustee, the terms of the trust determine the extent of his duties and powers, except so far as the performance of the duties or the exercise of the powers. And it continues that the Settlor cannot safely rely upon a hope that without such express provisions the court will find that powers necessary or appropriate for the efficient administration of the trust are to be implied. For this reason, it is common to insert in the trust instrument express provisions conferring powers upon the trustee, even though some of the powers might be held to have been created without such express provisions.

In expansion of this concept Scott of Trusts continues: “In determining the terms of the trust, resort is had in the first place to the instrument if any under which the trust is created. As to any matter expressly covered by the instrument, the provisions of the instrument, if unambiguous, determine the terms of the trust”, establishing and enforcing the concept.

In Volume 2 Section 163A-320A, including, specifically Section 185. “Duty with respect to person holding power of control.”, the outline of the power is summarized “By the terms of the trust it may be provided that the action of the trustee in certain respects shall be subject to the control of another. The person upon whom such power of control is conferred may be a co-trustee, or a beneficiary, or the Settlor, or a third person otherwise unconnected with the trust”.

In such cases the holder of the powers owes duties to the beneficiaries with respect to the exercise of the power and as fiduciary not for his own benefit.

The summation of the issue is fully expressed in this Section of Scott on Trusts wherein it states that “Where a trust is created inter vivos and the Settlor reserves power to control the trustee in some respects in the administration of the trust, the Settlor may or may not hold the power of control solely for his own benefit” and finally “Where the holder of the power holds it solely for his own benefit, the trustee can



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properly comply and is under a duty to comply with his directions, provided that the attempted exercise of the power does not violate the terms and conditions of the trust”.

The Master Spendthrift Trust was written and copyrighted under my direct supervision. It is a novel structure and innovative work which is in complete compliance with the Internal Revenue Code as amended. Its terms and conditions prohibit the Settlor of the trust from holding the office of a Compliance Overseer, Trustee, or Beneficiary in any manner. Therefore, the Master Copyrighted Spendthrift Trust is not a grantor trust as set forth in the Internal Revenue Code. The trust is a complex trust with discretionary powers entrusted to the trustees of the trust solely according to the terms and conditions of the trust.

The original Master Spendthrift Trust was registered with the United States Copyright Office by this Law Firm on November 29, 1999, under my direction and authority, under the title “Spendthrift Trust Format”; Copyright Registration Number TXu 928-247.

Robert N. Benson

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<sup>31</sup> <https://assetprotectionservices.com/resources/Benson-and-Associates,-Attorneys-at-Law.pdf>



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*(an Irrevocable Spendthrift Trust)*



**PAUL B. ROSEN**  
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Licensed in Texas\* & New York:

June 12, 2019

The original copyrighted Master Spendthrift Trust (created and copyrighted in 1999) and its successor in copyright, Benson Financial Trust, meet all legal requirements as an irrevocable, complex, discretionary, spendthrift trust. Both copyrighted trusts are unique legal documents. Their major features, including provisions on irrevocability, spendthrift provisions, non-grantor classifications and discretionary provisions, has its origin in Scott's landmark treatise on The Law of Trusts, The Restatement of Trusts, and the Internal Revenue Code, resulting in a Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust. Liability is limited in that discretionary spendthrift trusts are free from most creditor claims and are exempt from most claims of the beneficiary's creditors.

Both trusts are structured to allow the Trust/Trustee to take advantage of exclusions from the sale or exchange of capital asset gains under Title 26, Subtitle A, Chapter 1, Subchapter 1, Part 1, Subpart A, Section 643 of the IRC. The trusts provide substantial protection from creditors and claims, with minimal statutory exceptions, varying from state to state. Additionally, the copyrighted trusts are in full compliance with the Internal Revenue Service, statutes, rules and regulations; more specifically, but not limited to, Title 26, Subtitle A, Chapter 1, Subchapter 1, Part 1, Sections 59, 67, 543, 553, 927, as well as Subpart A, Section 641, Section 643 subparts (a), (b), (c), (d), and Section 651 and Sections 672-678. The terms and conditions of both copyrighted trusts are written to allow deferment of taxation for endowments designated to the corpus of the trust. Thus, such properly received property, as described in the above Internal Revenue Service provisions, is not subject to capital gains taxation treatment while held in the trust. Further, when utilized in accordance with the above-stated Internal Revenue Code, Rules, and Regulations, all extraordinary income/dividends and stock dividends allocated and paid to the corpus of the trust are not considered income to the trust since the structure allows the Trustee to allocate these dividends to the corpus of the Trust.



Both trusts, if organized and structured properly, are not subject to turn over orders by a court. This limits the liability of Beneficiaries and Trustees of the Trust. It also makes the corpus of the Trust unreachable by creditors.<sup>1</sup>

These Trusts, proven over time, were created and copyrighted to provide both deferral of taxes and legal protection. They are a valuable and unique estate planning device when properly implemented and utilized. In short, I endorse both copyrighted trusts as valuable estate planning tools.

<sup>1</sup> In some jurisdictions, and under limited circumstances, the income from a trust (but not the corpus) may be accessible to satisfy child support obligations, spousal support obligations or restitution required for criminal conduct.

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<sup>32</sup> <https://assetprotectionservices.com/resources/Paul-B.-Rosen,-Attorney-and-Counselor-at-Law.pdf>



## **THE ROSEN & ROSEN LAW FIRM**

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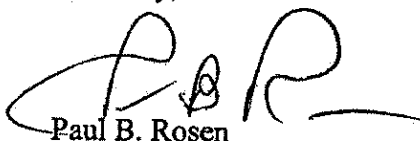
August 15, 2014

To Whom It May Concern:

I am an attorney practicing law for 35 years. I have reviewed the spendthrift trust copyrighted by Master's Trust. Master's copyrighted trust meets all legal requirements as an irrevocable, complex, discretionary, spendthrift trust. If utilized properly, the trust provides substantial protection from most creditors and claims, with minimal statutory exceptions, varying from state to state. Additionally, the copyrighted trust is in full compliance with the Internal Revenue Service, statutes, rules, and regulations; more specifically, but not limited to, Title 26, Subtitle A, Chapter 1, Subchapter 1, Part 1, Sections 59, 67, 543, 553, 927, as well as Subpart A, Section 641, Section 643 subparts (a), (b), (c), (d), and Section 651 and Sections 672-678. The terms and conditions of this copyrighted trust are written to allow deferment of taxation for endowments designated to the corpus of the trust; property held in the trust is not subject to capital gains. Also, in accordance with the stated Internal Revenue Code, extraordinary dividends and stock dividends allocated and paid to the corpus of the trust are not considered income to the trust.

Each of the copyrighted trusts major features, including provisions on irrevocability, spendthrift provisions, non-grantor classifications and discretionary provision, has its origin in Scott's landmark treatise on The Law of Trusts and is now supported by the Restatement Third of Trusts. This trust is a valuable and unique estate planning device. To realize your estate planning goals, the use of this trust should be considered. I believe this trust will serve the best interest of you, your estate, and your beneficiaries when implemented properly and utilized in the right circumstances. In short, I endorse this copyrighted trust as a valuable estate planning device.

Sincerely,



Paul B. Rosen

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### **MEMORANDUM**

September 9, 2017

#### **Subject: Trust Contract, Demand Notes, Insurance, IRC Compliance, Intellectual Properties and Trust Rights with Relation to Spendthrift Trust Organizations**

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. In American Law, the government cannot impose a tax upon a right to contract. The “right to contract” is guaranteed under the United States Constitution Article §10. Courts can determine the enforceability of contracts, generally on public policy grounds. One example is a gambling contract, which is largely unenforceable depending on the jurisdiction. However, standard contracts emanating from spendthrift trusts are fully enforceable. 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 the Trust. The government can only regulate and tax entities it creates. Also, assets conveyed or purchased by 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 hold a beneficial interest, but do not hold title to said assets. Property held by a properly structured contract in the form of a Spendthrift Trust Organization is generally immune from tax liens, levies, seizures, and lawsuits, subject to certain limited exceptions in some jurisdiction. Example – in some jurisdictions, a beneficiary’s interest could be subject to attachment upon distribution for child support. The Spendthrift Trust Organization is not liable for the debts of the trustee(s), personally, and the beneficiaries, and the assets held by the Trust cannot be seized to satisfy their debts. A spendthrift trust may enter into contracts the same as individuals or legal entities (e.g. corporations, partnerships, etc.)<sup>1</sup>. Further, the trustees and beneficiaries are not liable for the debts of the Trust Organization. *Hussey v. Arnold*, 182 U.S. 461, 21 S. Ct. 645.

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<sup>1</sup> The right of contract clause is found in Article I of the United States Constitution. Generally speaking, the clause was added to the Constitution in order to prohibit states from interfering with private contracts. The clause states that “No State shall...pass any...Law impairing the Obligation of Contracts...”.



**Asset Protection Services of America Trust**  
(an Irrevocable Spendthrift Trust)



A contract between an individual/entity and a Spendthrift Trust is an agreement creating obligations enforceable by law. The basic elements of this contract are mutual assent, consideration, capacity, and legality. In some states, the element of consideration can be satisfied by a valid substitute. Such contracts are enforceable and a trust may be sued for contractual obligations the trust specifically enters into by and through the trustee(s) in his/her official capacity.

Transactions entered into by the trust are subject to the common law, and often the uniform commercial code, the same as individuals and legal entities (e.g. corporations, partnerships, etc.). However, as stated above, trust assets can never be directly attached to satisfy separate obligations of the trustee(s) and/or the beneficiaries. Assets in the corpus of a Spendthrift Trust are managed at the sole and absolute discretion of the trustee(s) of the Trust. There are no limits set on the time a Trust holds property or assets in the corpus of the Trust before they may be resold.

Trusts are subject to usury laws with respect to paying or charging interest in connection with promissory notes or otherwise. The interest rates that a trust can charge or be charged without violating usury laws is unclear. In this regard, most states cap interest rates based on the promisee's capacity. For example, is the promisee an individual or a corporation for which permissible interest rates are different? Prudence dictates when charging interest in connection with a transaction. The trust utilizes the lowest permissible interest rate authorized by the particular jurisdiction, which is usually the rate an individual can charge.

The Trustee(s) of Spendthrift Trusts may purchase and hold insurance policies on the Trustee(s) or Beneficiaries. Proceeds of such policies that are tax exempt when passing to the Trustee or Beneficiary of the insurance policy to whom the policy is written hold the tax exempt status when distributed to the person named on the policy. Also, the benefits of the policies may be distributed to the heirs of said holders on the death of that person. Payments of the Demand Notes, being after tax dollars when conveyed to the heirs, are also pass through.

The foregoing analysis is intended as a response to the questions posed to me by Masters Copyrights LLC.

Sincerely,

Paul B. Rosen

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<sup>34</sup> [https://assetprotectionservices.com/resources/The-Rosen-and-Rosen-Law-Firm-\(Memorandum\).pdf](https://assetprotectionservices.com/resources/The-Rosen-and-Rosen-Law-Firm-(Memorandum).pdf)



## What Does IRS Memorandum AM 2023-006 Mean?

There are numerous videos on the internet, some from Certificated Public Accountants and even Attorneys, who claim that the IRS Memorandum AM 2023-006, released August 18, 2023, somehow makes this type of trust structure illegal, unlawful or other wise “scary” to contemplate utilizing.

First and foremost, the IRS AM 2023-006 was a “Memo” and **not** a “Revenue Ruling”. I challenge anyone reading this package to provide us with a “Revenue Ruling” from the IRS indicating making proper use of their own Internal Revenue Code §643 is somehow illegal or unlawful. You won’t find it, because it doesn’t exist! IRS Memo AM 2023-006 makes a very important statement at the beginning which *no one* in any video or commentary I have seen online wishes to discuss or bring to light:

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

**Number: AM 2023-006**

Release Date: 8/18/2023

CC:PSI:B01:DHChulani  
POSTU-105921-22

Third Party Communication: None  
Date of Communication: Not Applicable

UILC: 643.01-00, 643.01-04, 643.02-00

date: August 09, 2023

to: Janice B. Geier  
Associate Area Counsel, Portland  
(Small Business/Self-Employed)

Sheila R. Pattison  
Associate Area Counsel, Austin  
(Small Business/Self-Employed)

from: Holly Porter  
Associate Chief Counsel  
(Passthroughs & Special Industries)

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subject: "Non-grantor, irrevocable, complex, discretionary, spendthrift trust"

**This memorandum may not be used or cited as precedent.**

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<sup>35</sup> <https://assetprotectionservices.com/resources/IRS-Memorandum-AM-2023-006.pdf>



***“This memorandum may not be used or cited as precedent.”***

If you don't understand “legalese”, let's define the operative words in a new sentence for you:

**Memorandum** = Message

**Cited** = Quoted as evidence for, or justification of, an argument or statement.

**Precedent** = An earlier event or action that is regarded as an example, or guide to be considered, in subsequent similar circumstance.

***“This message MAY NOT BE QUOTED AS EVIDENCE for, or justification of, an event or action that is regarded in subsequent similar circumstances.”***

The IRS Memorandum AM 2023-006 was ***not*** a “Revenue Ruling” it was a “Message” whose intent, I believe, was to “scare people away” from taking full-advantage of a legal and lawful tax strategy – because it greatly reduces the amount of taxable income the Internal Revenue Service is able to collect from taxpayers. Additionally, people regurgitating the various arguments from this Memo failed to discuss what the IRS stated on Page 2 of its own introduction:

*“In Addition, **we do not discuss the following questions...***

- 3. Whether any of the gross income described in this structure **constitutes** an “extraordinary dividend” under §643(b).*
- 4. Whether, in any particular case, the existence of the trust might be challenged as a threshold matter under “sham trust” principles. **We assume**, solely for the sake of this memorandum, that the **taxpayers are observing the formalities of their trust instruments and other relevant documents and contracts. To the extent that they are not...** the trust might be disregarded, with all the claimed tax benefits dependent on the trust's validity being vitiated.” (Emphasis Added)*

The Memorandum *refused* to allow some of the most important aspects of the entire argument into the discussion, because it refutes the very argument they purportedly were trying to make! Properly drafted trust structures ***may*** have extraordinary dividends in accordance with §643(b) and the trust structures are ***not*** inherently a sham if the taxpayers are observing their trust instrument formalities.

Moving into the IRS Memorandum AM 2023-006, it tried to argue that the IRC §643 doesn't actually mean what it says it means, because you have to go back earlier into the tax code and look at various definitions surrounding the word “income”. For example, IRC §61(a) defines “gross income” and IRC §63(a) defines “taxable income”. They then “skipped” over the very beginning of IRC §643 and incorrectly argued that IRC §643(a)(3) doesn't actually mean “*gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus.*” because of the said prior definitions in the code.

What the IRS Memorandum AM 2023-006 failed to acknowledge is that the very beginning of IRC §643(a) unequivocally states:





*“For purposes of **this part**, the term “distributable net income” means, with respect to any taxable year, the taxable income of the estate or trust **computed with the following modifications**—” (Emphasis Added)*

In short, the Internal Revenue Code is not contradicting itself. It clearly states in IRC §643 that for the purposes of its own Parts A, B, C and D, that it is **modifying** previous definitions surrounding the word “income”. What part of the word “modifications” eludes them in their Memorandum argument?

Even independent legal counsel have drafted counter-arguments to this IRS “Memo” AM 2023-006.

*“A cursory overview of IRC §61(a) would demonstrate that any revenue generated from the specified sources of income would be categorized as “gross income”. IRC §63(a) goes on to state that “gross income” minus allowable deductions is categorized as “taxable income.” Under IRC §643(a), Distributable Net Income is “taxable income,” i.e., income that is taxable under IRC §63(a), that is computed with modifications delineated in subsections (1) through (4). In other words, IRC §643, et. seq., modifies the definition, and therefore the method of calculation, of what would be considered taxable income. See Treas. Reg. §1.643(a)-0 (defining taxable income (as defined in section IRC §63) of the estate or trust, computed with the modifications set forth in §§1.643(a)-1 through 1.643(a)-7). Reading IRC §643(a) in conjunction with Treas. Reg. §1.643(a)-0 would demonstrate that what is considered taxable income under IRC §63(a) is modified by the plain language of IRC §643(a)(1) through (4).*

*Because IRC §643(a) is clear and unambiguous, it must be afforded its plain and obvious meaning. See CRI-Leslie, LLC v. Comm’r of Internal Revenue, 147 T.C. 217, 224 (2016), aff’d, 882 F.3d 1026 (11th Cir. 2018)(holding that a court will interpret a statute according to its plain meaning). **It is therefore our opinion that IRC §643(a) reasonably modifies taxable income as defined in IRC §63(a), by virtue of subsections (1) through (4). Therefore, the assessment made in the Memorandum with respect to IRC §643(a) not acting as a modifier of IRC §63(a) is inaccurate and incomplete at best, as the Memorandum fails to properly analyze the entirety of IRC §643(a). Further, the Memorandum’s analysis with respect to IRC §643(b) is also incomplete.”** <sup>36</sup> (Emphasis Added)*

## In Conclusion

The Benson Financial Trust is a proprietary instrument, originally developed in the early 1970’s, and has been copyrighted since 1999. More than 125,000 clients have purchased our trust structure over the last *half-century* without anyone having ever been indicted, arrested or imprisoned for utilizing (or promoting) its many asset protection, tax strategy and estate planning benefits; and the trust structure has never lost a correspondent or forensic audit.

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<sup>36</sup> <https://assetprotectionservices.com/resources/Steven-E.-Gurian,-Esq.,-LLM.pdf>



## Client Testimonials

*"I have worked with Jay Butler of Asset Protection Services of America Trust (APSA) to establish our Revocable Living Trust for the avoidance of probate, set-up multiple Limited Liability Companies and an "S" Corporation. Most recently we purchased their "Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust" and reduced the overall size of my structure. I am very excited for all the benefits that this Trust provides as it saved me paying 15% long-term capital gains tax on \$526,965.11 of gain, which equated to roughly \$79,044.77 in tax savings.*

*When I began the search looking to protect my assets and to minimize my tax burden, I looked at several companies before I went with APSA. Now that I have used APSA, I definitely made the best decision. Jay is extremely knowledgeable and meticulous with his work and always has my best interest at heart. His knowledge is amazing. I recently sold a property in Florida and, throughout the process, there were disagreements with the wording on the contracts and deeds that were not correct and there was at times some heated discussions about this. In the end, I am proud to say everything Jay wanted concerning the wording of the contracts was in the final closing documents. If you were keeping track of the score, it was two real estate agents, a legal secretary and two "high-powered attorneys" 0, and Jay with APSA 100. I thoroughly enjoyed being able to sit in on a 3-way call and listen to Jay school the other side in his factual, calm and easy going demeanor even when they were being rude and condescending to him.*

*I am very excited with the benefits related to the [Irrevocable Spendthrift Trust](#)<sup>37</sup> that Jay has just recently set up for me. The tax savings from the sale of my property have more than paid for the Trust and I am looking forward to all the future years of tax savings this wonderful tool will provide for my family and me.*

*Another very important thing to consider when you are deciding on a company is service after the sale. Jay is always available to answer any questions and there is never an extra charge for this. Throughout this entire process of setting up my LLC's and trusts over the last 1.5 years or so I have experienced the highest level of honesty and integrity from Jay Butler and Asset Protection Services of America Trust. I trust Jay more than I trust my mother; he is that kind of person. I consider Jay more than a business associate, he is a trusted friend. If you are thinking about using his services, I highly recommend Jay and APSA. Using Asset Protection Services of America Trust was one of the best decisions I made and using Jay and his services will be one of the best decisions you will make."<sup>38</sup>*

**~Patrick, Iowa**

Please feel free to read all our [Client Testimonials](#).

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<sup>37</sup> <https://www.assetprotectionservices.com/apsa/trusts/irrevocable-spendthrift-trust.html>

<sup>38</sup> <https://www.assetprotectionservices.com/apsa/about/client-testimonials.html>



## Frequently Asked Questions (FAQ)

### **How do you purchase or transfer Residential Properties into the Trust if they are encumbered?**

We make use of Land Trusts, which take advantage of the Garn - St. Germain Depository Institutions Act, and allow us to transfer residential properties (after having been purchased) into the Land Trust without invoking a lender's due-on-sale clause. The Beneficial Interest of the Land Trust is "assigned" to either a Limited Liability Company or Beneficial Trust shortly after the said transfer is complete.

### **Can you obtain Loans through the Trust to Purchase Vehicles, Real Estate or other Assets?**

Any loans made to the Trust would be a non-recourse loan, as the assets of the Trust are impenetrable. Most financial institutions will not loan to our Trust because (we believe) they are unable to turn-around and the sell the loan to Wall Street as a mortgage-backed security. So, we recommend you secure the loan in your individual name, through a Limited Liability Company, or other methods such as a hard-money loan, owner-financing and/or private equity lenders.

### **What happens if I am ever Audited? Who is going to come to my Rescue and Defend me?**

The audit risk is around 0.27% for this Trust. But, if you were to receive a correspondent audit, generally the trained Enrolled Agent can assist you - similarly to if you or your entity were audited. We also have a third-party attorney, currently licensed to practice law in California and Texas, with 34-years of experience as an attorney and 19-years of experience using our Trusts for himself and his law firm. He offers a "**Kovel Agreement**" for you to purchase separately (requiring a non-refundable retainer of \$3,500) and will fully represent you in the event of an IRS correspondent or forensic audit.

### **What type of Guarantees do you Provide as to the Efficacy of your Trust Structure?**

The Benson Financial Trust offers a written "**Limited Warranty Certificate**" which, *"Agrees to provide, to bona fide purchasers of an Authorized Copyrighted Benson Financial Irrevocable Beneficial Spendthrift Trust, legal representation as necessary to appeal an adverse audit ruling and change by the Internal Revenue Service of purchaser's trust tax return disallowing the exclusion from taxable income i.) gains from the sale or exchange of a capital asset, ii.) extraordinary dividends, or iii.) taxable stock dividends that the trustee in good faith allocated to the corpus of the trust pursuant to IRC §643 and that have not been paid, credited or required to be distributed to any beneficiary during the taxable year."*

### **Has our Trust ever been challenged by the United States government, and was it successful?**

Trust Law is not subject to any local, State or Federal court and no judge or court may issue a turnover order against a Spendthrift Trust. The Spendthrift Trust is sold by a licensed attorney as a legal document and the Spendthrift Trust is created for the client by the Attorney unlike others who sell illegal documents or trusts who are not licensed lawyers. The IRS examined our Spendthrift Trust for compliance and a past District Director purchased one for himself. We have prosecuted vigorously those who have infringed on our Copyrighted Trust and prevailed in Federal court each time, even when the defendants claimed invalid - it was found valid. Those Federal cases are sealed.



### **If I wanted to Learn More about Trusts, do you offer any Training Courses?**

Yes, we welcome you download our Free 168-page “Scott on Trusts” Training Course, which takes you through the history and basic principles of trust law. <sup>39</sup>

### **Do you Provide Any On-Going Customer Support?**

All of our products and services come with One-Year of Unlimited Customer Support. While the majority of questions and concerns will arise during this period of time, we remain available to provide you with on-going customer support Monday through Friday from 9:00 am to 5:00 pm (EST).



### **Schedule an Appointment**

The best way to reach us is on the top right-hand corner of every page on our website where you will find an image that says, “Click Here” to “Schedule an Appointment”. You may block out 90-Minutes of uninterrupted time with us as often as you want to discuss your Trust Structure, as early as the next business day. <sup>40</sup>

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## **NOTES**

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<sup>39</sup> [https://assetprotectionservices.com/resources/Scott-on-Trusts---Training-Course-\(168-Pages\).pdf](https://assetprotectionservices.com/resources/Scott-on-Trusts---Training-Course-(168-Pages).pdf)

<sup>40</sup> <https://www.assetprotectionservices.com/apsa/schedule-an-appointment.html>