Informational Package on the Benson Financial Trust

(Version 2.60325)

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February 1, 2024

To Whom it May Concern,

As the General Counsel for Benson Financial Trust I confirm that Jay Butler, Trustee of Asset Protection Services of America Trust is a duly authorized and highly regarded distributor for Benson Financial Trust, in good standing.

I further confirm that Mr. Butler is authorized to promote and sell our original, proprietry and copyrighted Benson Financial Trusts pursuant to his contract with Benson Financial Trust.

Should you have any further questions regarding Mr. Butler, please feel free to reach out.

Regards,

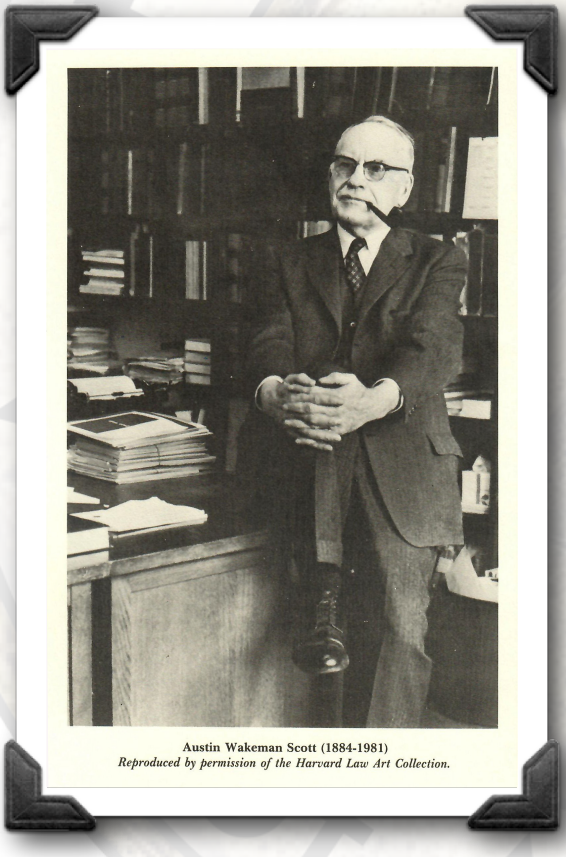
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Irrevocable Spendthrift Trust [1]

Asset Protection Services of America Trust is an Authorized Agent of Benson Financial Trust [2] copyrighted materials. On November 29, 1999, the proprietary "Master Spendthrift Trust", a **"Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust"** was filed with the U.S. Copyright Office, and Copyright Registration Number TXu928247 [3] 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 the protégé of **Professor Austin Wakeman Scott** who taught at the Harvard Law School. Professor Scott was the renowned author of "Scott on Trusts" recognized by President Lyndon Baines Johnson 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.



Austin Wakeman Scott (1884-1981)
Reproduced by permission of the Harvard Law Art Collection.

In approximately 1995, Mr. Benson partnered with Tarrant County Judge and attorney-at-law 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 clients have taken advantage of Mr. Benson's original, proprietary and copyrighted trusts over the last 53+ years.

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

[2] https://bensonfinancial.us

[3] https://publicrecords.copyright.gov

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– Breakdown –

Part 1 — The Fiduciary Trust Framework (The Rules of the System)

Before discussing asset transfers, accounting principles, or tax outcomes, the governing legal framework of trusts must be established. The outcome of every step that follows depends on which body of law applies, and in what order. A trust is not merely a receptacle for assets. It is a fiduciary relationship, governed primarily by state law, in which legal title, control, and beneficial enjoyment are deliberately separated. The trustee holds legal title and administers the property subject to fiduciary duties, while beneficiaries hold equitable interests subject to the terms of the governing instrument. These roles are distinct, legally enforceable, and defining features of trust law.

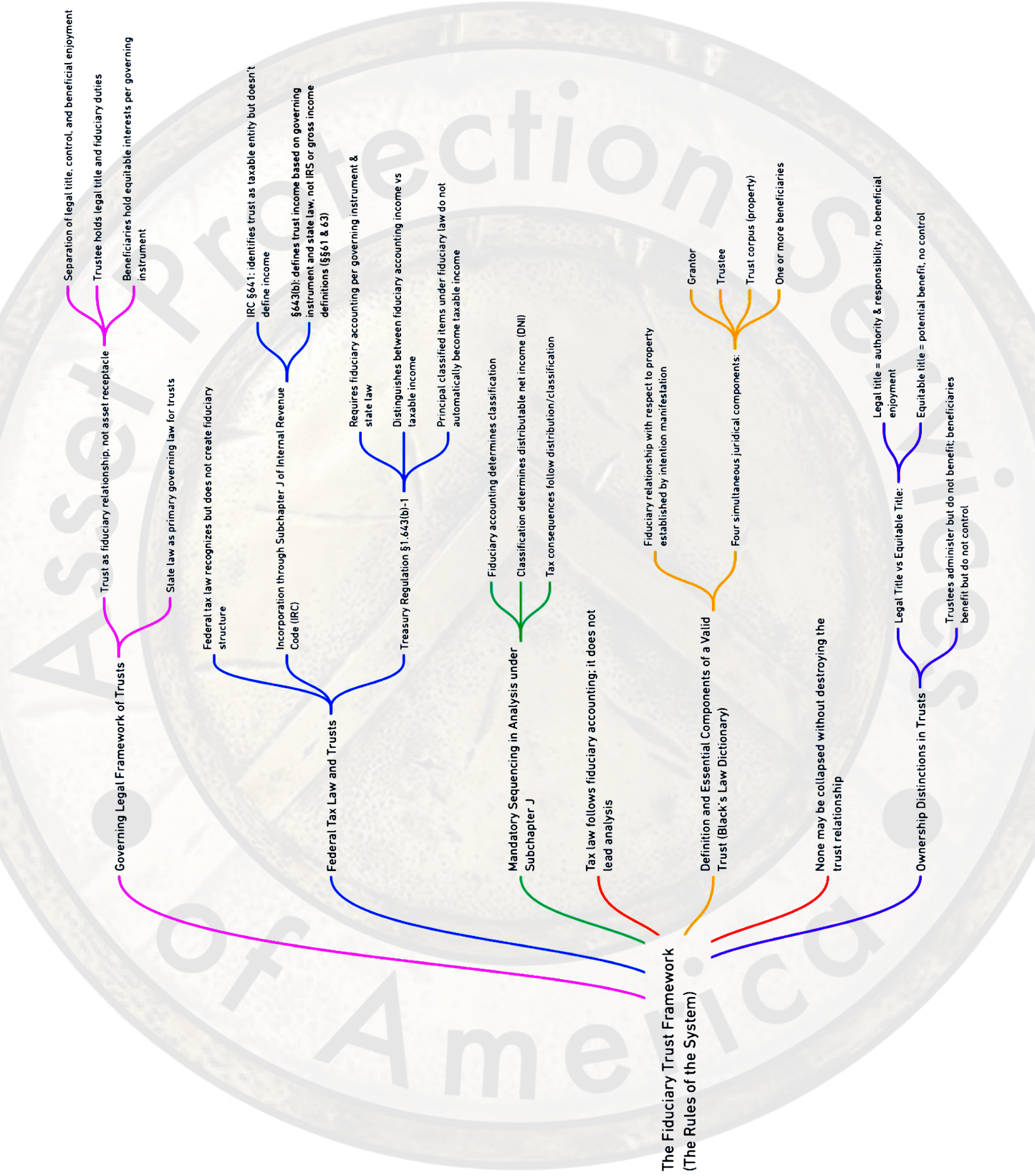
Federal tax law does not create this fiduciary structure. It recognizes it. When Congress chose to tax trusts, it did not replace fiduciary accounting with federal income tax concepts. Instead, it incorporated fiduciary law into the tax regime through Subchapter J of the Internal Revenue Code. That incorporation begins with IRC §641, which establishes that trusts are taxable entities. Section 641 does not determine what is taxable; it merely identifies the trust as the relevant taxpayer. The determination of what constitutes income for a trust is governed by IRC §643.

Section 643(b) is foundational. It defines trust income as the amount of income determined under the terms of the governing instrument and applicable local law. Congress did not delegate this determination to the IRS, nor did it tie trust income to the definition of gross income under IRC §§61 and 63. Instead, it expressly deferred to fiduciary accounting principles administered under state law. This deference is explicit, not implied.

Treasury Regulation §1.643(b)-1 confirms this statutory structure by requiring fiduciary accounting income to be determined in accordance with the governing instrument and state law, and by distinguishing fiduciary income from taxable income. Items classified as principal under fiduciary law do not become income merely because they might be taxable in another context.

The sequencing imposed by Congress is mandatory. Fiduciary accounting determines classification, classification determines distributable net income, and tax consequences follow distribution and classification. Tax law does not lead this analysis; it follows it. Without recognizing that fiduciary accounting precedes taxation, Subchapter J is misread and trust transactions appear suspect. When the hierarchy is applied correctly, the mechanics are predictable and mechanical.

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A trust, as defined by Black's Law Dictionary, is a fiduciary relationship with respect to property, arising from a manifestation of intention to create that relationship and subjecting the person who holds title to duties to deal with the property for the benefit of another. Every valid trust contains four juridical components: a grantor, a trustee, trust corpus, and one or more beneficiaries. These elements must exist simultaneously, and none may be collapsed without destroying the trust relationship.

Legal title and equitable title are separate forms of ownership. Legal title confers authority and responsibility, not beneficial enjoyment. Equitable title confers potential benefit, not control. Trustees administer trust property but do not enjoy it, while beneficiaries may receive benefits but do not control trust assets. **Courts enforce this separation to prevent ownership, control, and benefit from residing in the same person.**

A trustee is not a debtor, and a beneficiary is not a creditor. A beneficiary's interest is a chose in action, enforceable only according to the governing instrument and applicable law. Trusts may be created by declaration or by conveyance and are governed by the Statute of Frauds rather than the Statute of Wills when operative during life. Capacity, certainty of beneficiaries, lawful purpose, and proper formation are required. **Spendthrift, discretionary, complex, and irrevocable features preserve fiduciary separation and defeat sham-trust allegations when properly administered.**

These doctrines are foundational. Federal tax law incorporates them rather than overriding them. Any analysis that begins with taxation rather than fiduciary law reverses statutory sequencing and produces incorrect results. The Rule Against Perpetuities is a doctrine of state law that limits the duration of certain future interests, not the validity of the trust relationship itself. Where applicable, it operates to prevent interests from vesting too remotely; it does not collapse fiduciary separation or recharacterize ownership. Modern statutes in many jurisdictions have modified or abolished the common-law rule, but where it applies, **compliance is a matter of drafting and administration, not tax characterization. Its presence or absence does not convert a valid fiduciary trust into a sham.**

Certainty of beneficiaries is likewise a foundational requirement. A trust must identify beneficiaries with sufficient definiteness that a court can determine who is entitled to enforce the trust. This does not require that beneficiaries be named individually at inception; classes of beneficiaries are permissible so long as the class is objectively ascertainable. Trustee discretion operates within this boundary and does not undermine beneficiary certainty.

A critical distinction exists between equitable beneficiaries and incidental beneficiaries. Equitable beneficiaries are those for whose benefit the trust is administered and who possess enforceable rights under fiduciary law. Incidental beneficiaries may receive indirect or contingent benefits from trust administration but possess no equitable interest and no standing to compel trustee action. Confusing incidental benefit with equitable ownership is a common analytical error in sham-trust allegations and is rejected under settled trust doctrine.

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Part 2 — How Assets Enter the Trust (Adjusted Basis and IRC §1001)

With the fiduciary framework established, the next inquiry is not philosophical but mechanical: how an asset lawfully enters the trust. **The answer is through a properly structured sale at adjusted basis, governed by ordinary contract law and analyzed under the same gain-recognition rules that apply to any disposition of property under the Internal Revenue Code. The trust does not receive assets by gift, concealment, or contribution. It acquires them through a documented transaction supported by real consideration.**

Adjusted basis is calculated exactly as the Internal Revenue Code already requires. **It begins with the original purchase price, increases by capital improvements properly capitalized, and is reduced by depreciation deductions allowed or allowable under IRC §§1011 through 1016. This computation is mandatory, not elective. It is the same calculation required in every gain or loss analysis under federal tax law and forms the foundation for any application of IRC §1001.**



IRC §1001 governs the recognition of gain or loss on the sale or other disposition of property. **The statute defines gain as the excess of the amount realized over the adjusted basis.** Where those two figures are equal, gain is zero. **This formula is not a planning device; it is the statutory rule enacted by Congress.** In the transaction at issue, the trust purchases the asset for an amount equal

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to the adjusted basis, and the seller receives a bona fide promissory note in the same amount.

The receipt of a promissory note is not equivalent to the receipt of income. Long-standing federal tax law distinguishes between income and a valid debt obligation. A promissory note constitutes property other than money for purposes of IRC §1001(b). Where the note is bona fide, enforceable, and issued on commercially reasonable terms, its fair market value is treated as equivalent to its stated principal. Accordingly, the amount realized equals the adjusted basis, and no gain is realized at the point of transfer.

This transaction is structured as a sale rather than a gift precisely to preserve tax integrity and fiduciary separation. **A gift would risk grantor-trust characterization and collapse the independence required under trust law. By contrast, a sale supported by a bill of sale and promissory note establishes debtor-creditor rights distinct from beneficial ownership.** The seller relinquishes ownership of the asset and receives only a creditor's claim against the trust.

IRC §453, governing installment sales, may overlay this analysis where payments on the note are made over time. **That overlay does not create gain where none exists at the outset.** It merely governs the timing of gain recognition if gain were present. Where a sale occurs at adjusted basis and produces zero gain under IRC §1001, the installment sale provisions do not manufacture income. They defer recognition only where gain exists to be deferred.

Through this mechanism, two consequences occur simultaneously. Ownership of the asset transfers to the trust, and the seller realizes no taxable gain at the time of transfer. The trust does not begin its administration holding unrecognized income or disguised appreciation. It begins holding an asset acquired at cost, with historical tax attributes intact and future treatment governed by fiduciary accounting law rather than individual income tax rules.

Once the transfer is complete, the analysis of personal gain recognition ends. **The relevant inquiry becomes how the trust classifies and administers the asset under fiduciary law.** That jurisdictional shift is addressed next.

Part 3 — Post-Transfer Operation and Fiduciary Substance

Once the asset has been transferred into the trust at adjusted basis, the governing legal regime changes in a way that is jurisdictional rather than stylistic. Prior to the transfer, the property was evaluated under rules applicable to an individual taxpayer. **After the transfer, the property is governed by fiduciary law, and the trust becomes the relevant legal and tax subject.** From this point forward, the analysis no longer begins with individual income tax concepts. **It begins with fiduciary administration and fiduciary accounting.**

This shift is compelled by IRC §641, which establishes the trust as a separate taxpayer. **Section 641 identifies who the taxpayer is; it does not define what is taxable. What constitutes income for a trust is determined by fiduciary classification under IRC §643(b), which defers expressly to**

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the governing instrument and applicable local law. That deferral presumes that the trust is administered as a genuine fiduciary arrangement, not as a nominee or conduit.

Fiduciary substance is established through administration. The trustee must be independent, meaning the trustee holds legal title, exercises judgment, and is bound by enforceable duties that are not subject to unilateral beneficiary control. Trustee independence is not measured by labels but by conduct. Where a trustee may be removed only pursuant to defined procedures, and where discretionary authority is exercised in good faith under the governing instrument, fiduciary separation is preserved.



The trustee's duties are affirmative and enforceable. They include the duties to protect trust property, to defend it against claims, to segregate it from non-trust assets, and to enforce rights belonging to the trust. Commingling of trust assets with personal assets of the trustee or beneficiaries is prohibited. Failure to observe these duties exposes the trustee to surcharge and personal liability under state law. **These consequences are not theoretical; they are the mechanisms by which courts police fiduciary legitimacy.**

Trust administration often includes a compliance overseer or similar role authorized under the governing instrument. Such a role does not exercise ownership or control over trust assets. Instead, it exists to ensure adherence to fiduciary duties, to monitor administration, and to remove or replace a trustee for cause where the instrument permits. **The existence of oversight strengthens fiduciary substance rather than undermining it, because it reinforces accountability without collapsing roles.**

Trustee discretion is central to fiduciary operation. A discretionary trust authorizes the trustee

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to determine whether, when, and in what amounts distributions are made, subject to standards set forth in the governing instrument. Beneficiaries possess no unilateral right to compel distributions absent an express mandate. **The trustee may defer distributions indefinitely where permitted, consistent with fiduciary duty and the purposes of the trust.** Discretion distinguishes fiduciary administration from agency or debt relationships.

Beneficiaries do not manage trust property. They do not direct operations, enter contracts on behalf of the trust, or control banking. **Where beneficiaries incur expenses related to trust activity, reimbursement occurs only pursuant to trustee approval and documentation, preserving separation between fiduciary administration and personal affairs.** Travel, expenses, and similar costs are evaluated under fiduciary standards, not beneficiary preference.

These operational realities defeat attempts to re-characterize the trust as a sham. Sham-trust analyses turn on retained control, lack of independence, commingling, and absence of real fiduciary consequences. Where trustees are independent, duties are enforced, discretion is real, and beneficiaries lack control, fiduciary substance exists as a matter of law.

From this point forward, the trust operates within the fiduciary framework Congress assumed when it enacted Subchapter J. **Tax consequences do not arise from intent or outcome but from how fiduciary accounting classifies receipts and how the trustee exercises discretion within that framework.** The next step in the analysis is therefore not taxation, but classification under fiduciary accounting principles.

Part 4 — Fiduciary Accounting, Principal Classification, and IRC §643

With fiduciary administration established, the analysis turns to fiduciary accounting. Fiduciary accounting is not a tax concept and is not derived from federal income tax law. It is a body of state law and common-law doctrine that governs how receipts, disbursements, and changes in value are classified for trust administration purposes. These classifications exist independently of federal tax labels and are enforceable as a matter of fiduciary duty.

Under fiduciary accounting principles, the trust corpus constitutes principal. Capital appreciation of trust assets is likewise classified as principal unless the governing instrument or applicable local law directs otherwise. When a principal asset is sold, the proceeds are generally allocated to principal. This allocation is not discretionary in the casual sense; it is dictated by fiduciary statutes and long-standing doctrine designed to preserve the trust corpus for current and future beneficiaries.

Capital gain is a tax concept applied after realization. Principal is a fiduciary accounting classification applied before tax allocation. Treating these concepts as interchangeable produces structurally incorrect results. Congress expressly prevented that error by enacting IRC §643(b), which defines trust income by reference to the governing instrument and applicable local law rather than by reference to federal income tax definitions such as IRC

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§§61 or 63.

Section 643(b) establishes the classification universe. Until fiduciary accounting classifies a receipt as income or principal under local law, nothing can enter distributable net income. Section 643(a) operates only after §643(b) has been applied. These provisions are not parallel rules; they are nested rules that must be applied in sequence.

Section 643(a)(3) and §643(a)(4) address specific categories of receipts, including extraordinary dividends and taxable stock dividends. Where such receipts are allocated to principal under the governing instrument and applicable local law, they are excluded from DNI. This exclusion is not elective. It is conditional on fiduciary classification already having occurred under §643(b).



Treasury Regulations §1.643(b)-1 and §1.643(a)-3 confirm this integrated approach. The regulations repeatedly defer to the governing instrument, applicable local law, and fiduciary accounting treatment. They do not create an independent federal definition of trust income. Revenue Ruling 62-147 and IRS Memorandum AM-2023-006 likewise assume proper fiduciary

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classification and do not override it.

Trustees make fiduciary accounting determinations in good faith pursuant to state law and the governing instrument. These determinations are subject to judicial review for abuse of discretion, not substitution of judgment. Federal tax law respects these determinations because Congress commanded it to do so. Any analysis that begins with federal tax labels and attempts to retrofit fiduciary accounting afterward reverses statutory sequencing and is incorrect as a matter of law.

Part 5 — Taxation Occurs Last: DNI, Reporting and Objections

Only after fiduciary accounting classifications have been fixed does federal tax law begin to operate. IRC §641(a) provides that the taxable income of a trust is computed in the same manner as an individual except as otherwise provided in Subchapter J. Those exceptions are not incidental; they exist precisely because trusts are fiduciary arrangements governed by state law rather than personal ownership.



Distributable Net Income is defined in IRC §643(a). DNI is not fiduciary income, not cash flow, and not a tax preference. It is a statutory ceiling that limits the amount a trust may deduct for distributions and the amount beneficiaries may be required to include if distributions occur. Where income is

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distributed, the trust takes a deduction under IRC §661 and beneficiaries include corresponding income under IRC §662. Where income is retained, the trust is taxed at the trust level.

Principal that remains classified as principal under fiduciary accounting does not enter DNI and is not currently taxable. This result is not a loophole; it is the outcome Congress mandated by incorporating fiduciary accounting into the tax regime. Form 1041 reflects this design by requiring the trust to report its income, gains, and deductions, and by computing DNI separately on Schedule B.

Active and passive activities conducted within the trust are reported according to their character, with rents, expenses, and depreciation reported on Schedule E where applicable. Lease payments, operating expenses, and related deductions follow the same reporting rules that apply outside a trust, subject to fiduciary allocation and trustee authority. The trust issues Forms 1099 where required and does so in its fiduciary capacity, not as an agent of beneficiaries.

Objections asserting that capital gain must be taxed immediately, that fiduciary accounting is manipulated, or that the trust is a sham fail because they reverse statutory sequencing. Sham trust cases turn on retained control, lack of fiduciary independence, commingling, and absence of enforceable duties. Where fiduciary form and substance are respected, outcomes follow law rather than intent.

The framework described here is not theoretical. It is grounded in long-standing trust doctrine, authoritative legal commentary, administrative guidance, and filed returns. Nothing disappears, nothing is hidden, and nothing is accelerated prematurely. When sequence is respected, the result is compliance applied to fiduciary law as it exists.

Notes:

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– Diagram –

A Married Couple (or an Individual) Purchases our Benson Financial Irrevocable Spendthrift Trust

Week **1** –> Receives 4-Page Certifications of Trust, EIN's (Employer Identification Numbers), and Application for Trust Bank Accounts Submitted
Week **2** –> Receive Trust Agreements in .pdf format, and Begin Working Collaboratively on Asset Spreadsheet
Week **3** –> Receive Trust Record Books in physical format via USPS Priority Mail with Tracking/Signature Required
Week **4** –> Conclude Working on Excel Spreadsheet and
& Start on Bills of Sale, Promissory Notes (BOSPN), &
Week **5** –> Lease Agreements, Motor Vehicle Trust Registrations
Week **6** –> Transfer Title of all Assets into the Beneficial Trust

---

The Trustees (ie. Fiduciaries) decide to sell a real estate investment property

–> Purchase Price + Improvements (Less Depreciation) = **Basis**
–> $600,000 + $150,000 (Less $250,000) = $500,000 **Basis**
–> The Bill of Sale reflects the Actual Selling Price of Property
–> The Promissory Note *is* Financial Consideration for the Sale
–> The Promissory Note *is* Bona Fide, Enforceable, Collectible, Documented, and based on Commercially Reasonable Terms
–> A Sale with a "Bill of Sale and Promissory Note" establishes Debtor-Creditor Rights distinct from Beneficial Ownership

---

The Sellers (ie. Trustees) have no "Unacknowledged" Appreciation

–> The Sellers (ie. Trustees) have no "Unacknowledged" Appreciation as the Assertion does not follow the Statute
–> IRC §1001 Does Not Impose Tax simply because the Property has Unrealized Appreciation
–> Gain Equals the Amount Realized Minus Adjusted Basis
–> In this Transaction, the Amount Realized is $500,000 and the Adjusted Basis is $500,000
–> The Result under §1001(a) is Zero ($0.00) of Gain

Title is Transferred and the Trust is the New Owner of the Property.

–> Title is Transferred via Warranty/Quitclaim Deed into the Trust *before* Property is Listed for Sale or *after* as a Double Closing
–> The Property is Listed with a Local Real Estate Agent.
–> The Buyer Agrees to Selling Price and Money Goes 'Hard'
–> The Married Couple signs-off on all Closing Documents in their capacity as Trustees of the Irrevocable Spendthrift Trust
–> Upon Closing, Escrow transfers 100% of the Sale Proceeds to Bank Account (and EIN) of Irrevocable Spendthrift Trust
–> Gains would either be Taxed at the **Individual rate**; or Taxed According to **Fiduciary Accounting Income** below

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IRC §641 (b) Computation and Payment
"*The taxable income of an estate or trust shall be computed in the same manner as in the case of an **individual**, except as **otherwise provided in this part**.*"

Capital Gain **is a tax concept applied *after* realization.** ***Principal*** **is a fiduciary accounting classification applied *before* tax allocation.**

IRC §643 (b) Income
"*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.***"
[Emphasis Added]

If the Fiduciary claims "Income" then there *is* DNI (Distributable Net Income)

If the Fiduciary claims "Principal" then there is *not* DNI (Distributed Net Income)

Stays in Trust		**Distribution to:**
10%	$0 - $3,100	Trustee (via 1099)
24%	$3,100 - $11,150	Beneficiary (via K-1)
35%	$11,150 - $15,200	0% to 9.8% – State
37%	Over $15,200	10% to 37% – Federal

IRC §643 (a)(4)
Extraordinary Dividends & Taxable Stock Dividends
"*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.***
[Emphasis Added]

Notes:

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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 has a fiduciary responsibility to the **Beneficiary** who ultimately benefits from the trust. The **Trust** itself, known as the "Corpus" which is Latin for "body", holds the trust assets.

A *"Trust"* is defined by Black's Law Dictionary as:
"a right of property, real or personal, held by one party for the benefit of another."

What Our Trust is ***Not***

In the United States, ninety-nine percent (99%) of all trusts are created as revocable, grantor trusts, which offer limited estate tax advantages, no privacy, no asset protection, and no living benefits. Living trusts only help someone bypass probate, and that's it! So before we begin to explain what our Trust ***is***, we believe it important for you to first understand what our Trust is ***not***:

Our Benson Financial Trust is ***Not*** a Revocable Trust [4] which can be changed, amended or even revoked (ie. terminated) at any time. There is very little, if any, asset protection benefits associated with Revocable Trusts.

Our Benson Financial Trust is ***Not*** a Grantor Trust [5] wherein the Grantor owns trust property and assets for income and estate tax purposes. In our trust, the Grantor may *never* be a Beneficiary, hold any Beneficial interest, trust assets, nor take-back any assets conveyed into the trust. Our trust is not a Grantor Trust as "alter ego" problems would arise and the spendthrift provisions would be voided.

Our Benson Financial Trust is ***Not*** a Simple Trust [6] which requires income to be distributed to Beneficiaries during the taxable year, and pays tax on capital gains.

Our Benson Financial Trust is ***Not*** a Pure Trust [7] designed to hold real and personal property for the benefit of a third-party in exchange for Trust Certificates that have "distribution rights" with detailed terms and conditions.

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[4] https://legaldictionary.net/revocable-trust/

[5] https://www.investopedia.com/terms/g/grantortrustrules.asp

[6] https://www.law.cornell.edu/wex/simple_trust

[7] https://supremelaw.org/copyrite/goodbiz.com/alr.htm

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Our Benson Financial Trust is ***Not*** a Statutory Trust [8] established under the statutory laws of a State or particular jurisdiction. Common examples of a Statutory Trust would be a DST (Delaware Statutory Trust) or a NAPT (Nevada Asset Protection Trust). Statutory Trusts are subject to the laws under which they were established and ofter require annual State tax returns to be filed and/or to be foreign-filed if operating outside their jurisdiction of creation.

Our Benson Financial Trust is ***Not*** an Implied Trust [9] which is *not* specifically created by written word or spoken agreement; hence its nature of being *implied* by varying situations or circumstances.

Our Benson Financial Trust is ***Not*** an Express Trust [10], the opposite of an implied trust, specifically (ie. expressly) created by the Grantor for a set and designated purpose, either privately or publicly.

Our Benson Financial Trust is ***Not*** an Intentionally Defective Grantor Trust [11] allowing assets to be excluded from the Grantor's estate for estate tax purposes, but keeping income tax responsibilities solely with the Grantor.

Our Benson Financial Trust is ***Not*** an Offshore Trust [12] establish in another country outside.

Our Benson Financial Trust is ***Not*** a Self-Settled Trust [13] wherein the Grantor is also a Beneficiary, funding the trust with their own assets and retaining the right to benefit from those assets during their lifetime.

Our Benson Financial Trust is ***Not*** a Testamentary Trust [14] specified in a person's Will that is handled upon their death.

Our Benson Financial Trust is ***Not*** a Common Law Trust [15] reliant on past court case decisions rather than specific statutes or laws.

Our Benson Financial Trust is ***Not*** a Non-Discretionary Trust [16] where the Trustee's investment decisions are strictly pre-determined by the Trust documents.

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[8] https://www.lawinsider.com/dictionary/statutory-trust

[9] https://dictionary.justia.com/implied-trust

[10] https://www.law.cornell.edu/wex/express_trust

[11] https://www.investopedia.com/terms/i/igdt.asp#toc-what-is-an-intentionally-defective-grantor-trust-idgt

[12] https://thelawdictionary.org/offshore-trust

[13] https://www.consumershield.com/dictionary/self-settled-trust

[14] https://legaldictionary.net/testamentary-trust/

[15] https://www.legalbriefai.com/legal-terms/common-law-trust

[16] https://www.legalbriefai.com/legal-terms/non-discretionary-trust

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Our Benson Financial Trust is ***Not*** a Taxable Association or Corporation [17] pursuant to tax law, because it qualifies as a trust under Treas. Reg. §301.7701-4 and does not possess all-four required corporate attributes:

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.

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; the Trust may continue until the death of the last currently living descendants of those Beneficiaries living at the time of the creation of the Trust.

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.

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.

[17] https://www.thetaxadviser.com/issues/2020/may/classifying-business-entities-check-box-regulations/

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Beneficial **O**wnership **I**nformation **R**eport

What motivated us to find and learn of the Benson Financial Trust in the first place? Because we wanted to find a way to legally and lawfully avoid the Corporate Transparency Act and its dystopian Beneficial Ownership Information Reporting requirements. And find it, we did.

The Benson Financial Trust affords unparalleled privacy as it is not created, registered or foreign-filed at any City, County, State and Federal levels and are ***not*** required to adhere to the **CTA** (**C**orporate **T**ransparency **A**ct) compliance requirements enacted between January 1, 2024 and January 1, 2025.

Found on pages 1,177 – 1,199 of the 2021 **NDAA** (**N**ational **D**efense **A**uthorization **A**ct), this horrific 22-page 'piece of legislation' *requires* the ultimate beneficial ownership information of every "Reporting Company" to provide the following information on a **BOIR** (**B**eneficial **O**wnership **I**nformation **R**eport) and be submitted to **FinCEN** (the **Fin**ancial **C**riminal **E**nforcement **N**etwork) under the United States Department of the Treasury or face serious civil and/or criminal penalties.

Definition of "Reporting Companies"

Under the Corporate Transparency Act, "Reporting Companies" are defined as any entity ***"created by the filing of a document with a Secretary of State or a similar office under the law of a State or Indian Tribe; or formed under the law of a foreign country."*** This includes any Secretary of State, Department of State, Corporations Commission or Division, which "creates" Corporations, Limited Liability Companies, Limited Partnerships, Irrevocable Trusts (formed under State legislation), and Foreign Entities registered to conduct business in the United States.

Anyone who directly, or indirectly, owns 25% or more of the entity's ownership interests or anyone who exercises "substantial control" over the entity, even if they're not an owner, are ***required*** to comply.

Civil and Criminal Penalties

The following penalties may be imposed against any person who "willfully fails" to report complete and/or updated ultimate Beneficial Ownership Information Reports to FinCEN under 31 U.S.C. §5336(h)(1)(B).

- Civil Penalties of $500 per-day (There is no cap on the $500 per-day civil penalty)
- Criminal penalties of up to $10,000
- Imprisonment of up to two (2) years under 31 U.S.C. §5336(h)

BOIR Currently Suspended for Domestic Persons

While the BOIR filing requirements are currently suspended for domestic persons following the outcome of the **Texas Top Cop Shop, Inc., et al vs. Merrick Garland, Attorney General, et al** court case making its way through the Texas appellate courts, the final verdict will not affect our Trust structure in any way!

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NO BOIR Filing Requirements

Our Benson Financial Trust is formed under contract law, and not under the legislation of any State.

–> Our Trust does ***not*** file the Beneficial Ownership Information Report with the Financial Crimes Enforcement Network under the United States Department of the Treasury.

–> Our 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.

–> 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."

"Right to Contract" Enshrined in the United States Constitution

Our Trusts are not created under the laws of any one State (ie. a Statutory Trust), rather they are created based on your 'Right to Contract' as enshrined in the United States Constitution (ie. a Contract Trust). ***A contract in the form of an Irrevocable Spendthrift Trust 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 as our "right to contract" is unimpairable under Article 1, Section 10, Clause 1. [18] ***"No State shall... pass any... law impairing the Obligations of Contracts."***
That means it is not within the power of the government, or even a judge, to change one word of a contract of Trust. Once a property is transferred into an Irrevocable Spendthrift Trust 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.

–> The government is prohibited from regulating or imposing a tax on a "right".

–> 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."

This is one of the core characteristics of our Trust established by the law and court related cases. A Spendthrift Trust Organization is *created* and given life through a ***"Contract in the form of a manifestation of intention in the terms and conditions of the trust of a Spendthrift Trust Organization"*** often referred to as the "trust" or "trust instrument". Because these "contracts" don't owe their existence to any legislative acts, the authority for creating a trust is the common law right to contract by each party, now under the UCC and UTC codes for trusts. Regardless as to various theories that trusts are fundamentally a "deal" (contractual/common law) or a "conveyance" (property law), the distinction is considered irrelevant by the IRS for practical requirements, like obtaining an Employer Identification Number (EIN), as it is viewed as a separate legal entity for tax purposes.

[18] https://constitution.congress.gov/browse/article-1/section-10/clause-1/

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Why is Our Copyrighted Trust Unique?

The **Grantor** (ie. Creator / Settlor / Trustor) 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.

–> 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".

–> 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.

–> Our Grantor is intentionally separated from the Trust's assets (ie. corpus), the moment assets enter the Trust and it's funded. Legal separation occurs at this point, safeguarding the corpus from claims by Settlors, Trustees or other parties.

–> All assets that do 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.

An **Irrevocable** trust exists when 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 so-long-as assets were not illegally (ie. fraudulently) conveyed into the trust.

–> The irrevocable transfer of the assets cannot revert to the person making the sale, endowment or transfer.

–> The corpus of a Spendthrift Trust is not subject to turn over orders by any court or judge whether state or federal.

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 § 643.

A **Discretionary** trust is one in which the Trustee in his sole and absolute discretion manages the Trust, including the assets and liquidity of the Trust and determining when to make distributions - if any. No distributions may be forced by a Beneficiary even in a court of law. Our Trust meets this

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standard and provides that the Trustee must conform with IRC § 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. Property held by the trust is immune from tax liens, levies, and seizures, lawsuits, divorce claims and bankruptcy.

–> *"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)**

Who Does Our Trust Structure Help?

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

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Primary Trust Benefits

- Anonymity is maintained at the city, county, state and federal levels.
- Our Benson Financial Trust is formed under contract law, and not under the legislation of any State.
- 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.
- If the Trust maintains compliance with IRC §643, there are no 15% or 20% capital gains taxes, nor taxation on extraordinary dividends or stocks.
- No capital gains tax upon the sale of a principal residency regardless if the $250,000 individual or $500,000 marital capital gains tax exclusions have been exceeded (and no 2-year seasoning).
- No 1031 exchanges which only defer taxes until retirement and keep investment monies tied-up.
- Trustees may utilize Trust assets for and on behalf of Trust Beneficiaries without being a "distribution" if such expenditures are a "return of principal" and/or are exempt under IRC § 2503(e).
- *Distributions* made to Beneficiaries, such as cash, entertainment and vacations, are taxable events to the Beneficiaries, as are assets purchased and titled into the name of the Beneficiaries from Trust assets such as a vehicles and homes, etc.
- Trustee *personal expenditures*, such as food, clothing, personal fitness, vacations and elective medical procedures, are all taxable events to the Trustees.
- Trustee personal assets are sold (at the Trustee's basis) into the Trust using "Bills of Sales" and "Promissory Notes". Assets are not gifted into the Trust. For example, the basis of an investment property is deemed to be: "Purchase Price + Improvements (Less Depreciation) = Basis"
- The Trustee may use his or her promissory notes to "off-set" future taxable events.
- The Trust is a legal and lawful instrument, but will *not* protect the Trustees if engaged in any fraudulent or criminal activity. The Trusts are obviously not a license to commit crimes.
- The Trust is protected from personal bankruptcy, divorce, lawsuits, liens, levies and even death.
- The Trust is impenetrable by creditors and immune from transfer by operation of law.
- No court or judge may issue an order to seize any asset in a properly formed spendthrift Trust.
- The courts cannot issue a turn-over order [19] regardless as to whether the cause of action [20] for litigation originates from an inside lawsuit or outside lawsuit [21].
- Assets belong to the Trust on the day they were properly sold into the Trust (ie. No Fraudulent Conveyances). There is not even a 1-day "look-back", nor 5-year "look-back" with Medicaid.
- The Trust is *not* subject to taxation at the state level and does *not* file a state tax return.
- The beneficial Trust files a federal 1041 tax return, as a complex trust, from year-to-year.
- The business Trust files a federal 1041 tax return, often as a simple trust, as a pass-through.
- Either Trust may be a member in a Limited Liability Company, if circumstances require it.
- Upon the death of the Trustee, the Trust experiences no probate court, death tax, estate tax, inheritance tax, generation-skipping tax, or stepped-up tax basis.

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19 https://definitions.uslegal.com/t/turnover-order/

20 https://dictionary.thelaw.com/cause-of-action/

21 https://www.assetprotectionservices.com/apsa/contact/videos/inside-and-outside-lawsuits.html

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Flow-Chart of Trust Structure

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



All Business Activities
1099 Independent Contractors, Consulting, Sales, Marketing, Entrepreneurial Enterprises, Flower Shops, Restaurants, Car Dealerships, Attorneys, CPA's, Engineers, Physicians, Short-Term Fixing and Flipping.

ACTIVE Income

1041 Tax Return as Simple Trust

Business Trust
(Owns Businesses with No Assets)

"Active Income" is used to make the Lease Agreement payments, which is a **Business Expense** to the Business Trust.
To the Beneficial Trust, these "Passive Income" earnings go on its Schedule "E" with the Net Profits reported as an **Extraordinary Dividend**.

Lease Agreements
Equipment, Vehicles, Trucks, Boats, Planes, Intellectual Property, Software Licensure, Building Space, etc

Grantor	Husband or Wife
Trustee(s)	Husband Wife
Compliance Overseer(s)	Husband Wife
Beneficiary	Beneficial Trust
Employee Payroll	As Needed



All Assets
Sold into the Trust using a "Bill of Sale" with "Promissory Note" for Cash, Stocks, Bonds, CD's, Artwork, Precious Metals, Intellectual Property, Cryptocurrency, Jewelry, Real Estate, Equipment, Cars, Boats, Planes, etc

PASSIVE Income

1041 Tax Return as Complex Trust

Beneficial Trust
(Owns Everything)

IRC §643(a)(3)
"Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus…"

Non-Grantor	Jay Butler
Trustee(s)	Husband Wife
Compliance Overseer(s)	Husband Wife
Beneficiaries	Children

Trustees Receive 1099's
for Cash, Food, Fun, Fashion, Facials and Fitness

Rents

Ownership

Land Trusts are used if Residential Investment Property is Encumbered

_____ **Land Trust**



Titled *Directly* into Trust if there is No Debt



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The Trust is Likened Unto an Escrow Account

Trust assets are likened unto an escrow account of a mortgage title company. When the lender transfers money to the title company, the title company doesn't possess the money. The money is merely "held" in the title company's bank account until the lender authorizes its disbursement, provided all conditions are met and executed. Similarly, the Trust functions like a title company's "escrow account." All assets are held in escrow (the trust) until the trustee, at their sole and absolute discretion, approves the assets to be transferred to a beneficiary. Whenever income or an asset is allocated to a beneficiary, it triggers a taxable event, unless a beneficiary also owns one of our trusts, in which case there is no tax as assets are being passed from one trust corpus to another trust corpus. In addition, successor trustees who become primary trustees, inherit the same powers as the original trustee(s), and can defer distributing to beneficiaries indefinitely as the dynasty continues to grow. It is important to understand that no other trust enables and empowers trustees to build a dynasty in the way that this trust does.

The **Trustee** holds the legal and equitable title to the property for the benefit of the beneficiaries. So, although trustees hold the property title, they do not own the property. The trustees are the designated management authority for the Spendthrift Trust Organization. The beneficiaries do not own the property, but have the right to all the benefits, proceeds, and profits of it - at the discretion of the trustee to distribute it to them. This is called the "beneficial interest" which is contractually non-assignable and for that reason a creditor may not legally attach it. Beneficiaries have no management control of the assets in a Spendthrift Trust Organization.

Beneficiaries only possess the assets in the trust if they are transferred to them by title or deed by a trustee. Until this occurs, beneficiaries own nothing in the trust. Beneficiaries are entitled to the benefits, proceeds, or profits of the assets or properties, but only if and when the trustee permits it. The trustee is accountable for all trust assets, and in a spendthrift trust, the beneficiaries are only allowed what is "given to them," at the complete discretion of the trustee(s). When the trustee grants access, this is termed a "beneficial interest." This beneficial interest is contractually a non-transferable interest. As a result, any creditor of the beneficiary can never legally attach any trust asset to a debt obligation of the beneficiary. Moreover, assets transferred into the trust are never a "gift " to the trust because the assets in the trust hold no "equitable title."

Trust Distributions *are* Taxable Events

Assets and income in the trust will always remain "deferred" for tax purposes, until there are distributed. The assets and income enter the trust tax deferred and are distributed taxable. Unlike a 401K or other qualified plan which must begin distribution of assets at age 72 (in an unknown tax bracket), the assets in these trusts can be deferred indefinitely unless or until distributed to beneficiaries. Qualified Retirement Plans (QRP) may not be held in these trusts. Such assets must first be removed from the QRP and any penalties, fees and taxes paid (as applicable) before they may be "sold" into the trust. Taxes on the income or assets in our trust do not "disappear", nor do they vanish or go away. They are always there and will become due once the money or assets are

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distributed. However, distribution by a trustee is not required and, in-fact, is discretionary when (or if) a trustee ever decides to make a distribution. If it does, the taxes accrue to the recipient not the trust.

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**.

Compliant with 8 Categories of Trust Law

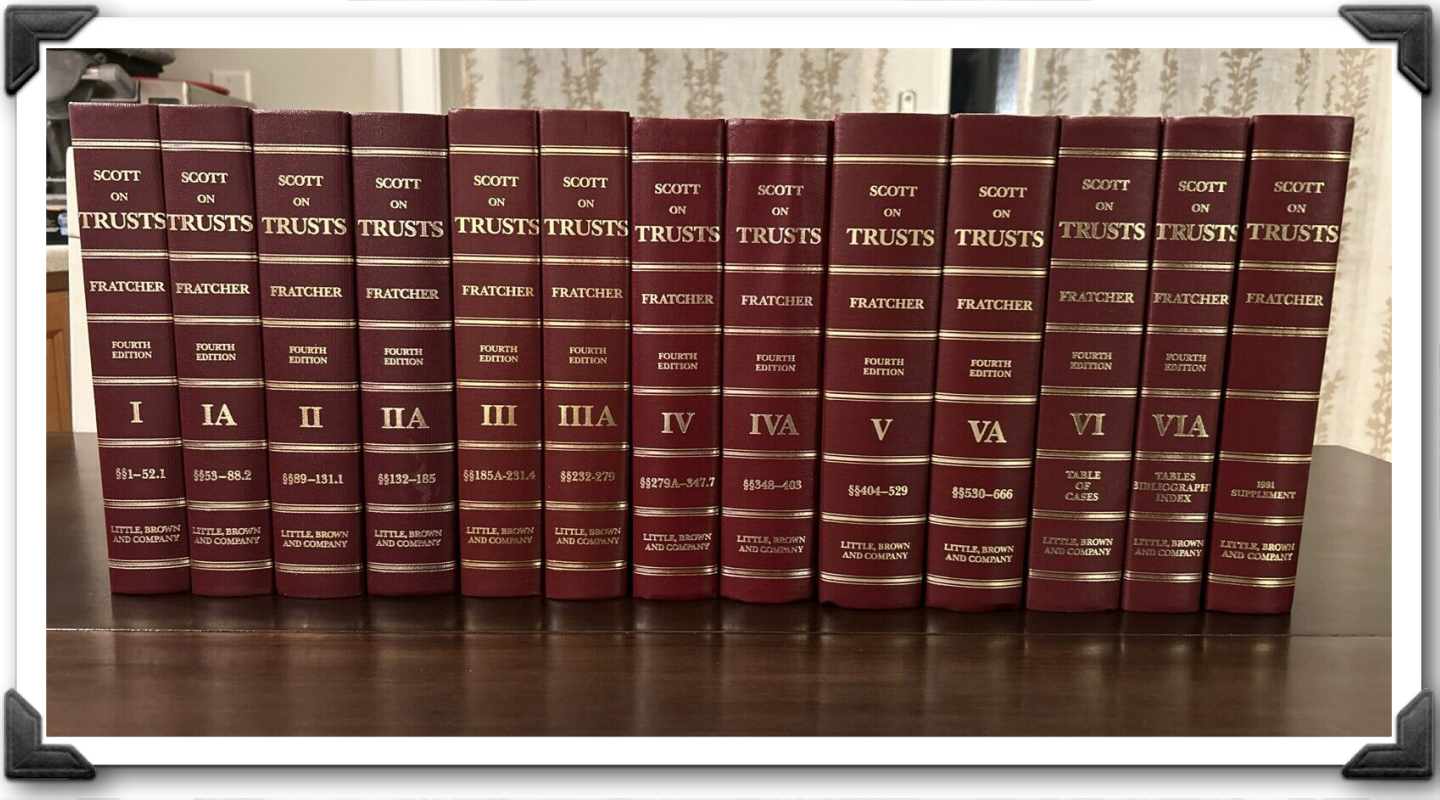
These 8 categories played a crucial role in the shaping of our trusts and ensuring that trust corpus is safeguarded from turnover orders by any court or judge.

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

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Scott on Trusts

4th Edition (13 Volumes)



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…"[22]
Article "Eliminating Capital Gains Tax Using a Complex Trust" by Kurram Chohan

[22] Supporting Articles –> Eliminating Capital Gains Tax Using a Complex Trust

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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

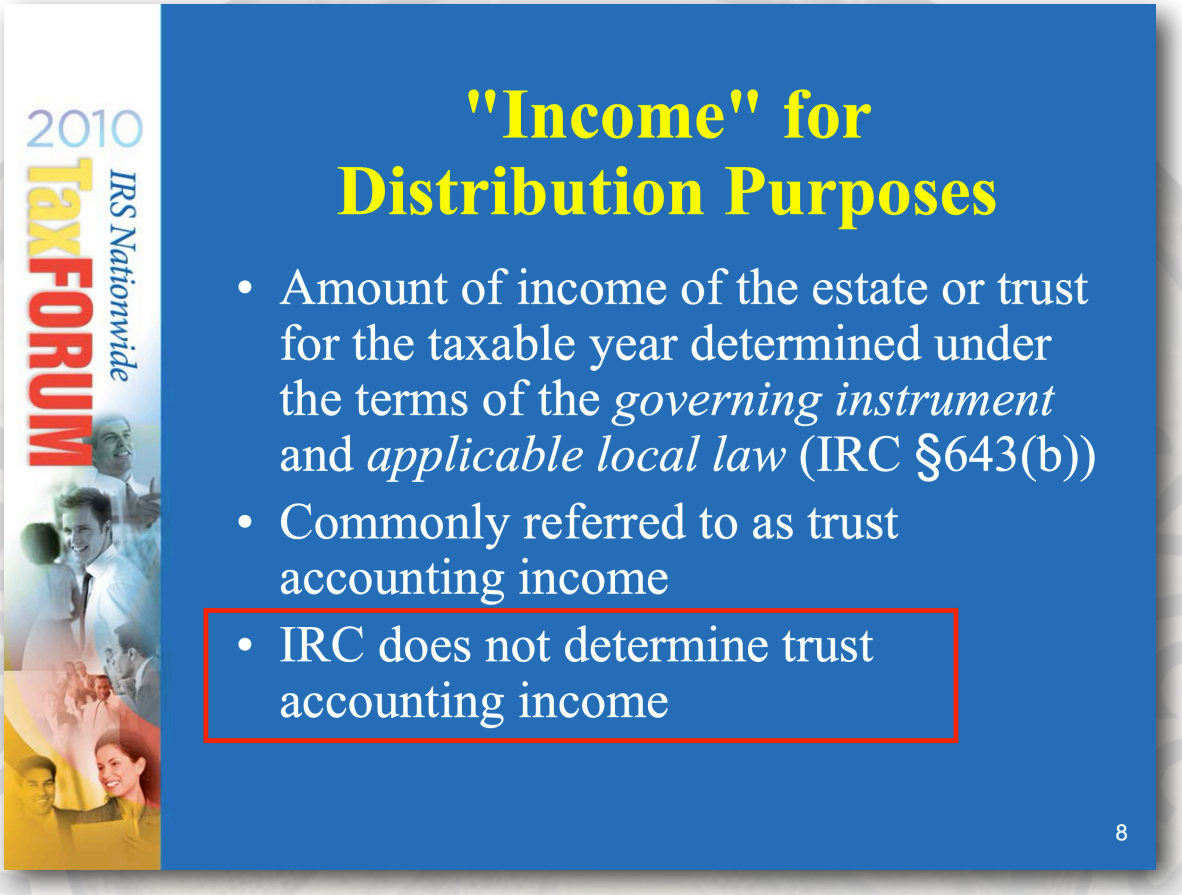
Avoidance Distinguished from Evasion

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.

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



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

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IRC §§ 643(a), 643(a)(3), 643(a)(4)

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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IRC § 643(b)

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

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Is a NICDS Trust a Sham?

*(**N**on-Grantor, **I**rrevocable, **C**omplex, **D**iscretionary, **S**pendthrift **Trust**)*

The Internal Revenue Code, Treasury Regulations, IRS Guidance and Courts do not evaluate trusts based on their acronyms, labels or names. Evaluation as to their efficacy is entirely fact-driven, and applies existing doctrines to the trust's real-world operation and whether or not it functions as a genuine alienation of ownership, control, risk and benefit. For example:

- Substance over form
- Economic substance vs. economic reality
- Sham transaction doctrine
- Assignment of income doctrine
- Step transaction doctrine
- Grantor trust rules (IRC §§ 671-679)

These doctrines are applied holistically. No single defect is determinative; cumulative facts often are.

Characteristics of Trusts Disregarded as Shams

The following factors recur consistently in cases, IRS notices, and Chief Counsel guidance where trusts are collapsed or ignored.

1. Retained Grantor Control (Primary Failure Point)

A trust is vulnerable when the grantor retains *de facto* control, regardless of formal drafting:

- Grantor serves as trustee or co-trustee with meaningful discretion
- Grantor can replace trustees freely or with related or subordinate parties
- Trustee follows grantor instructions as a matter of practice
- Side agreements, oral understandings, or implied expectations
- Grantor directs investments, distributions, or loans

–> Courts focus on who actually makes decisions, not who is named.

2. Retained Economic Benefit

Trusts are disregarded when the grantor remains the effective economic beneficiary:

- Trust pays personal expenditures
- Distributions closely track grantor lifestyle needs
- Loans to grantor lacking underwriting, enforcement, or commercial terms
- Circular cash flows returning funds to the grantor

–> Courts repeatedly ask: Who actually enjoys the property?

3. No Real Shift of Risk or Burden

Ownership without risk is not respected. Red flags:

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- Grantor guarantees trust debts or obligations
- Trust assets remain reachable by grantor creditors
- Trust bears no independent liabilities
- Grantor absorbs all downside risk

–> A genuine trust must be able to lose money without grantor intervention.

4. Assignment of Income Failures

Income remains taxable to the person who earns or controls the income-producing activity:

- Earned income redirected into a trust after the fact
- Trust does not own the underlying business or asset
- No arm's-length sale or contribution
- No valuation or consideration

–> Income cannot be "laundered" through a trust shell.

5. Illusory Trustee Independence

An "independent trustee" in name only will not withstand scrutiny:

- Trustee is a close friend, employee, subordinate, or financially dependent party
- Trustee never refuses distributions
- No documented deliberation or fiduciary analysis

–> Courts expect trustees who can and do say "no."

6. Lack of Bona Fide Non-Tax Purpose

Tax reduction alone is insufficient:

- No credible asset protection, estate planning, governance, or management purpose exists
- The structure serves no function other than income tax avoidance

–> Courts are explicit that tax motivation must be incidental, not primary.

7. Abusive Tax Reporting Positions

Several IRS-flagged promotions fail not only structurally, but legally:

- Claiming capital gains allocated to corpus are permanently excluded from taxation
- Misapplying IRC § 643(a) to assert permanent income tax exclusion
- Deducting personal expenses as trust administration
- Sloppy or inconsistent Forms 1041, K-1 or 1099

–> The IRS has explicitly rejected these interpretations.

7. Promotion of Trusts Drawing Scrutiny

- Promise guaranteed or *permanent* tax elimination
- Assure retained grantor control with tax benefits
- Rely on misstatements, misuse or abuse of DNI and/or corpus rules
- Use templated, plug-and-play documents

–> The IRS has addressed these issues in Notices, Chief Counsel Memorandums, audits, and litigation.

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Characteristics of Trusts that Survive Scrutiny

Legitimate trusts are operationally conservative, administratively disciplined, and often inconvenient to the grantor.

1. True Irrevocability

- No reversionary interests
- No retained powers under §§ 673–677
- No implied or practical path for asset return

–> Trust can refuse distributions to anyone, including the grantor

2. Genuine Trustee Independence

- Trustee is not related, subordinate, or economically dependent
- Trustee bears real fiduciary liability
- Trustee exercises documented discretion
- Trustee decisions are contemporaneously recorded

–> Judicial language consistently favors “boring” trustees.

3. Proper Asset Transfer

- Clean conveyance or arm’s-length sale
- Proper valuation
- Consideration where required
- Title and control actually change

–> Paper without operational follow-through is insufficient.

4. Income Follows Ownership

- Trust owns the income-producing asset or business
- Trust bears expenses and liabilities
- Trust operates in its own name
- Trust files and pays its own taxes

5. Respect for Fiduciary and Tax Formalities

- Accurate fiduciary accounting income vs taxable income
- Proper DNI calculations
- Correct issuance of K-1s
- Consistent tax reporting over time

6. Real Economic Consequences for the Grantor

- The grantor is no longer the “hero” of the story
- The arrangement can no longer be treated as “yours” (ie. “Grantor’s)

–> If the IRS ignored the trust instrument (form), and observed only the independent flow of ownership, money, control, risk and benefit (substance), the trust would continue to exist in practicality separate from the Grantor.

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Legal Opinions

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Robert N. Benson, Attorney at Law

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.

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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 unimpariable. That means that it is not within the power of the government or even a judge to change one word of a Contract of Trust. Once the property is transferred into a Spendthrift Trust Organization, it is subject to its own indenture, which governs and, protects the property held by it. The government can ONLY regulate and tax entities it creates.

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

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

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

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

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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Judge George W. Boring, Attorney at Law

Judge George Boring
Attorney At Law
5005 Brentwood Stair Road, Suite 205
Fort Worth, TX 76112

Subject: Copyrighted Spendthrift Trust Legal Opinion

Trust #: TX-1-Copyrighted Spendthrift Trusts

To Whom It Shall Concern;

With reference to the Trust Documents enclosed; is it 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.

Very Truly Yours,

Judge George W. Boring
Attorney

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Robert A. Desilets, Jr., J.D., LL.M., LL.M.

Opinion Letter

To Whom It May Concern:

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.

Sincerely,

Robert A. Desilets, Jr., J.D., LL.M., LL.M.

Former Attorney/Advisor to the Office of Chief Counsel of the Internal Revenue Service, Washington, DC, 1999 - 2004

Senior Legal Counsel

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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,Sections 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.

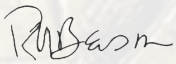
The summation of the issue is fully expressed in this Section of Scott on Trusts wherein it states that "Where a trust is created inter vivos and the Settlor reserves power to control the trustee is some respects in the administration of the trust, the Settlor may or may not hold the power of control 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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Everette J. Myers, IRS Senior Revenue Agent

MYERS AND ASSOCIATES

Date: May 6, 2003
To: Robert Benson
Re: Compliance with the IRC

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 (Statues 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.

Sincerely,

Everette J. Myers

Trustee

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The Rosen and Rosen Law Firm, Attorneys at Law

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PAUL B. ROSEN*
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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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The Rosen and Rosen Law Firm (Memorandum)

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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.)[1]. 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.

[1] 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...".

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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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Paul B. Rosen, Attorney and Counselor at Law

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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.

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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.[1]

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.



1 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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Steven E. Gurian, Esq., LL.M. (Legal Opinion on IRC §643)

EASY ESTATE PROBATE

ATTORNEY CLIENT PRIVILEGED INFORMATION

October 8, 2025

Asset Protection Services of America Trust
c/o Jay Butler, Trustee
732 South 6th Street
Suite N
Las Vegas, Nevada 89101

Re: Application of IRC § 643(b) to the Income Taxation of Non-Grantor Trusts

Dear Mr. Butler:

Attached you will find the legal opinion you have asked my office to prepare in connection with the interpretation and application of IRC § 643(b) to the Benson Financial Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust.

Should you or your office have any questions, please do not hesitate to contact me.

Very truly yours,

Steven E. Gurian, Esq., LLM

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EASY ESTATE PROBATE

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ATTORNEY CLIENT PRIVILEGED INFORMATION

October 2, 2025

Asset Protection Services of America Trust
c/o Jay Butler, Trustee
732 South 6th Street
Suite N
Las Vegas, Nevada 89101

Re: Application of IRC § 643(b) to the Income Taxation of Non-Grantor Trusts

Ladies and Gentlemen:

We have acted as counsel to Asset Protection Services of America Trust, in connection with the above-referenced matter. Asset Protection Services of America Trust, has requested that we deliver this opinion to you, and we understand that Asset Protection Services of America Trust will rely on this opinion and the legal analysis contained herein.

BACKGROUND

Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts (hereinafter the "Trust") were created as an asset protection and tax planning vehicle. A third-party settlor, acting on behalf of the taxpayer creates and funds the Trust, and the taxpayer gives the authority to add or remove Trustees and Beneficiaries to a compliance officer/overseer. The Trustee manages the day to day operations of the Trust including the filing and payment of federal income tax, but does not have the authority to add/remove Trustees and Beneficiaries. By designating the Trust as a non-grantor trust, the settlor of the Trust gives up control over any assets that are transferred to it. Consequently, these assets become creditor protected. Likewise, the spendthrift provision in the Trust adds an extra layer of protection by eliminating the Beneficiaries' ability to transfer or assign their interest in the trust. The spendthrift provision also prevents creditors from attaching or taking Trust assets that are for the benefit of the Beneficiary. The spendthrift provision of the Trust protects a Beneficiary's interest in the Trust from both voluntary and involuntary transfers, including claims by creditors. A valid spendthrift provision must restrain both voluntary and involuntary transfers of the Beneficiary's interest which is the case with the Trust. This means that creditors generally cannot attach to the assets of the trust or compel distributions to satisfy debts before the Beneficiary receives the distribution.[23]

[23] *See* Fla. Stat. § 736.0502; *See also In re Williams,* 118 B.R. 812, 813 (Bankr. N.D. Fla 1990); *Kraft v. Commissioner*, 142 T.C. 259, 266 (2014)(holding that the commissioner looks to state law to determine the validity and enforceability of a spendthrift provision in order to determine whether or not a taxpayer has "property" or "rights to property" that could be the subject of levy.

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From a tax standpoint, by structuring the Trust as a non-grantor Trust, the settlor does not pay tax on any income earned, but rather the trust has its own obligation to pay tax as a legally distinct entity. However, when a non-grantor trust makes a distribution to a Beneficiary, the taxable ordinary income is passed to the Beneficiary and taxed on their personal income tax return. Additionally, the Trust may take advantage of certain business deductions under IRC § 162 for ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. A non-grantor trust is treated as a separate taxable entity, and it may deduct expenses under IRC § 162 if it engages in a trade or business. If the Trust is primarily engaged in passive activities, *e.g.*, investment management, those expenses may not qualify as IRC § 162 deductions; however, they instead might fall under IRC § 212, which covers expenses for the production of income.

IRC § 643(b) clearly and unambiguously states:

> (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.

A plain reading of IRC § 643(b) would remove extraordinary dividends or taxable stock dividends from the definition of "income" if a fiduciary has the sole and absolute authority to designate something as extraordinary dividends or taxable stock dividends, and that designation is paid to the corpus of the Trust and not subject to distribution. Such interpretation and classification of extraordinary dividends or taxable stock dividends as "non-income" would make those alternate forms of the "income" under IRC § 643(b) non-taxable.

IRC § 162 allows for a deduction of:

> all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including –
>
> (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
>
> (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and
>
> (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

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Non-grantor trusts are treated as separate entities for tax purposes, meaning they file their own tax returns, *i.e.,* Form 1041, and pay taxes on their income. As separate taxpayers, they are entitled to deductions that any other taxpayer engaged in a trade or business can claim, provided they meet the criteria.

While as of the date of this Opinion no legal authority challenging the use of the Trust exists, on August 18, 2023, the Office of Chief Counsel for the Internal Revenue Service released an internal memorandum (Number: AM 2023-006) (hereinafter the "Memorandum") which addressed the use of this Trust as an estate planning tool. The Memorandum states that the structure does not offer the tax benefits claimed by promoters of the Trust. Specifically, the Memorandum states that any and all promotional materials on the Trust take IRC § 643(b) out of context and that IRC § 641 is not factored into any analysis concerning the taxation of the Trust. It is important to note that the Memorandum is not binding precedent, and the Internal Revenue Service has not issued an opinion on the Trust, nor has a court of competent jurisdiction issued an opinion on the Trust.

In light of the above, we were asked to opine on the following matters with respect to application of IRC § 643(a) and (b) to Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts and the use of the Trust:

In the context of IRC § 643, is there a distinction between "distributable net income" and "taxable income?"
Whether the Trust will recognize income on its capital gains?
Whether the Trust will recognize income on extra ordinary dividends?
Whether the Trust can take advantage of deductions under IRC § 162?
How a contribution to the Trust would be made in compliance with the Internal Revenue Code and Regulations?

GENERAL QUALIFICATIONS AND ASSUMPTIONS

For purposes of this opinion we have examined the executed original, or a copy certified or otherwise authenticated to our satisfaction of only the documents listed on the attached **Exhibit "A"** (the "Documents"). With respect to the Documents we have assumed: (i) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of the officers and other persons and entities signing each of said documents as or on behalf of the parties thereto; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to authentic originals of all documents submitted to us as certified, conformed, or photostatic copies; (iv) the due execution and delivery of all documents by all parties thereto (including those documents furnished to us in unexecuted form); and (v) that the aforesaid documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion. For the purposes of rendering our opinion, we have not

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reviewed any document other than the documents set forth above and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements, representations, and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete, and accurate in all material respects. Notwithstanding anything to the contrary set forth herein, we are not aware of any facts or circumstances that render our assumptions false, misleading, or materially incorrect.

We have also assumed that: (i) there has not been any mutual mistake of fact or misunderstanding, fraud, duress, or undue influence in connection with the transactions described herein; (ii) the conduct of the parties to the transactions that are the basis for your request for this opinion has complied with all tax reporting requirements, applicable laws (federal, state, and/or local), and any requirement of good faith, fair dealing, and conscionability in all respects material; (iii) that the information contained in any and all tax reporting forms would be accurate and comport with the Internal Revenue Code, Treasury Regulations, and all local and federal laws; (iv) you and your agents have acted in good faith and without notice of any facts or allegations that would be inconsistent, in any material respect, with the facts and assumptions contained, or the opinion as expressed, herein; (v) the constitutionality or validity of a relevant statute, rule, regulation, or agency action is not in issue unless a reported decision has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; (vi) other documents (aside from those executed in connection with the creation and administration of the Trusts) and court orders (pertaining to matters arising from or directly affecting the Trusts) have not been written, entered, rendered, authored, or otherwise provided to us that have or would undermine our opinion; and (vii) any and all tax reporting obligations have been met and are an accurate reflection of the transactions reported therein and are in conformity with the Internal Revenue Code and applicable law.

We have also assumed that the parties to the Documents have in all material respects complied and will comply at all times with their respective representations, warranties, covenants duties, and agreements contained in the Documents, and have not taken or made and will not take or make any actions or statements that are in any material respect inconsistent with or contradictory to such representations, warranties, covenants and agreements. Further, we have assumed that the Trust are not or will not be used in a manner that is inconsistent with the tax reporting, filing, and payment requirements imposed by the Internal Revenue Code.

The law covered by the opinion expressed herein is limited to the Internal Revenue Code, Treasury Regulations, as well as the express provisions of the Trust (the “Opining Law”). Accordingly, we do not express any opinion as to any matter governed by any law other than the Opining Law.

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We express no opinion as to any matter not specifically set forth herein. We express no opinion on whether a court of competent jurisdiction, including but not limited to the United States Tax Court, United States Courts of Appeals, and/or Supreme Court of the United States would or would not, enter an order or judgment in contravention to the opinions set forth herein. We cannot opine as to what action a court will take in the future when reviewing actions that have or have not occurred as of the date hereof. This opinion is expressly limited to the inquires stated *supra.*

OPINIONS

Distributable Net Income and Taxable Income

It is our opinion that IRC § 643(a) modifies what is considered taxable income as defined in IRC § 63(a). Specifically, IRC § 643(a)(1) through (4) make modifications to what would otherwise be taxable income. Further, the Trust allows the Trustee to determine the allocation of principal, income, and capital gains.

Taxation of Capital Gains

It is our opinion that the gains from the sale or exchange of a capital asset will be excluded from taxable income to the extent that such gains are allocated to the corpus of the Trust and are not paid, credited, or required to be distributed to any Beneficiary during the taxable year. The trusts provided in Exhibit "A" appear to comport with IRC § 643 and provide the fiduciary-Trustee with the discretion for such an allocation, as would presumably, local law and/or state law. The Trust allows the Trustee to determine the allocation of principal, income, and capital gains.

Taxation of Extraordinary Dividends

It is our opinion that extraordinary dividends or taxable stock dividends are excluded from gross income so long as the fiduciary-Trustee does not pay or credit to any Trust Beneficiary such dividends that are allocable to corpus under the terms of the governing instrument and local law. The trusts provided in Exhibit "A" appear to comport with IRC § 643 and provide the fiduciary-Trustee with the discretion for such an allocation, as would presumably, local law and/or state law.

Deductions Under IRC § 162

It is our opinion that the Trust is entitled to the deductions allowable under IRC § 162, Treas. Reg. § 1.482-1, and Treas. Reg. § 1.162.1 so long as the Trust actively carries on a trade or business. This requires more than passive investment activities, such as owning rental properties or holding stocks and bonds. Courts have generally required regular, continuous, and substantial activity. Further, the expenses must be both ordinary, *i.e.,* common and accepted in the business, and necessary, *i.e.,* helpful and appropriate for the business. If the

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Trust is primarily engaged in passive activities, *e.g.,* investment management, those expenses may not qualify as IRC § 162 deductions. Rather, they might fall under IRC § 212, which covers expenses for the production of income.

ASSUMPTIONS OF FACT

Trustees

Each Trustee has complied at all times and in all respects material with the provisions of Trust.

Each Trustee has not and will not engage in any type of fraudulent activity in connection with the Trust.

Each Trustee and their agents and/or representatives has not taken any action in contravention to the Trust.

Each Trustee has filed a complete and accurate tax return in conformity with applicable law.

Purpose of the Trust

That the Trust complies with IRC § 2511 and 26 U.S.C. Subtitle A.

That the Trust is property funded and complies with state law.

That the asset protection benefits of the Trust comport with local and state law.

That gross income generated by the Trust would constitute an extraordinary dividend as defined in IRC § 643(b).

LEGAL ANALYSIS

Discussion of the Law.

The following discussion comprises of our analysis in reaching the opinion expressed herein and does not constitute an independent opinion as to any element of the analysis.

The Characterization of Distributable Net Income vs. Taxable Income within the Meaning of IRC§ 643

Under **IRC § 61(a),** the Internal Revenue Code defines gross income as follows:

> (a) General definition - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

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(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Annuities; (9) Income from life insurance and endowment contracts; (10) Pensions; (11) Income from discharge of indebtedness; (12) Distributive share of partnership gross income; (13) Income in respect of a decedent; and (14) Income from an interest in an estate or trust.

Under **IRC § 63(a)**, the Internal Revenue Code defines taxable income as follows:

(a) In general - Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means **gross income** minus the deductions allowed by this chapter (other than the standard deduction). *[Emphasis Added].*

Under **IRC § 641(a)**, the Internal Revenue Code imposes tax on income of trusts and estates as follows:

(a) Application of tax - The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust […].

IRC **§ 643(a)** clearly and unambiguously states:

(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

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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.** *[Emphasis Added].*

A cursory overview of IRC § 61(a) would demonstrate that any revenue generated from the enumerated 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 the **modifications** delineated in subsections (1) through (4). In other words, IRC § 643, *et. seq.,* modifies the definition of taxable income, 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). Here, the Trust allows the Trustee to determine the allocation of principal, income, and capital gains.

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.

IRC § 643(b) clearly and unambiguously states:

(b) Income

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> 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**. *[Emphasis Added].*

The Memorandum fails to address the fact that both subsections (a) and (b) modify the meaning of "taxable income." IRC § 643(b) specifically states that unless the words "taxable", "distributable net", "undistributed net", or "gross", precede the word "income", then "income" would mean 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. *See also* Treas. Reg. § 1.643(b)-1. Clearly, there is a modification of what constitutes "income" under IRC § 643(b) as well.

In essence, IRC § 61(a)(14) states that income received by a trust is considered gross income which is then modified by IRC § 63(a), which allows for deductions. It is IRC § 63 that creates the concept of taxable income (gross income minus allowable deductions). Once taxable income is determined, IRC § 641(a) then provides the framework for further computing taxable income within the context of a trust. IRC § 643 then modifies the computation under IRC § 641(a) by providing rules for excluding certain amounts *e.g.,* extraordinary dividends or capital gains allocated to corpus from distributable net income.

Taxation of Capital Gains

IRC § 643(a)(3) clearly and unambiguously states:

> **(3) Capital gains and losses**
>
> **Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any Beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c)**. Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of 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.

The Memorandum states that the Trust will recognize income on its capital gains and dividends, except to the extent those amounts are distributed or deemed to be distributed to its

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Beneficiaries. Looking at IRC § 643(a)(3) as a whole, the assessment made in the Memorandum is correct. Gains from the sale of a capital asset are excluded to the extent that such gains are allocated to corpus and are not paid, credited, or required to be distributed to the Beneficiary during the taxable year, or paid, permanently set aside, or to be used for the purposes specified in section 642(c). Treas. Reg. § 1.643(a)-3 expounds further by stating that gains from the sale or exchange of capital assets are ordinarily excluded from distributable net income and are not ordinarily considered as paid, credited, or required to be distributed to any Beneficiary except as provided for in § 1.643(a)–6 and paragraph (b) of this section which addresses income from foreign trusts and certain sales of capital assets.

Treas. Reg. § 1.643(a)-3(b) clearly and unambiguously states:

> (b) Capital gains included in distributable net income. Gains from the sale or exchange of capital assets **are included in distributable net income to the extent they are, pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of discretion by the fiduciary** (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by applicable local law)—
>
> (1) **Allocated to income** (but if income under the state statute is defined as, or consists of, a unitrust amount, a discretionary power to allocate gains to income must also be exercised consistently and the amount so allocated may not be greater than the excess of the unitrust amount over the amount of distributable net income determined without regard to this subparagraph § 1.643(a)–3(b));
>
> (2) **Allocated to corpus but treated consistently by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a Beneficiary**; or
>
> (3) **Allocated to corpus but actually distributed to the Beneficiary or utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a Beneficiary.** *[Emphasis Added].*

Subsections (1) through (3) describe the only three instances (with its own set of limitations) where capital gains **would** be included in distributable net income. Because IRC § 643(a) modifies taxable income as defined in IRC § 63(a), by virtue of subsections (1) through (4), it is reasonable to infer that gain from the sale or exchange of a capital asset is likewise excluded from taxable income.

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Taxation of Extraordinary Dividends[24]

IRC § 643(a)(4) clearly and unambiguously states:

> (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**. *[Emphasis Added].*

The plain language of IRC § 643(a)(4) excludes extraordinary dividends and taxable stock dividends from gross income so long as the fiduciary-Trustee does not pay or credit to any Trust Beneficiary such dividends that are allocable to corpus under the terms of the governing instrument and local law.

The Memorandum also addresses **IRC § 643(b)** which clearly and unambiguously states:

> (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**. *[Emphasis Added].*

A plain reading of the pertinent portions of IRC § 643(b) at issue would demonstrate that gross income that is characterized as extraordinary dividends or taxable stock dividends would not be considered income. As stated *supra*, IRC § 61(a) delineates 14 classes of income which are subject to taxation by virtue of IRC § 63(a) (minus deductions). Therefore, if IRC § 643(b) explicitly removes extraordinary dividends or taxable stock dividends from income as defined in IRC § 61(a), it therefore would not be subject to tax under IRC § 63(a), assuming that certain conditions precedent are met. *See* Treas. Reg. § 1.643(b)-2 ("Extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be

[24] Although the focus of this opinion is the taxation of a complex trust, under Treas. Reg. § 1.643(a)-4 "a trust which qualifies under subpart B (section 651 and following) as a "simple trust," there are excluded from distributable net income extraordinary dividends or taxable stock dividends which are not distributed or credited to a Beneficiary because the fiduciary in good faith determines that under the terms of the governing instrument and applicable local law such dividends are allocable to corpus."

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allocable to corpus under the terms of the governing instrument and applicable local law are not considered "income" for purposes of subpart A, B, C, or D, part I, subchapter J, chapter 1 of the Code. *See also* section 643(a)(4), § 1.643(a)–4, § 1.643(d)–2, section 665(e), paragraph (b) of § 1.665(e)–1, and paragraph (b) of § 1.665(e)–1A for the treatment of such items in the computation of distributable net income"). In sum, IRC § 643(b) offers a deferral mechanism for the payment of income tax only to the extent sums are not distributed out from trust, to trust Beneficiaries. It is not a perpetual tax avoidance scheme, but a tax deferral mechanism similar to that of a like-kind exchange under IRC § 1031 or a tax-deferred exchange of property for stock in a corporation under IRC § 351.

Some materials have criticized the interplay between IRC § 643 and IRC § 641. For instance, some critics have taken the position that the promotional materials do not address IRC § 641 which provides that the trust's taxable income is computed as it is for individuals; however, these materials fail to account for the modification of IRC § 643(a).

IRC § 641(b) clearly and unambiguously states:

> The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, **except as otherwise provided in this part**. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time. *[Emphasis Added].*

While IRC § 641 serves as the foundational section for determining the taxable income of trusts and estates, it can be modified pursuant to its very own language. IRC § 641 provides that Subpart A can modify the computation of taxable income. Subpart A consists of IRC §§ 641 through and including 646. IRC § 641 establishes that trusts are separate taxable entities and provides the framework for computing their taxable income. IRC § 641 governs the tax computation of ordinary income, *e.g.,* interest, dividends, rent, capital gains, and other items not excluded under IRC § 643. However, IRC § 643 does modify this computation as IRC § 643(a) provides rules for excluding certain amounts *e.g.,* extraordinary dividends or capital gains allocated to corpus from distributable net income. In other words, IRC § 641 simply ensures that the trusts overall taxable income is properly computed.

It is important to note that distributable net income exclusions are not full exemptions. Even if an amount like an extraordinary dividend is excluded from distributable net income under IRC § 643(a), it does not mean it escapes taxation. Rather, the trust must compute its total taxable income under IRC § 641, including amounts allocated to corpus unless another specific provision *e.g.,* IRC § 643(a)(4) excludes it. In other words, if a fiduciary allocates extraordinary dividends or gains to corpus, IRC § 643 allows for their exclusion from distributable net income. Under IRC § 641, the trust still determines if these corpus allocations are taxable to the trust itself; however, IRC § 643 would be the tool used to determine whether

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or not extraordinary dividends or gains are allocated to the corpus of the trust. If allocated to the corpus of the trust, the allocation would be classified as undistributed net income; however, the allocated amount would not be subject to taxation by virtue of IRC § 643(a)[25][26]. For example, if the corpus allocation is treated as a return of principal (as in PLR-133314-14), it might avoid taxation at both the trust and Beneficiary levels.

In a relatively recent Private Letter Ruling, the Internal Revenue Service addressed the tax implications of a settlement agreement involving a family trust and its Beneficiaries while analyzing and applying IRC § 643. Private Letter Ruling (PLR) 201519012[27], also known as PLR-133314-14, was issued by the Internal Revenue Service on May 8, 2015.

The case involved a family trust that became the subject of litigation among the decedent's descendants. To resolve the disputes, the parties entered into a settlement agreement, which included the following key provisions: 1) Termination of Interests: The interests of certain great-grandchildren in the trust would be completely terminated in exchange for a distribution of a specified amount to each from the trust; 2) Funding the Distributions: To fund these distributions, an LLC would distribute a certain amount to its members, of which a portion would go to the trust; 3) Dismissal of Claims: The great-grandchildren would dismiss their claims with prejudice, and other family members would dismiss their respective claims; 4) Income Distribution Adjustments: Until the death of a specific grandchild, the income of the trust would be distributed among specified Beneficiaries in defined percentages, and 5) Post-Death Distributions: Following the death of the grandchild, all distributions to Beneficiaries by the trust would be determined under the terms of the trust, assuming that both of the specified great-grandchildren were deceased and not survived by issue. The Internal Revenue Service was asked to rule on several tax implications of this settlement, including whether the trust would continue to be exempt from the Generation-Skipping Transfer Tax provisions and how the distributions would be treated for income tax purposes.

The Internal Revenue Service issued favorable rulings on all requested points, including the exemption from the Generation Skipping Transfer Tax of distributions to the great-grandchildren. However, what is noteworthy is that the Internal Revenue Service ruled that the distribution received by the trust from the LLC, pursuant to the settlement agreement, was considered an extraordinary dividend and excluded from the definition of "income" within the meaning of IRC § 643(b). The characterization of the LLC distribution to the trust under the settlement agreement was a return of corpus. Because it qualified as an extraordinary dividend and was allocated to corpus, it fell outside the definition of "income" under IRC

[25] Note that distributions for health, education, support, and maintenance are taxable to the Beneficiary only if they consist of taxable income generated by the trust. If the distributions are from the trust's principal, they generally are not taxable as income to the Beneficiary. Reviewing the trust's tax filings and consulting with a tax advisor is advisable for precise determinations.

[26] Additionally, IRC § 2503(e). provides that qualified transfers made directly to a medical care provider or educational institution for someone else's benefit are not subject to gift tax.

[27] While this ruling turned on a specific set of facts and should not be considered precedent for other taxpayers, it does offer insight into the application of IRC § 643.

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§ 643(b). As a result, the trust did not include that amount in its taxable income. *i.e.,* distributable net income, and thus the Beneficiaries likewise did not have to report it as income under IRC § 662. The key takeaway is application of the extraordinary dividend exception. The revenue ruling confirms that if a fiduciary, in good faith, allocates an extraordinary dividend to corpus under valid instrument terms and state law, it is excluded from distributable net income and taxable income under IRC § 643(b). Here, reliance on IRC §§ 643(a)(4) and 643(b) — the "good faith allocation to corpus" removed the amount from the definition of income.

From a practical application standpoint, the Internal Revenue Service agreed that the distribution was an extraordinary dividend allocated to corpus, allowing its exclusion from distributable net income. Despite being excluded from distributable net income, the trust still needed to consider the distribution under IRC § 641 to determine whether it represented taxable income, *e.g.,* ordinary income, capital gains. The Internal Revenue Service concluded that the distribution qualified as a return of corpus, thus avoiding taxation under IRC § 641. With respect to the Beneficiaries, because the amount was excluded from distributable net income and properly treated as corpus, it was not taxed to the Beneficiaries under IRC § 662.

Deductions Allowable Under IRC § 162

Deductions for trust expenses can be allowed to the trust under IRC § 162 and Treas. Reg. § 1.162-1, provided the expenses meet the requirements for being an ordinary and necessary business expense.

IRC § 162(a) clearly and unambiguously states:

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

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Under **IRC § 162(a)**, a trust can deduct certain expenses if they possess the following key requirements for deductibility: (1) Ordinary, *i.e.,* common and accepted in the type of business the trust operates, (2) Necessary, *i.e.,* appropriate and helpful for the trust's business operations, (3) Incurred during the taxable year *i.e.,* the expenses must be paid or incurred in the current tax year that the deduction is being sought, and (4) Reasonable, *i.e.,* the lease payments should not exceed what would be expected in an arm's-length transaction.

For example, if the Trust were to take a deduction for lease payments in connection with a business, and the lease payments are a necessary, customary, and ordinary business expense, the Internal Revenue Service would ordinarily allow such a deduction. *See B. Forman Co. v. Commissioner,* 453 F.2d 1144, 1160 (2d Cir. 1972)(holding that the test for determining deductibility of business expense is whether hard-headed businessman, under the circumstances, would have incurred the expense). If lease agreements were executed with the intent of furthering a business purpose already in existence before or at the time of the creation of the Trust, the Trust would be allowed to take a deduction for the payments. If the Trust and the lessee have a business purpose for entering into a lease agreement, *e.g.,* if a lessee is leasing equipment, office space, or other property essential to its operations, those payments could qualify for a deduction under IRC § 162. Further, if the leased property is being used in the lessee's trade or business and not for personal purposes. Finally, the lease is a true lease and not a disguised sale or financing arrangement. This distinction ensures that the payments qualify as deductible rental expenses and not as capital expenditures.

Under **Treas. Reg. § 1.162-1(a)**, "Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, such as salaries, rentals, or other payments for the use of property." The regulation explicitly includes "rentals" as an example of deductible business expenses if they are ordinary, necessary, and directly connected with the business. If the Trust conducts or operates a business then the lease payments in the instant example are deductible because they represent a cost incurred to generate income in the business. Therefore, deducting them matches expenses with the income they help produce, adhering to the principle of matching expenses under tax accounting. They are also considered a legitimate, recurring cost of doing business, similar to salaries, supplies, or utilities.

As long as the Trust meets these criteria and substantiates the expenses with appropriate documentation, *e.g.,* lease agreements and proof of payment, lease payments should qualify as deductible business expenses. If the Trust is primarily engaged in passive activities, *e.g.,* investment management, those expenses may not qualify as IRC § 162 deductions. Rather, they might fall under IRC § 212, which covers expenses for the production of income. In some two trust structures, one trust is allocated or funded with passive income assets which take advantage of deductions under IRC § 212 while another trust may contain assets that generate income from an active trade or business and are thus allowed deductions under IRC § 162.

Illustrative Example

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Here are two illustrative examples of contributions and use of Trusts as an asset protection/ tax planning vehicle.

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

As discussed above, the first method would be where a third-party settlor, acting on behalf of the taxpayer creates and funds the Trust, and the taxpayer is appointed as Trustee and is given the authority to add or remove Trustees and Beneficiaries. The taxpayer-client can sell an appreciated capital assets to the Trust in exchange for a demand note, the demand note would be based on the book value or the taxpayer-client's basis in the contributed asset. In either scenario, if there is a capital event such as the sale of real estate, capital gains tax would be calculated by ascertaining what would qualify as gross income under IRC § 61(a)(3), followed by a determination of what taxable income would be under IRC § 63(a). Because the entity selling real estate is a non-grantor trust, IRC § 641 would determine the computation of tax based on the sale of real estate by the Trust. However, to the extent that IRC § 643(a)(1-4) and IRC § 643(b) reclassifies income items based on their allocation to corpus, no tax would be due on the sale of the real estate. However, tax would be due if/when the Trust makes an income distribution to its Beneficiaries as a result of their inclusion in the distributable net income of the Trust. *See* Treas. Reg. § 1.643(a)-3(b). Notwithstanding, if the Trust generates income and it is not distributed but allocated to the corpus of the Trust, the Trust will not recognize gain or loss as a result of the use IRC § 643.

To illustrate an example, assume that Jane owns a commercial property she purchased 20 years ago for $500,000.00. The property is now worth $1,000,000.00. If Jane sells the property outright, she faces a significant capital gains tax liability, estimated at $100,000.00 (based on a twenty percent (20%) federal income rate, state taxes, and depreciation recapture).

Jane wants to defer the capital gains taxes and create a tax-efficient income stream for retirement. Jane consults her tax and legal advisors, who create an irrevocable trust. Jane contributes the commercial property via gift under IRC § 2010(c) to the Trust. The gift is made using the commercial property's fair market value, but the Trust takes a carryover basis under IRC §§ 1015(a) and 2512. If the Trust later sells the commercial property, it would realize a gain of $500,000.00 under IRC §§ 61(a)(3) and 63(a). Since the seller of the commercial property is a non-grantor trust with its own tax reporting and payment obligations, IRC § 641 would determine the computation of tax based on the sale of real estate by the Trust. However, if Jane as Trustee in good faith, allocates the capital gain to corpus under valid instrument terms and state law, it is excluded from distributable net income and taxable income under IRC § 643(b). Here, reliance on IRC §§ 643(a)(4) and 643(b) — the "good faith allocation to corpus" would remove the amount from the definition of income. Therefore, to the extent that IRC § 643(a)(1-4) and IRC § 643(b) reclassifies income items based on their allocation to corpus, no tax would be due on the sale of the commercial property. However, if the Trust makes a distribution of income to a Beneficiary, the distribution is taxable because it is allocated to the distributable net income of the Trust. Distributions for health, education,

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support, and maintenance are taxable to the Beneficiary only if they consist of taxable income generated by the trust. If the distributions are from the trust's principal, they generally are not taxable as income to the Beneficiary.

Deferred Sales Trust[28]

The deferred sales trust method, where the Trust is established before the sale of an appreciated asset, is an alternative example of how trusts are used in deferring taxation. Here the seller enters into a legal agreement with the Trust, transferring ownership of the appreciated asset to the trust. The Trust then becomes the legal owner of the asset and sells it to a third-party buyer. The seller relinquishes direct control over the asset and the proceeds of the sale, but becomes the Beneficiary of the Trust. Control over trust assets is exercised by the Trustee (a third party or professional Trustee). Since the Trust is structured to defer the seller's receipt of the sales proceeds, the seller does not immediately incur a taxable event. In return for transferring the asset to the Trust, the seller receives a promissory note (installment contract) from the Trust. The note outlines periodic payments (principal and interest) over a set period or the seller's lifetime. These payments are taxed incrementally, spreading out the capital gains tax liability and potentially reducing the overall tax burden. The Trust would then reinvest the proceeds from the sale into income-generating or growth-oriented assets. Investments are chosen to align with the seller's financial goals, such as retirement income, estate planning, or further tax optimization. Capital gains taxes are deferred until the seller receives payments; therefore, because payments are spread over time, the tax liability can often be managed to keep the seller in a lower tax bracket. The deferred nature of taxes allows the seller to use more of the proceeds upfront for investment or other purposes.

To illustrate an example, assume that Jane owns a commercial property she purchased 20 years ago for $500,000.00. The property is now worth $5,000,000.00. If Jane sells the property outright, she faces a significant capital gains tax liability, estimated at $1,200,000.00 (based on a twenty percent (20%) federal income rate, state taxes, and depreciation recapture).

Jane wants to defer the capital gains taxes, reinvest the proceeds to generate passive income, and create a tax-efficient income stream for retirement. Jane consults her tax and legal advisors, who create an irrevocable trust. The trust is structured under IRC § 453 (installment sale method) and Treas. Reg. § 15a.453-1 to allow deferred recognition of capital gains. Jane then transfers the property to the Trust in exchange for a promissory note. This exchange is not treated as a sale for tax purposes because the seller does not yet realize the capital gains per IRC § 453(f).

[28] Unlike the Traditional Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust Method where the client/seller is named as the Trustee, the Deferred Sales Trust would require a separate third-party Trustee to administer the trust assets and arrange payment of the installment sale note.

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After the Trust is funded with the property, the Trust sells the property to a buyer for $5,000,000.00. Since the Trust is the legal seller, the sale proceeds go into the Trust. The transaction is not a taxable event for Jane because she has not received cash or its equivalent, *i.e.,* IRC § 453(b). In return for transferring the asset, Jane receives a promissory note structured under IRC § 453 for installment sales. The promissory note specifies payments of $300,000.00 annually (principal and interest) over twenty (20) years. The capital gains tax is recognized incrementally as payments are received IRC § 453(a) unless allocated to corpus under IRC § 643. The Trustee can then reinvest the proceeds into income-generating assets, *e.g.,* stocks, bonds, or REITs, following prudent investment guidelines. The Trust operates independently of Jane to maintain the separation required for deferral benefits. *See* Treas. Reg. § 1.451-2. The installment sale rules allow taxpayers to defer recognition of capital gains until payments are received.[29]

Qualifications in the Application of Law

In expressing our opinion, we note the following considerations presented by the facts of this case. First, each Trustee has and will observe all applicable statutory formalities and requirements of the Trust in all material respects as well as all tax reporting requirements.

In reaching our opinion herein, we have relied upon concepts from the Trust, the Internal Revenue Code, Treasury Regulations, statutory authorities, cases, and secondary sources discussed herein which involve general principles regarding the taxation of the Trust. While we believe that the general principles applicable in the context of the analysis proffered are supported by the Documents and law, we caution that a court addressing the issues presented for legal analysis in this opinion would rule on the issues of the taxation of the Trust based upon the particular facts and circumstances before it, and might, therefore, reach a different result based on those facts. The foregoing opinion is therefore a reasoned opinion based upon an analysis of the Documents, the Internal Revue Code, Treasury Regulations, and case law decided under the laws of various jurisdictions that we believe would be applicable by analogy to the factual patterns set forth herein. Thus, the opinion expressed herein is not a guaranty as to what a particular court or regulatory committee actually would hold, but is an opinion as to the decision a court or regulatory committee would reach assuming that the issues were properly presented to a court or regulatory committee, and assuming that the a court or regulatory committee were to follow existing precedent as to legal and equitable principles applicable in any future litigation regarding the taxation of the Trust.

In this regard, we further note that legal opinions on matters involving the Opining Law unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions of third parties typically are provided. These inherent limitations exist primarily

[29] Treas. Reg. § 15a.453-1 provides detailed guidance on how installment obligations are treated for tax purposes, ensuring compliance with IRC § 453. IRC § 453(b) states that the installment method applies when a taxpayer does not receive full payment in the year of sale. IRC § 453(f) ensures that transferring property to the Trust in exchange for a promissory note does not trigger immediate tax liability. Treas. Reg. § 1.451-2 prevents Jane from being taxed on funds in the Trust since she does not have direct access to or control over the proceeds.

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because of: (i) the pervasive equity powers of courts properly exercising jurisdiction, (ii) the overriding goal of reorganization to which other legal rights and policies may be subordinated, (iii) the potential relevance of the exercise of judicial discretion, as evidenced by the fact that courts have accorded different degrees of significance to a variety of factual elements, (iv) facts and circumstances arising in the future that are different from those assumed herein, and (v) the nature of the trust administration and taxation of trusts and estates in general. Accordingly, the conclusions reached herein must be considered in light of these broad statutory and equitable powers of a court or regulatory committee. Consequently, we render no opinion or advice of counsel as to the interplay of the issues opined on herein with the judicial or regulatory process with respect to the Trust generally, or strategic factors or circumstances that might affect the outcome of any litigation regarding the taxation of the Trust and related matters.

This opinion is rendered pursuant to your request and is solely for your use, and may only be relied upon by you, your successors or assigns (including any Trustee or any substitute or successor Trustee), and may not be relied upon for any other purpose or relied upon by, or furnished or quoted to, any other Person for any purpose. This opinion speaks only on the date hereof and is based on our understandings and assumptions as to present facts, and on our review of the above-referenced documents and the application of state and federal law as the same exist on the date hereof, and we undertake no obligation to update or supplement this opinion after the date hereof for the benefit of any Person (including any Person granted reliance in the preceding sentence) with respect to any facts or circumstances that may hereafter come to our attention or any changes in facts or law that may hereafter occur or take effect.

Very truly yours,



Steven E. Gurian, Esq., LL.M

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EXHIBIT "A"

IRC Memo AM 2023-006;
Benson and Associates Legal Opinion dated June 3, 2002;
Myers and Associates Legal Opinion dated May 6, 2003;
Paul B. Benson Legal Opinion dated June 12, 2019;
Asset Protection Services of America Trust – Internal Revenue Code and Legal Compliance: Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust;
2010 IRS Nationwide Tax Forum Presentation;
Current Federal Tax Developments Article by Thomas, Zollars, and Lynch, Ltd.;
Copyright Master's Trust 2012 Business Trust; and
Master's Irrevocable Spendthrift Trust Agreement.

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Supporting Articles



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Optimizing Your Taxes Using the 1041 System

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Optimizing Your Taxes Using The 1041 System

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Money

KC Chohan, Founder of Together CFO Outsourced CFOs Specializing in Creating Optimized Tax Structures for the High Net Worth & Family Offices



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As you're aware, there are many different legal taxation systems in the U.S. Local, state and federal all have their share of the pie. And as business owners, we must file taxes for each of our companies as well as for ourselves as individuals. Knowing the laws in each system has its advantages: Being informed and able to navigate tax laws will enable you to optimize your taxes. The two main tax systems used by business owners are the 1040 system and the 1041 system.

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The advantages of optimizing your tax strategy mean you will be able to increase cash flow and compound your wealth. Here, I'll discuss one such optimization approach using the 1041 system and explain how it differs from the 1040 approach most people use.

1040

Form 1040, the Individual Income Tax Return, is the way most people file their taxes. The education on advanced taxation strategies is not always the most popular of subjects. Instead, many business owners do the same thing year after year, expecting a different result. The usual process involves sending over their profit and loss and balance sheets to their certified public accountant (CPA), who then looks for the latest loopholes to help reduce the owner's tax liability. This is often enough for smaller businesses, but for larger companies, using loopholes is not the answer.

First, tax laws change from year to year. Prime examples of this include conservation easement and research and development credits, but the list goes on and on. Using loopholes is not a long-term solution to optimizing taxes.

1041

A complex trust, one of the nine types of 1041 trusts/estates, is one way in which the top 1% optimize their taxes. The 1041 system has a different set of laws that allows for different classifications and deductions compared to the 1040 approach. The advantages of setting up an optimized tax system mean you will be able to increase cash flow and start to create more wealth.

To understand a complex trust, it helps to compare it to a simple trust. A simple trust has three main requirements:

1. It must distribute all income to the beneficiaries.
2. It cannot distribute the principal.
3. It cannot make distributions to charities.

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A complex trust does one or more of the things that a simple trust can't do. The question then becomes why isn't everyone using the 1041 system? One reasons is the expense of setting up such a system, which can run into hundreds of thousands of dollars, and that's only if you can qualify to be part of a system. Wealth management companies and multifamily offices can charge hundreds of thousands of dollars to set up such structures and generally require a minimum of $25 million of liquid investable assets before they would consider setting up a 1041 structure.

If you are looking to optimize your taxes and you are not in the 1%, the next step would be to research a specialist in the 1041 complex trust system. Many estate planning legal firms, estate specialty CPA firms and CFO services companies may be able to assist you.

Know Your Options

The key to optimizing your taxes is to educate yourself on the different options available. But note that creating and operating an advanced tax strategy like the one above will likely require enlisting the help of a professional or team that specializes in the strategy you're interested in. So do your research and find the right professional or team for your situation. Once you have one in place and are fully optimized, you can start seeing the same benefits as the top elite.

The information provided here is not investment, tax or financial advice. You should consult with a licensed professional for advice concerning your specific situation.

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Khurram Chohan

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Is an Irrevocable Spendthrift Trust Subject to Division in Divorce?

Good estate planning can oftentimes revolve around asset protection – will the assets left for the benefit of children be subject to the creditors of the children or be subject to seizure by an ex-spouse. A recent case from the Massachusetts Supreme Court held that assets in an irrevocable trust could not be divided in a divorce proceeding between one of the beneficiaries and that beneficiary's spouse.

In Pfannenstiehl v. Pfannenstiehl, 475 Mass. 105, 55 N.E.3d 933 (2016), the Massachusetts Supreme Court unanimously overturned a lower court decision that had ordered that assets in an irrevocable discretionary trust created by the husband's father be split in a divorce.

The husband's father created an irrevocable trust for the husband, his siblings, and their children. At the time of the divorce proceeding, the trust held property valued at $25 million and there were 11 beneficiaries.

The irrevocable trust instrument states that distributions shall be made as follows:

> [The trustees] shall pay to, or apply for the benefit of, a class composed of any one or more of the Donor's then living issue such amounts of income and principal as the Trustee, in its sole discretion, may deem advisable from time to time, whether in equal or unequal shares, to provide for the comfortable support, health, maintenance, welfare and education of each or all members of such class.

The irrevocable trust also contains a spendthrift clause:

> Neither the principal nor income of any trust created hereunder shall be subject to alienation, pledge, assignment or other anticipation by the person for whom the same is intended, nor to attachment, execution, garnishment or other seizure under any legal, equitable or other process.

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. As explained (citations omitted):

> Interests in discretionary trusts generally are treated as expectancies and as too remote for inclusion in a marital estate, because the interest is not "present [and] enforceable"; the beneficiary must rely on the trustee's exercise of discretion, does not have a present right to use the trust principal, and cannot compel distributions. Diane attempts to distinguish the 2004 trust from a "pure" discretionary trust, however, by noting that distributions from the 2004 trust are subject to an "ascertainable standard" which governs the trustee's discretion.
>
> Under § 103 of the Uniform Trust Code, an "ascertainable standard" refers to a trust provision that requires a trustee to distribute funds to support a beneficiary's needs "relating to an individual's health, education, support or maintenance." See G. L. c. 203E, § 103. This standard limit's the discretion of the trustee, who is obligated to make distributions with an eye toward maintaining the beneficiary's standard of living in existence at the time the trust was created.
>
> The trustee of a trust that contains an ascertainable standard must engage in a detailed inquiry into each beneficiary's needs and finances, and must "give serious and responsible consideration both as to the propriety of the amounts and as to their consistency with the terms and purposes of the trust." Such consideration must be "viewed in light of [the beneficiaries'] assets and needs, when

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measured against the assets of the trust." See G. L. c. 203E, § 803 (if trust has more than one beneficiary, trustee must give "due regard to the beneficiaries' respective interests").

The wife argues that, because the trustees of the 2004 trust must take the husbands standard of living into account when determining whether to make distributions, the husband has a present enforceable property right to compel distributions when he needs them. Her argument relies in large part on the Appeals Court's decision in Comins v. Comins, 33 Mass. App. Ct. 28 , 30-31 (1992), in which an interest in a discretionary trust with an ascertainable standard was deemed sufficiently certain to include the trust in the marital estate. In that case, the wife was the sole beneficiary of the trust. She received all of the trust income and held power of appointment over the trust upon her death.

Unlike the spouse in Comins, however, the husband is one of eleven living beneficiaries among an open class of beneficiaries. The trustees of the 2004 trust are required to take into account the trust's long-term needs and assets, unpredictability in the stocks that fund it (which the judge found at times in the past have provided no income or have incurred a loss), the changing needs of the eleven current beneficiaries, and the possibility of additional beneficiaries.

The husband's present right to distributions from the 2004 trust is speculative, because the terms of the trust permit unequal distributions among an open class that already includes numerous beneficiaries, and because his right "to receive anything is subject to the condition precedent of the trustee having first exercised his discretion" in determining the needs of an unknown number of beneficiaries.

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Eliminating Capital Gains Tax Using a Complex Trust

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Eliminating Capital Gains Tax Using A Complex Trust

Khurram Chohan Forbes Councils Member
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Money

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The tax impacts of capital gains are a common concern for high net worth individuals. There are many paths for reducing or deferring capital gains, but not as well known are ways to eliminate capital gains tax. So how can you eliminate such taxes?

First, let's start with explaining what capital gains tax is. Capital gains is a tax paid on the profits made from the sale of an asset — usually a property, business, stock or bond. For example, if you were to start a company from

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scratch and then sell it for $10 million, depending on which state you lived in, you may have a 20% to 37% capital gains tax to pay, or $2 million to $3.7 million.

Some ways to reduce/defer capital gains tax include:

1. Offsetting capital gains with losses: With this tactic, you can use up to $3,000 in realized losses from your investments to offset capital gains of a similar type of investment.

2. Using a 1031 exchange: This is when you sell a property and then roll the proceeds into a "similar investment" within a 180-day window. This tactic defers your taxes until a later date.

3. Using retirement accounts, such as an individual retirement account or 401(k) plan: Many of these will actually create tax-free growth, but similar to 1031 exchanges, this method defers your taxes rather than eliminating capital gains.

4. Moving to a different state: Currently, nine states (Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming) do not have a state capital gains tax.

Eliminating Capital Gains Using A Complex Trust

One way to eliminate capital gains is through the use of a complex trust. Trust accounting is different than the more commonly used generally accepted accounting principles, and the distributable net income is calculated in a different manner when using a complex trust. When trust documents are implemented properly, you can effectively transfer control of assets from one person to another without triggering a taxable event.

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Taxation follows ownership, and a trust system can provide you control without ownership. This will allow you to eliminate capital gains in an efficient way without looking for the latest loophole or deferring the taxes. A properly set up complex trust allows you to avoid capital gains tax and also eliminates probate and inheritance taxes at the same time, while also increasing your tax efficiency overall.

However, complex trusts are not an option for everyone. They can be costly to set up and often have large liquidity requirements — in some cases $5 million. This makes complex trusts a good fit for business owners who pay more than $200,000 per year in taxes, high net worth individuals and family offices that are looking for tax efficiencies, rather than for people who earn W2 income. The system also has many rules and regulations you must learn to ensure you are fully compliant.

There are many tools for minimizing or deferring your capital gains, but a properly established complex trust can allow you to have a more efficient tax structure, not only for capital gains but also for wealth transfer.

The information provided here is not investment, tax or financial advice. You should consult with a licensed professional for advice concerning your specific situation.

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Distributions Held by Spendthrift Trust are Protected from Creditors

IOWA STATE UNIVERSITY
Center for Agricultural Law and Taxation

Iowa Court Says Distributions Held by Spendthrift Trust are Protected from Creditors

September 27, 2022 | Kitt Tovar Jensen



The case is *A.Y. McDonald Industries, Inc. v. McDonald*, No. 21-1365 (Iowa Ct. App. Aug. 31, 2022).

On August 31, 2022, the Iowa Court of Appeals held that a creditor cannot collect distributions from a spendthrift trust until the funds are in the beneficiary's control. A creditor attempted to garnish funds of two spendthrift trusts which were being held by a trustee for the debtor's benefit. The district court denied the debtor's motion to quash the garnishment. Because the debtor had not yet received the distributions, the Court of Appeals reversed the district court's order.

Background

A CEO of a manufacturing company agreed to pay restitution after misappropriating company funds. The CEO signed a limited power of attorney (LPOA) which allowed a third-party to collect the distributions the CEO received as a beneficiary of two spendthrift trusts and then transfer those payments to the company. The CEO attempted to revoke the LPOA and the company sued.

The Court of Appeals determined that "creditors can only collect after the trust has paid or distributed property to the beneficiary." Therefore, a beneficiary of a spendthrift trust cannot make an irrevocable transfer of his right to future distributions. However, the court held that the CEO had breached the parties' agreement and was still liable for the funds.

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The company resumed its collection efforts and the CEO, in a new lawsuit, petitioned to quash the garnishment. The district court denied the motion and authorized the collection of funds held by the trust. The CEO appealed.

Spendthrift Protections: Iowa Code 633A.2302

A spendthrift trust protects the beneficiary's interest from creditors as long as the interest is held by the trust. Restatement (Third) of Trusts § 58 cmt. d(2) (Am. Law. Inst. May 2022 Update); *see also* Iowa Code § 633A.2301. The CEO was a beneficiary of two spendthrift trusts, the J. Bruce McDonald Trust and the Delos L. McDonald Trust.

A bank, as the third-party garnishee, transferred the CEO's quarterly distributions from the J. Bruce McDonald Trust into a "subaccount." This allowed the other beneficiaries to receive their quarterly distributions. In the original lawsuit, the district court determined that the funds held in the subaccount were not entitled to spendthrift protections. The CEO did not appeal that ruling. Therefore, the court held that the doctrine of res judicata precluded the CEO from raising the issue on appeal.

The Delos L. McDonald Trust had also been allocating funds to the CEO; however, these funds remained within the trust account for the benefit of the CEO as the parties resolved their issues. The company argued that these allocations constituted "distributions." It also pointed out the fact that the bank had issued K-1 statements to the CEO to report the distributions as income on his tax return.

> A beneficiary shall not transfer, assign, or encumber an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary of a spendthrift trust shall not reach the interest of the beneficiary or a distribution by the trustee before its *receipt by the beneficiary*.

Iowa Code § 633A.2302(2) (emphasis added). At trial, bank employees testified that the distributions were discretionary. Unlike mandatory distributions, the courts cannot order payments of discretionary distributions from a trust. Iowa Code § 633A.2306(1).

Here, the CEO had accrued funds held in trust. The court concluded that the term "receipt" meant that the funds would be protected in the spendthrift trust until the CEO had control over them. Therefore, once the funds are distributed, they would treated the same as any other property and the spendthrift protections would not apply. *Kiffner v. Kiffner*, 171 N.W. 590, 591 (1919).

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Asset Protection Services of America Trust - “Pay No Capital Gains Tax”



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Asset Protection Services of America Trust Pay No Capital Gains Tax

By Jay Butler



While some individuals and couples *might* escape low capital gains taxation under the new 2026 thresholds, most *all* investors will incur a capital gains tax liability upon the sale of an investment property.

The Scenario

So, in our scenario, "Bob" previously invested into a duplex. At the time of his purchase, he put $200,000 down toward his $500,000 acquisition. Over the years he invested another $200,000 improving the two units and eventually took-back $200,000 in depreciation. The property values continued to grow in his area and, when he decided to sell, the duplex had appreciated to $1.5 Million in value. Bob contemplated his $1 million in long-term capital gains tax dilemma and asked himself, *"Could there be a way to legally and lawfully avoid paying any capital gains tax?"* He would soon realize the answer was "yes".

On a side note, prior to purchasing, Bob had considered using a Self-Directed IRA or Roth to build his real estate portfolio - but elected not to take advantage of either. The minor costs involved in establishing an LLC structure and paying annual custodial services were not a deterrent. Even risks of turning the entire retirement account into a taxable event because of a self-dealing or prohibited transaction were not insurmountable. But the taxes would *still come due* for the Self-Direct IRA as they were withdrawn during retirement and, for the Roth, taxes would have *already been paid* going in. It's not that either option was inherently bad, but neither choice was fully ideal - and so he left the property in his name.

Back to today, depending on his marital status and tax filing election, Bob was looking at paying a substantial amount in long-term capital gains tax under the new 2026 thresholds and he wasn't keen on relinquishing it. Bob considered utilizing a 1031 exchange at the time of the sale but, while that was an intriguing idea, he would be forced to invest into another property of like-kind in a limited period of time. He needed a way to invest freely, as he saw fit, without all of the rules, risks and restrictions. Bob wanted to pay-down debt on other properties he held, reducing stress and increasing cash-flow. He also wanted to diversify his investments into precious metals and cryptocurrency, and desired to help his children with their college education and medical bills. Being tied-up in yet another real estate investment until retirement wasn't going to help him accomplish his goals either.

The Solution

Bob chose to seek other existing solutions, and discovered the Benson Financial Irrevocable Spendthrift Trust. When he read the Legal Opinion drafted for an authorized agent Asset Protection Services of America Trust, he realized the answers he needed could be found within their proprietary trust instrument. Bob learned the original trust documents were drafted by two attorneys and Harvard School of Law professors. The first, Austin Wakeman Scott, authored the nine-book volume "Scott on Trusts" recognized as the leading treatise and authority on trust law in America. And the second, his protege' Robert N. Benson, an experienced attorney who worked with a prominent wall street law firm providing legal acumen to high-net-worth individuals.

Their combined knowledge and experience enabled them to draft a trust based on contract law, established entirely upon the constitutional laws of our nation. Not only was their unique trust structure legal and lawful to the core, its very essence was rooted in the Internal Revenue Code and Treasury Regulations, and is supported by case law. In-fact, their trust documents were Copyrighted in 1999 as an original work. The Copyright Office duly noted that it was the first and only trust in American history to have ever been copyrighted. Having never heard of such a thing, Bob was encouraged to know the trust had already been in use for over half-a-century. Nobody wants to be a guinea pig. Knowing over 125,000 other clients had successfully made use of the trust before him (over a period of 53-years without ever having lost an audit), gave Bob the peace-of-mind and sufficient courage to move forward.

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The Strategy

Bob purchased a book containing the copyrighted trust and was provided assistance in making use of those materials. He received his Certification of Trust, and corresponding Employer Identification Number (EIN) issued by the Department of the Treasury, with the proprietary Trust Agreement and supporting documents. Bob then prepared to sell his duplex into the trust by calculating his "Basis". Taking the purchase price of his property ($500,000) and adding what he spent on improvements ($200,000), Bob subtracted from that ($700,000) amount the depreciation already taken ($200,000) and had his "basis" amount for his sale ($500,000).

Purchase Price + Improvements
(Less Depreciation) = "Basis"

In keeping with contract law, a Bill of Sale was prepared for Bob and he sold the duplex out of his individual name and into the trust at the agreed upon amount of $500,000. A Promissory Note was executed in financial consideration for the sale, and title was transferred by Quitclaim or Warranty Deed. The duplex was listed for sale at $1.5 Million and Bob signed-off on all the closing documents in his capacity as trustee of the trust. After the property was sold and the closing completed, the entire $1.5 Million was transferred from escrow to the bank account under the name and EIN of the trust.

Bob did not incur any capital gains taxes on the sale of the property into the trust, as the amount of the sale was equal to his after-tax investment in the property, and saved him between $154,478 (Married Filing Jointly) and $177,239 (Married Filing Separately). Likewise, the Irrevocable Spendthrift Trust did not incur any capital gains tax from the sale of the duplex as, in accordance with the copyrighted trust agreement and IRC §643(a)(3), the entire sale amount was allocated to the corpus (or body) of the trust.

IRC §643(a)(3) – Capital Gains and Losses

"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, or (B) paid, permanently set aside, or used for the purposes specified in §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 §1202 shall not be taken into account." [Emphasis Added]

The Savings

The entire $1.5 Million from the duplex property sale is now firmly in the trust's bank account, without any taxes having been removed. Bob is the acting trustee over the trust and authorized signatory over the trust bank account. Thus "Trustee Bob" may, at his sole and absolute discretion, determine the "how, what, when, where, why, or even if" trust assets shall be utilized. Under the original and proprietary trust agreement, there are no requirements whatsoever for the trustee to distribute any monies to the beneficiaries during the taxable year. So, Bob is now free to pay-down existing trust debts and/or re- invest those monies into any other form, including but certainly not limited to, precious metals, cryptocurrency or even additional real estate investments which may, or may not, be of like kind - all in a time frame of his choosing. Here is what Bob saved on this transaction alone, and he could only imagine what that amount might grow to over time!

Savings on $1 Million of Long-Term Capital Gains

New 2026 Thresholds	0%	15%	20%	Savings
Single Filers	Up to $49,450 **$0.00**	$49,451 to $545,500 **$74,407**	Over $545,500 **$90,900**	**$165,307**
Married Filing Jointly	Up to $98,900 **$0.00**	$98,901 to $613,700 **$77,218**	Over $613,700 **$77,260**	**$154,478**
Married Filing Separately	Up to $49,450 **$0.00**	$49,451 to $306,850 **$38,609**	Over $306,850 **$138,630**	**$177,239**
Head of Household	Up to $66,200 **$0.00**	66,201 to $579,600 **$77,009**	Over $579,600 **$84,080**	**$161,089**

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The Summary

The Trust is not a perpetual tax avoidance scheme, but a tax deferral mechanism, without all the cumbersome rules, risks and restrictions. Should Trustee Bob "distribute" cash to the beneficiaries, that could inevitably lead to a taxable event for the said beneficiaries. Distributions for health, education, maintenance and support (HEMS), are often taxable to the beneficiary *if* they consist of taxable income generated by the trust. However, if the distributions are from the trust's principal, they generally are not taxable income to the beneficiary as indicated by standing IRS Private Letter Rulings. Additionally, IRC §2503(e) provides that qualified transfers made directly to an educational institution or medical care provider for someone else's benefit are *not* subject to gift tax.

While the scope of benefits from utilizing our Benson Financial Trust exceeds the purview of this overview, upon Bob's death, the trust experiences no probate court, no death tax, no estate tax, no inheritance tax, no generational-skipping tax, and no stepped up basis on trust assets. Instead, the beneficiaries may become the new trustees and immediately take-over control of all trust assets. Not even spouses of the new trustees may invade assets of the trust given the spendthrift provisions supersede pre-nuptial and post-nuptial agreements. This is how many wealthy families have taken humble beginnings and grown them into impressive estates, allowing the control of that wealth to be passed-on from generation to generation. "Own nothing; control everything." You don't have to wait to be a multi- millionaire to take advantage of our irrevocable spendthrift trust. Quite the opposite. Your chances of becoming a millionaire improve exponentially by taking advantage of our original, proprietary and copyrighted Benson Financial Irrevocable Spendthrift Trust.

Documentation

Please visit our Irrevocable Spendthrift Trust webpage and download the Free Information Package with Legal Opinions on our Benson Financial Trust today. Visit us at www.AssetProtectionServices.com.

Consultation

To "Schedule an Appointment" just 'click' on the top right-hand corner of any page at https://www.assetprotectionservices.com/ and reserve your free 90-minute consultation now.

Disclaimers

" Bob" is a fictional character and any resemblance to real persons, living or dead, is purely coincidental and unintentional. No representations or warranties are given or implied to render any accounting, financial, investing, legal, tax or other professional advice.

MEET JAY BUTLER

Jay Butler *is the Trustee of Asset Protection Services of America Trust, Manager of State Trustee Services LLC and the former Vice-President of Sales and Marketing for Corporate Support Services of Nevada, Inc. Mr. Butler holds a Bachelor's Degree of Fine Arts from Boston University.*

Jay has provided customized business entity structuring for clients in all 50 states along with some of the most respected names in the industry including the Jay Mitton organization "the father of asset protection" and Real Estate Investor Association seminars. He also appeared in numerous magazine articles in Reality 411, Ca$h-Flow and REI Wealth.

While working with Wealth Protection Concepts, LLC under the tutelage of the former Las Vegas and North Las Vegas city attorney Carl E. Lovell Jr. (now deceased from Leukemia), Mr. Butler was bestowed the title of "Asset Protection Planner" for his competency and experience. He also co-authored the first edition of his book "Cover Your Assets: Legal Authorities on Asset Protection, Tax Strategies and Estate Planning" © 2006 with Dr. Lovell.

When residing in Zug, Switzerland, Mr. Butler was the Associate Director of "CO-Handelszentrum GmbH" providing Swiss company formation and administration services and executed a full-range of fiduciary responsibilities including client support and international corporate compliance services (KYC, FATCA, AML and FATF).

Jay builds his relationships through consistent attention to detail and reliable support. He has traveled extensively throughout the United States (having visited 49 of the 50 states), explored 40 nations worldwide, and has lived in a total of 7 countries throughout North America, Central America, the Middle East, North Africa and Europe. Jay holds dual citizenship in the United States and Italy and permanently resides with his wife and daughter in Puglia.

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Internal Revenue Service

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IRS Private Letter Ruling 201519012 (ie. PLR-133314-14)

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201519012**
Release Date: 5/8/2015

Index Number: 2601.03-06, 2501.00-00, 643.00-00, 662.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
,
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-133314-14

Date:
February 06, 2015

Trust	=
Decedent	=
Bank	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Date 1	=
Date 2	=
Company	=
LLC	=
Spouse	=
Child 1	=
Child 2	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Great-grandchild 1	=
Great-grandchild 2	=
Great-grandchild 3	=
Great-grandchild 4	=
Great-grandchild 5	=
Great-grandchild 6	=
Great-grandchild 7	=
Great-grandchild 8	=
Case	=
Court	=

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State =
a =
b =
c =
d =
e =
f =

Dear :

This letter responds to your authorized representative's letter dated September 8, 2014, requesting rulings on the income, gift, and generation-skipping transfer (GST) tax consequences of compliance with a court-approved settlement agreement.

FACTS AND REPRESENTATIONS

The facts and representations submitted are summarized as follows:

Decedent died in Year 1, a year prior to September 25, 1985. Decedent's Will established a testamentary trust (Trust) for the benefit of Decedent's relatives, Decedent's spouse (Spouse), and their issue. Trust was funded primarily with stock in Company. In Year 2, Trust exchanged its shares in Company for an interest in LLC. Great-grandchild 1 and Bank serve as trustees (Trustees) of Trust.

Under Clause I, Item Four of Decedent's Will, Trust will terminate twenty (20) years after the death of the last to survive of Spouse, Child 1, Child 2, Grandchild 1, Grandchild 2, and Grandchild 3.

Clause II(a) provides for the distribution, at least annually, of specific amounts of Trust income to certain named beneficiaries for their lifetimes, but not to exceed the duration of Trust. Clause II(b) limits the total amount of these distributions to one-third of the income of Trust.

Clause II(c)(1) and (2) provide the manner in which the remaining Trust income is to be distributed to Spouse, Child 1, and Child 2 during their lifetimes. Clause II(c)(3) directs that after the death of Spouse, Child 1, and Child 2, Trust income is to be distributed equally to the widow of Child 1 (if there is one), Decedent's living grandchildren, and the issue of any deceased grandchildren of Decedent, *per stirpes*.

Clause II(c)(4) provides that upon the death of Decedent's last surviving grandchild, the income of Trust is to be distributed equally to Decedent's living great-grandchildren and the issue of any deceased great-grandchildren of Decedent, *per stirpes*.

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Under Clause III, upon termination of Trust, the assets of Trust are to be distributed to the then income beneficiaries of Trust.

Item Five annuls any bequest made to a beneficiary of Decedent's Will who objects to the probate of Decedent's Will or in any way directly or indirectly contests the Will or any provision of the Will, or the distribution of Decedent's estate under the Will. Item Five provides further that it is the will of Decedent that any such beneficiary be absolutely barred and cut off from any share in Decedent's estate (No-contest Provision).

There are currently eight income beneficiaries of Trust. Decedent's only surviving grandchild, Grandchild 3, receives one-third of the income. The three children of Grandchild 1, Great-grandchildren 1, 2, and 3, each receive one-ninth of the income, and the four children of Grandchild 2, Great-grandchildren 4, 5, 6, and 7, each receive one-twelfth of the income.

Great-grandchild 4 and Great-grandchild 5 filed a number of objections to Trust's annual accountings, petitions, and joinders in Case in Years 3, 4, and 5, and have indicated that they will file objections to future accountings in Case (Objectors' Claims). Objectors' Claims allege that Trustees have breached their duty of impartiality and their fiduciary duties. Great-grandchild 1 and Great-grandchild 8 (a daughter of Grandchild 3) responded by filing claims in Case alleging that certain of Objectors' Claims violate the No-contest Provision in Decedent's Will (No-Contest Claims). The Probate Commissioner ruled that the Objectors' Claims did violate the No-contest Provision.

The litigation in Case has been intensive, has created divisions within the Decedent's family, and has been expensive. The parties have been represented by separate counsel and have incurred substantial legal fees and costs. On Date 1, the parties entered into an agreement to resolve Case (Settlement Agreement). On Date 2, Court issued an order (Order) approving Settlement Agreement.

Under the terms of Settlement Agreement and Order, if the Internal Revenue Service issues a favorable private letter ruling on all of the rulings requested below, the following will occur: (1) the interest of Great-grandchild 4 and Great-grandchild 5 in Trust (including the interests of their issue, if any) will be completely terminated in exchange for a distribution of $a to each from Trust; (2) to fund the distributions from Trust to Great-grandchild 4 and Great-grandchild 5, LLC will distribute $e to its members, of which $f will go to Trust; (3) Great-grandchild 4 and Great-grandchild 5 will dismiss with prejudice the Objectors' Claims and Great-grandchild 1 and Great-grandchild 8 will dismiss the No-Contest Claims; (4) until the death of Grandchild 3, the income of Trust will be distributed b percent to Grandchild 3, c percent each to Great-grandchild 1, or his issue in the event of his death, Great-grandchild 2, or his issue in the event of his death, Great-grandchild 3, or her issue in the event of her death, and d percent each to Great-grandchild 6, or his issue in the event of his death, and Great-Grandchild 7, or her

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issue in the event of her death; (5) following the death of Grandchild 3, all distributions to a beneficiary by Trust shall be determined under the terms of Trust assuming for this purpose that both Great-grandchild 4 and Great-grandchild 5 are deceased and not survived by issue.

It is represented that no additions (actual or constructive) have been made to Trust since Date 1.

You have requested the following rulings:

(1) After implementation of Settlement Agreement, Trust will continue to be exempt from the GST tax provisions of chapter 13 and distributions of $a from Trust to Great-grandchild 4 and Great-grandchild 5, distributions of Trust income to the other beneficiaries, and distributions of Trust corpus made upon termination of Trust made in compliance with Settlement Agreement are not subject to GST tax.

(2) The $a distributions from Trust to Great-grandchild 4 and Great-grandchild 5 made in compliance with Settlement Agreement do not result in gifts for federal gift tax purposes by the other beneficiaries of Trust.

(3) The $e distribution from LLC to Trust made in compliance with Settlement Agreement is not income within the meaning of § 643(b).

(4) The $a distributions from Trust to Great-grandchild 4 and Great-grandchild 5 are not includible in the income of Great-grandchild 4 and Great-grandchild 5 under § 662.

Ruling 1

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer made after October 22, 1986.

Section 2611(a) provides that the term “generation-skipping transfer” means a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

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Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. In general, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(B) provides that a court-approved settlement of a bona fide issue regarding the administration of the trust or the construction of terms of the governing instrument will not cause an exempt trust to be subject to the provisions of chapter 13, if -- (1) The settlement is the product of arm's length negotiations; and (2) The settlement is within the range of reasonable outcomes under the governing instrument and applicable state law addressing the issues resolved by the settlement. A settlement that results in a compromise between the positions of the litigating parties and reflects the parties' assessments of the relative strengths of their positions is a settlement that is within the range of reasonable outcomes.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee's distribution, settlement, or construction that does not satisfy paragraphs (b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or by nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

In this case, Trust is exempt from GST tax because Trust was irrevocable prior to September 25, 1985 and it is represented that no additions (actual or constructive) have been made to Trust on or after September 25, 1985.

The facts provided and representations made indicate that Settlement Agreement represents a compromise between the positions of the litigating parties and reflects the parties' assessment of the relative strengths of their positions. Settlement Agreement is a product of arm's length negotiations and is within the range of reasonable outcomes under the terms of Trust and applicable law.

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Upon implementation of Settlement Agreement, the interests of Great-grandchild 4 and Great-grandchild 5 in Trust will terminate. The partial termination of Trust will accelerate the distribution of a portion of the corpus of Trust to these beneficiaries. The partial termination will not shift a beneficial interest in Trust to a beneficiary who occupies a lower generation than the person or persons who held the interest before the division. Moreover, implementation of Settlement Agreement does not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original Trust agreement.

Accordingly, based upon the facts submitted and the representations made, we rule that after implementation of Settlement Agreement, Trust will continue to be exempt from the GST tax provisions of chapter 13 and that distributions of $a from Trust to Great-grandchild 4 and Great-grandchild 5, distributions of Trust income to the other beneficiaries, and distributions of Trust corpus made upon termination of Trust made in compliance with Settlement Agreement are not subject to GST tax.

Ruling 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether property transferred is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 25.2511-1(g)(1) provides that the gift tax is not applicable to a transfer for a full and adequate consideration in money or money's worth, or to ordinary business transactions.

Section 25.2512-8 provides that a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent) will be considered as made for an adequate and full consideration in money or money's worth.

Whether an agreement settling a dispute is effective for gift tax purposes depends on whether the settlement is based on a valid enforceable claim asserted by the parties and, to the extent feasible produces an economically fair result. *See Ahmanson Foundation v. U.S.*, 674 F.2d 761, 774-75 (9th Cir. 1981), citing *Commissioner v. Bosch,* 387 U.S. 456 (1967). Thus, state law must be examined to ascertain the legitimacy of

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each party's claim. If it is determined that each party has a valid claim, the Service must determine that the distribution under the settlement reflects the result that would apply under state law. If there is a difference, it is necessary to consider whether the difference may be justified because of the uncertainty of the result if the question were litigated.

As discussed above, Settlement Agreement represents the resolution of bona fide controversies among the parties. All interested parties who hold or may hold an interest in Trust have been represented in the proceedings that culminated in Order approving Settlement Agreement. Further, based on the facts as presented, the terms of Settlement Agreement are the product of arm's length negotiations among all of the interested parties. Court approved Settlement Agreement. Settlement Agreement reflects the rights of the parties under the applicable State law that would be applied by the highest court of State and under federal law. Accordingly, based on the facts submitted and representations made, we rule that the $a distributions from Trust to Great-grandchild 4 and Great-grandchild 5 made in compliance with Settlement Agreement do not result in gifts for federal gift tax purposes by the other beneficiaries of Trust.

Ruling 3

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 $f distribution from LLC to Trust as a return of corpus. As such, the $f 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

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meaning of that section. Accordingly, based on the facts submitted and the representations made, we rule that the $f distribution from LLC to Trust is an extraordinary dividend excluded from the definition of "income" within the meaning of § 643(b).

Ruling 4

Section 61 provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived, including gains derived from dealings in property.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of: (1) the amount of income for such taxable year required to be distributed currently, and (2) any other amounts properly paid or credited or required to be distributed for such taxable year, but such deduction shall not exceed the distributable net income of the estate or trust.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662 provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not, and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) provides that, except as otherwise provided in subtitle A, the gain or loss realized from the exchange of property for cash or for other property differing materially either in kind or in extent is treated as income or loss sustained.

In this case, the distributions of $a to Great-grandchild 4 and Great-grandchild 5 are extraordinary distributions and are excluded from the definition of "income" under

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§ 643(b). These distributions are not part of Trust's distributable net income and, therefore, are not includible in the income of Great-grandchild 4 or Great-grandchild 5 under § 662. Accordingly, based on the facts submitted and the representations made, we rule that the distributions of $a from Trust to Great-grandchild 4 and Great-grandchild 5 are not includible in the income of Great-grandchild 4 and Great-grandchild 5 under § 662.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

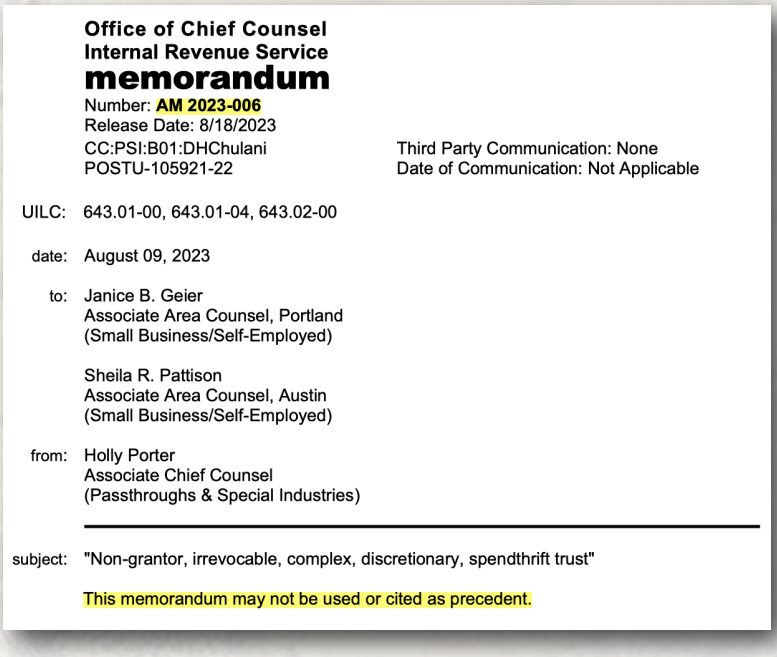
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What Does IRS Memorandum AM 2023-006 Mean?

There are a plethora of 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 Memorandum did not comment on the construction or use of Internal Revenue Code §643, it wasn't directed at any third party, it was not dated for publication, it was not cited as precedent, and yet, despite all of that, it was still released to the public "as if" it held some form of authoritative weight; it did not.

IRS Memo AM 2023-006 makes a very important statement at the beginning which ***no one*** in any video, article or commentary I have seen 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)

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

This memorandum may not be used or cited as precedent.

"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."

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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 reduces the amount of taxable income the IRS is able to collect from taxpayers.

*IRS Memorandum AM-2023-006 was **not** a "Revenue Ruling" and carries no precedential weight as evidenced by **Treasury Regulation §601.601(d)(2)(i)(a):***

> *"A "Revenue Ruling" is an official interpretation by the Service that has been published in the Internal Revenue Bulletin. **"Revenue Rulings" are issued only by the National Office and are published** for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned."*

People regurgitating the various arguments from this Memo failed to discuss what the IRS also 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. *…. 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** …. [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*** allow the Trustee to "declare" (unanticipated) extraordinary dividends in accordance with the terms of the governing instrument under §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]

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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 argument?

The IRS Memorandum AM 2023-006 is Defective and Deceptive

The Memorandum acknowledges **§ 643(a)(3)** *"Gains from the sale or exchange of capital assets shall be excluded **[from DNI]** to the extent that such gain was allocated to corpus."* [Emphasis Added] **but defectively insists the trust must report the full amount as taxable income if undistributed citing the lack of income distribution deduction under §651 or §661.**

This deceptively ignores the allocation to corpus which removes the items from being defined as income in § 643(b) "*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**." [Emphasis Added]*

IRS Revenue Ruling 62-147 (1962-2 C.B. 146) supports this position, ***"holding that extraordinary dividends allocated to corpus under the trust terms are not includible in DNI, even if later distributed"*** [Emphasis Added] emphasizing the fiduciary's good-faith action controls the allocation.

This ruling reinforces gains are not treated as "income" for current taxation when properly allocated to principal, aligning with **§ 643(a)(4)** *"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." [Emphasis Added]*

The assertion in the IRS Memorandum that "income" refers solely to "accounting income" and not taxable income is contrary to the statutes in §643 and attempts to nullify the good-faith allocations of the Trustee as intended by Congress to defer trust administration to State law and the terms and conditions of the governing trust instrument.

The Internal Revenue Code says what it means and it means what it says, *"Holding that a court will interpret a statute according to its plain meaning."* **CRI-Leslie, LLC vs. Commissioner of Internal Revenue 147 T.C. 217, 224 (2016) aff'd, 882 F.3d 1026 (11th Cir. 2018)**

In Conclusion

Our Benson Financial Trust Structure has successfully filed over 1 Million tax returns over a period of more than half-a-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 have never lost an IRS correspondent or forensic audit.

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IRS Memorandum AM-2023-006 (August 18, 2023)

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.

SUMMARY: This memorandum discusses a marketed trust structure which mistakenly interprets § 643 of the Internal Revenue Code (the "Code") to remove certain trust income from current taxation. CC:PSI first discovered promotional material relating to the structure in March 2021, and subsequently informed SB/SE Division Counsel. This memorandum describes the structure and explains why it does not provide the claimed benefit. While we have reviewed the promoters' materials, we have not reviewed specific taxpayers' documents in relation to the structure. Therefore, this is a general discussion which does not rely on any facts unique to specific taxpayers and we do not include any taxpayer identifying information. Our legal conclusions are based on the summarized materials and may change if a particular case offers different facts.

For simplicity, this memorandum is limited to rebutting the promoters' misinterpretation of § 643. We do not address whether some or all of these structures could be recharacterized as grantor trusts under § 671, and, if needed, will issue a supplemental memorandum on that question. Similarly, we do not address the statements in the promoters' materials that appear to advise taxpayers to treat certain taxable trust

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distributions as deductible payments of trust expenses or the treatment of sales to the trust. In addition, we do not discuss the following questions:

1. The gift, estate, or generation-skipping transfer (GST) tax consequences of the structure. Specifically, we do not address whether transfers to or from the trust are "taxable gifts" as defined in § 2511.
2. The trust's purported "asset protection" benefits, including whether state or federal courts will find that the terms of the trust provide protection from the claims of creditors including claims pertaining to federal tax debts.
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, such that their control over the property transferred to the trust does not really change, the trust might be disregarded, with all the claimed tax benefits dependent on the trust's validity being vitiated. See Zmuda v. Commissioner, 731 F.2d 1417 (1984), and Markosian v. Commissioner, 73 T.C. 1235 (1980), for the factors used to determine that a trust arrangement is a sham.
5. Whether the transaction in general or any particular instance of it might fall into any of the categories of "reportable transactions" provided in Treas. Reg. § 1.6011-4, such as a "confidential transaction" or "transaction with contractual protection."

DESCRIPTION OF STRUCTURE: The structure claims to provide significant tax and asset protection advantages to individual taxpayers (described herein as the "Taxpayer"). The structure is being promoted by a combination of attorneys, accountants, enrolled agents, and unlicensed tax advisors. The promotional materials consist primarily of a series of presentations (some of which can be found on various social media platforms), informational websites, short documents, and short legal opinions. The materials state that the trust being offered complies with Scott on Trusts, the Uniform Trust Code, the Restatement of Trusts (Third), and the Code. Some materials specifically note that the trust is "section 643 compliant". The materials describe the trust by its purported characteristics, typically a combination of the terms "non-grantor," "irrevocable," "discretionary," "complex" (or "complex with simple provision"), "section 643," and "spendthrift."[1] In many variations, promotional materials refer to the trust structure as a "Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust". While there is some inconsistency among the materials, the basic form and mechanics of the structure are described here.

[1] In some iterations of the promotional materials, the trust is additionally described as "copyrighted." This appears to be a reference to a specific model or form of trust instrument that is being sold or licensed, and not a tax or legal characteristic of the trust.

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Formation and oversight

A third-party settlor, acting on behalf of Taxpayer, creates and nominally funds a trust with legal documents that are provided by the promoter. Taxpayer is appointed the "Compliance Overseer" with power to add and remove trustees and change beneficiaries of the trust. The promotional materials are inconsistent as to whether Taxpayer, a third-party, or both serve as trustee. In the case of a third-party serving as trustee, it is unclear whether the third-party would be an independent trustee.

Taxpayer is not a named beneficiary of the trust. In some variations, Taxpayer's spouse and/or children are specifically named as beneficiaries but are subject to change by the Taxpayer. The trust instrument gives the trustee sole discretion to make distributions of income or principal to beneficiaries ("discretionary distributions"). It is unclear whether the Taxpayer, serving in the role of Compliance Overseer, is given a power to direct the trustee to make or withhold discretionary distributions to beneficiaries. The trust is a self-styled "spendthrift" trust or "spendthrift trust organization." There are no provisions that allow any party to revoke the trust by distributing trust assets back to the donor in termination of the trust.

An accompanying letter described as a legal opinion ("legal opinion letter") states that the trust is in "in compliance with the IRC" and thereby must obtain an Employer Identification Number (EIN) and file Form 1041, "U.S. Income Tax Return for Estates and Trusts" (in addition to any other filing requirements) annually as a complex trust. A subsequently dated legal opinion letter from the same source notes that the trust is "not subject to turn over orders by any court. This limits the liability of Beneficiaries and Trustees of the Trust. It also makes the corpus of the Trust unreachable by creditors."

Funding

The trust is primarily funded by Taxpayer selling assets to the trust in exchange for a promissory note (styled as a "demand note" in certain materials).[2] The promotional materials do not discuss issues relating to the trust's initial capital, creditworthiness, or ability to make payments on the promissory note. Nor do the materials outline requirements related to the terms of the note, such as having a defined period for repayment. Certain materials do discuss the requirement for debt instruments of the trust to charge adequate interest (not specifically in relation to the demand note).

Certain materials claim that the sale of assets to the trust is a non-taxable event, noting that the trust's purchase price is the "book value" of the assets rather than their fair market value, such that the trust retains Taxpayer's basis in the assets. Further, there is a presumption that any of the Taxpayer's business assets (including real estate, equipment, or intangible property) sold to the trust will be leased back to Taxpayer or an

[2] Examples of assets appropriate for funding the trust by 'sale' include equipment, real estate, computers, websites, handbooks, copyrights, trademarks, and proprietary operating systems.

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entity owned or controlled by Taxpayer. A few variations recommend that (1) Taxpayer transfer up to a 90% interest in a limited liability company ("LLC") (or another type of business entity) owned by Taxpayer to the trust, (2) the Taxpayer will cause the LLC to sell certain assets (including intellectual property (IP)) to the trust, and (3) Taxpayer will cause the LLC to lease back those assets and IP from the trust for a payment that is approximately equal to 70% of the monthly income of the LLC.

Income earned by the trust

The promotional materials claim that almost none of the income generated by the trust is subject to current federal income tax if the trustee allocates such income to corpus and refrains from making distributions to beneficiaries. The legal basis for these assertions regarding federal income taxation rely on § 643 of the Code.

To support the assertion that all income from the sale or exchange of capital assets ("capital gains") is excluded from federal income tax, the materials quote § 643(a)(3), without context (emphasis in original):

> "IRC Section 643(a)(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 not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year . . ."

Next, the materials claim that the trustee may characterize any remaining trust income as an "extraordinary dividend", which the materials claim is not subject to current taxation so long as the trustee allocates such income to corpus. The materials find support for this claim in § 643(a)(4):

> "if a fiduciary has the sole and absolute authority to designate something as extraordinary dividends or taxable stock dividends, and that designation is paid to the corpus of the trust and not subject to distribution, then it is not income to the trust according to Rule 643 [sic]."[3]

The accompanying legal opinion letters do not expound on this assertion, claiming only that the trust structure "provides the exclusion of extraordinary dividends and taxable stock dividends from items of gross income because the structure allows the Trustee to allocate these dividends to the corpus of the Trust." Another memorandum styled as a legal opinion letter simply states, "[c]apital gains, extraordinary dividends and taxable

[3] Several promoters rely on a private letter ruling issued by this office as support for their claim that extraordinary dividends described in § 643(a)(4) are not subject to current taxation. Some materials refer to this ruling as "Private Letter Ruling # PLR-133314-14 issued May 8, 2015" or "IRS Private Letter Ruling 133314-14" See PLR 201519012. This private letter ruling held that a certain distribution that a trust received from an LLC pursuant to a settlement agreement is considered an extraordinary dividend "excluded from the definition of "income" *within the meaning of § 643(b) (*emphasis added)."

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stock dividends when allocated by the trustee to the corpus of the trust in good faith are not taxable income to the trust." That memorandum subsequently quotes from § 643 without explanation or context.

LAW:

Section 61(a) of the Code provides that, except as otherwise provided, "gross income" means all income from whatever source derived.

Section 63(a) generally defines the term "taxable income" as gross income minus the deductions allowed by Chapter 1 of the Code.

Section 641(a) generally provides that the tax imposed by § 1(e) applies to the taxable income of estates or of any kind of property held in trust including income which, at the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

Section 641(b) provides, in part, that the taxable income of a trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part [§§ 641 through 685]. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

Section 643(a) defines the term "distributable net income", for purposes of this part [§§ 641-685] as meaning, with respect to any taxable year, the taxable income of the estate or trust computed with certain modifications listed in §§ 643(a)(1) through (7).

Section 643(a)(3) provides that gains from the sale or exchange of capital assets shall be excluded [from "distributable net income"] 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 § 642(c).

Section 643(a)(4) provides that for purposes only of subpart B [§§ 651 and 652] (relating to trusts which are required to distribute current income only (i.e., "simple" trusts)) there shall be excluded [from "distributable net income"] 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.

Section 643(b) provides that for purposes of subparts A, B, C, and D [§§ 641-668], 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

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under the terms of the governing instrument and applicable local law shall not be considered income.

Section 1.643(a)-0 of the Income Tax Regulations provides that the term "distributable net income" has no application except in the taxation of estates and trusts and their beneficiaries. It limits the deductions allowable to estates and trusts for amounts paid, credited or required to be distributed to beneficiaries and is used to determine how much of an amount paid, credited, or required to be distributed to a beneficiary will be includible in that beneficiary's gross income. It is also used to determine the character of distributions to the beneficiaries. Distributable net income means for any taxable year, the taxable income (as defined in § 63) of the estate or trust, computed with the modifications described in §§ 643(a)(1) through (7) and the regulations thereunder.

Section 651 provides in the case of any trust the terms of which provide that all of its income is required to be distributed currently, and do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in § 642(c), there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently.

Section 651(b) provides, in part, that if the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently, and (2) any other amounts properly paid or credited or required to be distributed for such taxable year, but such deduction shall not exceed the distributable net income of the estate or trust.

ANALYSIS:

Contrary to the claims of the promotors, the trust will recognize income on its capital gains and dividends, except to the extent those amounts are distributed or deemed to be distributed to its beneficiaries.

The promotional materials support their claims about the tax benefits of their structure by reading subsections of § 643 out of context. The materials do not address § 641 which provides the basic rule that the trust's taxable income is computed as it is for individuals, with certain modifications. Instead, the materials look to § 643(a) for guidance as to the definition of "taxable income". In so doing, the materials fail to consider the beginning of that section, which expressly states that the section defines "distributable net income" rather than "taxable income."

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A non-grantor trust is considered a separate taxable entity for income tax purposes. A non-grantor trust computes its gross income in much the same manner as an individual. Most deductions and credits allowed to individuals are also allowed to estates and trusts. However, there is one primary distinction. A trust is allowed an income distribution deduction for distributions to beneficiaries. See §§ 651 and 661. A trust's deduction for distributions to beneficiaries is limited to the lesser of (1) amounts that the trust properly pays or credits to beneficiaries during the taxable year (or amounts that are required to be paid or credited to the beneficiaries during the taxable year under the trust instrument if not actually distributed) or (2) the "distributable net income" of the trust.

Section 643 defines the concept of the "distributable net income" (or "DNI") of the trust. DNI not only limits the amount that the trust can deduct for distributions to beneficiaries, but it also determines the amount on which the beneficiaries can be taxed as a result of those distributions. See §§ 652 and 662. The income distribution deduction of the trust coupled with the gross income inclusion to beneficiaries ensures the income of the trust is taxed either to the entity or to the beneficiaries, but not to both.

Under § 643(a), DNI is calculated by making certain modifications to the trust's taxable income. Some of these modifications include subtracting certain items of gross income from DNI that may not be distributable to beneficiaries who are entitled to receive trust "income". This, in turn, depends on the economic rights of trust beneficiaries determined under the trust instrument and applicable local law for the taxable year at issue. As background, a trustee apportions items of gross income or tax-exempt receipts of the trust between two different classes of beneficiaries, a class that is entitled to trust "income" as defined under the trust instrument and applicable local law (i.e., the "accounting income" of the trust), and a class of beneficiaries (sometimes referred to as "remainder beneficiaries") entitled to certain amounts of gross income allocated to trust "corpus" or "principal". Gross income that is allocated to trust principal can be accumulated by the trust for distribution in subsequent taxable years or at the time of the trust's termination. Gross income that is allocated to trust income is either distributed to beneficiaries in the current taxable year or, depending on the terms of the trust instrument, can be accumulated by the trust for distribution in subsequent taxable years.

If a trust excludes all capital gains and extraordinary dividends from income within the meaning of § 643(b), that simply means that the trust will subtract those capital gains and extraordinary dividends from DNI under § 643(a), so long as those amounts are not actually distributed to the beneficiaries. In turn, subtracting those amounts from DNI simply means that trust has a lower threshold for the deduction that it can take for distributions to beneficiaries authorized by § 651 (for simple trusts) or § 661 (for complex trusts). If a non-grantor trust does not make (and is not required to make) any distributions to its beneficiaries, then it is not entitled to any "income distribution deduction". Therefore, all of the income attributable to capital gains and extraordinary dividends must be reported by the non-grantor trust as income on Form 1041.

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The promoters of this structure mistakenly assume that income in § 643(b) refers to the taxable income of the trust. However, the first sentence of § 643(b) provides that, within the parts of the Code encompassing §§ 641 through 668, any references to "income" without preface refers to the accounting income of the trust rather than another concept of income such as "taxable income". References to other types of income will be denoted by their full name, such as "distributable net income" or "taxable income". See e.g., § 641 describing rules related to the computation of "taxable income".

RECOMMENDATION:

In each case using this structure, as a threshold matter, the trust's income tax returns should be examined to ensure that (a) the trust is reporting all of its taxable income, including capital gains and any income that is described as an extraordinary dividend, and (b) ensure that the trust is disallowed any deduction claimed with respect to such income solely because the trustee, acting in good faith, has allocated such income to the corpus of the trust.[4]

Please call Jennifer N. Keeney or Darshan H. Chulani at (202) 317-6850 if you have any further questions.

[4] Certain promotional materials include a description of tax reporting used in this structure as shown on the Form 1041. This sample From 1041 reflects that capital gains and other amounts of gross income characterized as extraordinary dividends are included as part of the trust's "total income", however, the sample Form 1041 shows that the trust claims a deduction on line 15a (other deductions not subject to 2% floor) in an amount that corresponds to the amount included in income. These promotional materials suggest that, in some variations, a statement is included with the return to explain this deduction.

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Steven E. Gurian, Esq., LL.M. (Counter Legal Opinion IRC Memo AM-2023-006)

EASY ESTATE PROBATE

ATTORNEY CLIENT PRIVILEGED INFORMATION

September 27, 2023

Benson Financial, LLC
c/o Paul Rosen, Esq.
1707 Post Oak Boulevard
Suite 483
Houston, Texas 77056

Re: Counter Legal Opinion on IRC Memo AM 2023-006

Dear Mr. Rosen:

Attached you will find the legal opinion you have asked my office to prepare in connection with the IRS internal memorandum AM 23-006 regarding the interpretation of IRC § 643(b) to a Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust.

Should you or your office have any questions, please do not hesitate to contact me.

Very truly yours,

Steven E. Gurian, Esq., LLM

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EASY ESTATE PROBATE

Legal Opinion – 643b & Copyright Trust

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ATTORNEY CLIENT PRIVILEGED INFORMATION

September 27, 2023

Benson Financial, LLC
c/o Paul Rosen, Esq.
1707 Post Oak Boulevard
Suite 483
Houston, Texas 77056

Re: Counter Legal Opinion on IRC Memo AM 2023-006

Ladies and Gentlemen:

We have acted as counsel to Benson Financial, LLC, in connection with the above-referenced matter. Benson Financial, LLC, has requested that we deliver this opinion to you, and we understand that Benson Financial, LLC, will rely on this opinion.

BACKGROUND

Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts (hereinafter the "Trust") were created as an asset protection and tax planning vehicle. A third-party settlor, acting on behalf of the taxpayer creates and funds the Trust, and the taxpayer is given the authority to add or remove trustees and beneficiaries. By designating the Trust as a non-grantor trust, the settlor of the Trust gives up control over any assets that are transferred to it. Consequently, these assets become creditor protected. Likewise, the spendthrift provision in the Trust adds an extra layer of protection by limiting the beneficiaries ability to transfer or assign their interest in the trust. The spendthrift provision also prevents creditors from attaching or taking Trust assets that are for the benefit of the beneficiary. From a tax standpoint, by structuring the Trust as a non-grantor Trust, the settlor does not pay tax on any income earned, but rather the trust pays tax as a legally distinct entity. However, when a non-grantor trust makes a distribution to a beneficiary, the taxable ordinary income is passed to the beneficiary and taxed on their personal income tax return.

IRC § 643(b) clearly and unambiguously states:

> **(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

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> 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.

A plain reading of IRC § 643(b) would remove extraordinary dividends or taxable stock dividends from the definition of "income" if a fiduciary has the sole and absolute authority to designate something as extraordinary dividends or taxable stock dividends, and that designation is paid to the corpus of the Trust and not subject to distribution. Such interpretation and classification of extraordinary dividends or taxable stock dividends as "non-income" would make the "income" under IRC § 643(b) non-taxable.

On August 18, 2023, the Office of Chief Counsel for the Internal Revenue Service released memorandum (Number: AM 2023-006) (hereinafter the "Memorandum") which addressed the use of this Trust as an estate planning tool. The Memorandum states that the structure does not offer the tax benefits claimed. Specifically, the Memorandum states that any and all promotional materials on the Trust take IRC § 643(b) out of context and that IRC § 641 is not factored into any analysis concerning the taxation of the Trust.

We were asked to opine on the following matters with respect to IRC Memo AM 2023-006 and the application of IRC § 643(a) and (b) to Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts:

1. In the context of IRC § 643, is there a distinction between "distributable net income" and "taxable income?"
2. Whether the Trust will recognize income on its capital gains?
3. Whether the Trust will recognize income on extra ordinary dividends?

GENERAL QUALIFICATIONS AND ASSUMPTIONS

For purposes of this opinion we have examined the executed original, or a copy certified or otherwise authenticated to our satisfaction of only the documents listed on the attached **Exhibit "A"** (the "Documents"). With respect to the Documents we have assumed: (i) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of the officers and other persons and entities signing each of said documents as or on behalf of the parties thereto; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to authentic originals of all documents submitted to us as certified, conformed or photostatic copies; (iv) the due execution and delivery of all documents by all parties thereto (including those documents furnished to us in unexecuted form); and (v) that the aforesaid documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion. For the purposes of rendering our opinion, we have not reviewed any document other than the documents set forth above and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements, representations and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects. Notwithstanding anything to the contrary

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set forth herein, we are not aware of any facts or circumstances that render our assumptions, false, misleading, or materially incorrect.

We have also assumed that: (i) there has not been any mutual mistake of fact or misunderstanding, fraud, duress, or undue influence in connection with the transactions described herein; (ii) the conduct of the parties to the transactions that are the basis for your request for this opinion has complied with all applicable laws and any requirement of good faith, fair dealing, and conscionability in all respects material; (iii) you and your agents have acted in good faith and without notice of any facts or allegations that would be inconsistent, in any material respect, with the facts and assumptions contained, or the opinion as expressed, herein; (iv) the constitutionality or validity of a relevant statute, rule, regulation, or agency action is not in issue unless a reported decision has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; (v) other documents (aside from those executed in connection with the creation and administration of the Trusts) and court orders (pertaining to matters arising from or directly affecting the Trusts).

We have also assumed that the parties to the Documents have in all material respects complied and will comply at all times with their respective representations, warranties, covenants duties, and agreements contained in the Documents, and have not taken or made and will not take or make any actions or statements that are in any material respect inconsistent with or contradictory to such representations, warranties, covenants and agreements.

The law covered by the opinion expressed herein is limited to the Internal Revenue Code, Treasury Regulations, as well as the express provisions of the Trust (the "Opining Law"). Accordingly, we do not express any opinion as to any matter governed by any law other than the Opining Law.

We express no opinion as to any matter not specifically set forth herein. We express no opinion on whether a court of competent jurisdiction, including but not limited to the United States Tax Court, United States Courts of Appeals, and/or Supreme Court of the United States would or would not, enter an order or judgment in contravention to the opinions set forth herein. We cannot opine as to what action a court will take in the future when reviewing actions that have or have not occurred as of the date hereof. This opinion is expressly limited to the inquires stated *supra.*

OPINIONS

A. Distributable Net Income and Taxable Income

It is our opinion that IRC § 643(a) modifies what is considered taxable income as defined in IRC § 63(a). Specifically, IRC § 643(a)(1) through (4) make modifications to what would otherwise be taxable income.

B. Taxation of Capital Gains

It is our opinion that the gains from the sale or exchange of a capital asset will be excluded from taxable income to the extent that such gains are allocated to the corpus of the Trust and are not paid, credited, or required to be distributed to any beneficiary during the taxable year. The

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trusts provided in Exhibit "A" appear to comport with IRC § 643 and provide the fiduciary-trustee with the discretion for such an allocation, as would presumably, local law.

C. Taxation of Extraordinary Dividends

It is our opinion that extraordinary dividends or taxable stock dividends are excluded from gross income so long as the fiduciary-trustee does not pay or credit to any Trust beneficiary such dividends that are allocable to corpus under the terms of the governing instrument and local law. The trusts provided in Exhibit "A" appear to comport with IRC § 643 and provide the fiduciary-trustee with the discretion for such an allocation, as would presumably, local law.

ASSUMPTIONS OF FACT

A. Trustees

1. Each trustee has complied at all times and in all respects material with the provisions of Trust.

2. Each trustee has not and will not engage in any type of fraudulent activity in connection with the Trust.

3. Each trustee and their agents and/or representatives has not taken any action in contravention to the Trust.

4. Each trustee has filed a complete and accurate tax return.

B. Purposes of the Trust

1. That the Trust complies with IRC § 2511.

2. That the Trust is property funded and complies with state law.

3. That the asset protection benefits of the Trust comport with local and state law.

4. That gross income generated by the Trust would constitute an extraordinary dividend as defined in IRC § 643(b).

LEGAL ANALYSIS

A. Discussion of the Law. The following discussion comprises of our analysis in reaching the opinion expressed herein and does not constitute an independent opinion as to any element of the analysis.

1. The Characterization of Distributable Net Income vs. Taxable Income within the Meaning of IRC§ 643

Under IRC § 61(a), the Internal Revenue Code defines gross income as follows:

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> (a) General definition - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Annuities; (9) Income from life insurance and endowment contracts; (10) Pensions; (11) Income from discharge of indebtedness; (12) Distributive share of partnership gross income; (13) Income in respect of a decedent; and (14) Income from an interest in an estate or trust.

Under IRC § 63(a), the Internal Revenue Code defines taxable income as follows:

> (a) In general - Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means **gross income** minus the deductions allowed by this chapter (other than the standard deduction). *[Emphasis Added]*.

Under IRC § 641(a), the Internal Revenue Code imposes tax on income of trusts and estates as follows:

> (a) Application of tax - The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust […].

IRC § 643(a) clearly and unambiguously states:

> (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**

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> **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.** *[Emphasis Added]*.

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.

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IRC § 643(b) clearly and unambiguously states:

> (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**. *[Emphasis Added]*.

The Memorandum fails to address the fact that both subsections (a) and (b) both modify the meaning of "taxable income". IRC § 643(b) specifically states that unless the words "taxable", "distributable net", "undistributed net", or "gross", precede the word "taxable", then "income" would mean 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. *See also* Treas. Reg. § 1.643(b)-1. Clearly, there is a modification of what constitutes "income" under IRC § 643(b) as well.

2. Taxation of Capital Gains

IRC § 643(a)(3) clearly and unambiguously states:

> **(3) Capital gains and losses**
>
> **Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c)**. Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of 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.

The Memorandum states that the Trust will recognize income on its capital gains and dividends, except to the extent those amounts are distributed or deemed to be distributed to its beneficiaries. Looking at IRC § 643(a)(3) as a whole, the assessment made in the Memorandum is correct. Gains from the sale of a capital asset are excluded to the extent that such gains are allocated to corpus and are not paid, credited, or required to be distributed to the beneficiary during the taxable year, or paid, permanently set aside, or to be used for the purposes specified in section 642(c). Treas. Reg. § 1.643(a)-3 expounds further by stating that gains from the sale or exchange of capital assets are ordinarily excluded from distributable net income and are not ordinarily

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considered as paid, credited, or required to be distributed to any beneficiary except as provided for in § 1.643(a)–6 and paragraph (b) of this section which addresses income from foreign trusts and certain sales of capital assets.

Treas. Reg. § 1.643(a)-3(b) clearly and unambiguously states:

> (b) Capital gains included in distributable net income. Gains from the sale or exchange of capital assets **are included in distributable net income to the extent they are, pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of discretion by the fiduciary** (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by applicable local law)—
>
> (1) **Allocated to income** (but if income under the state statute is defined as, or consists of, a unitrust amount, a discretionary power to allocate gains to income must also be exercised consistently and the amount so allocated may not be greater than the excess of the unitrust amount over the amount of distributable net income determined without regard to this subparagraph § 1.643(a)–3(b));
>
> (2) **Allocated to corpus but treated consistently by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a beneficiary**; or
>
> (3) **Allocated to corpus but actually distributed to the beneficiary or utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a beneficiary.** *[Emphasis Added]*.

Subsections (1) through (3) describe the only three instances (with its own set of limitations) where capital gains **would** be included in distributable net income. Because IRC § 643(a) modifies taxable income as defined in IRC § 63(a), by virtue of subsections (1) through (4), it is reasonable to infer that gain from the sale or exchange of a capital asset is likewise excluded from taxable income.

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3. Taxation of Extraordinary Dividends[1]

IRC § 643(a)(4) clearly and unambiguously states:

> (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**. *[Emphasis Added]*.

The plain language of IRC § 643(a)(4) excludes extraordinary dividends and taxable stock dividends from gross income so long as the fiduciary-trustee does not pay or credit to any Trust beneficiary such dividends that are allocable to corpus under the terms of the governing instrument and local law.

The Memorandum also addresses IRC § 643(b) which clearly and unambiguously states:

> (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**. *[Emphasis Added]*.

A plain reading of the pertinent portions of IRC § 643(b) at issue would demonstrate that gross income that is characterized as extraordinary dividends or taxable stock dividends would not be considered income. As stated *supra*, IRC § 61(a) delineates 14 classes of income which are subject to taxation by virtue of IRC § 63(a) (minus deductions). Therefore, if IRC § 643(b) explicitly removes extraordinary dividends or taxable stock dividends from income as defined in IRC § 61(a), it therefore would not be subject to tax under IRC § 63(a), assuming that certain conditions precedent are met. *See also* Treas. Reg. § 1.643(b)-2 ("Extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to

[1] Although the focus of this opinion is the taxation of a complex trust, under Treas. Reg. § 1.643(a)-4 "a trust which qualifies under subpart B (section 651 and following) as a "simple trust," there are excluded from distributable net income extraordinary dividends or taxable stock dividends which are not distributed or credited to a beneficiary because the fiduciary in good faith determines that under the terms of the governing instrument and applicable local law such dividends are allocable to corpus."

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corpus under the terms of the governing instrument and applicable local law are not considered "income" for purposes of subpart A, B, C, or D, part I, subchapter J, chapter 1 of the Code. See section 643(a)(4), § 1.643(a)–4, § 1.643(d)–2, section 665(e), paragraph (b) of § 1.665(e)–1, and paragraph (b) of § 1.665(e)–1A for the treatment of such items in the computation of distributable net income").

B. Qualifications in the Application of Law

In expressing our opinion, we note the following considerations presented by the facts of this case. First, each trustee has and will observe all applicable statutory formalities and requirements of the Trust in all material respects as well as all tax reporting requirements.

In reaching our opinion herein, we have relied upon concepts from the Trust, the Internal Revenue Code, Treasury Regulations, statutory authorities, cases, and secondary sources discussed herein which involve general principles regarding the taxation of the Trust. While we believe that the general principles applicable in the context of the analysis proffered are supported by the Documents and law, we caution that a court addressing the issues presented for legal analysis in this opinion would rule on the issues of the taxation of the Trust based upon the particular facts and circumstances before it, and might, therefore, reach a different result based on those facts. The foregoing opinion is therefore a reasoned opinion based upon an analysis of the Documents, the Internal Revue Code, Treasury Regulations, and case law decided under the laws of various jurisdictions that we believe would be applicable by analogy to the factual patterns set forth herein. Thus, the opinion expressed herein is not a guaranty as to what a particular court or regulatory committee actually would hold, but is an opinion as to the decision a court or regulatory committee would reach assuming that the issues were properly presented to a court or regulatory committee, and assuming that the a court or regulatory committee were to follow existing precedent as to legal and equitable principles applicable in any future litigation regarding the taxation of the Trust.

In this regard, we further note that legal opinions on matters involving the Opining Law unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions of third parties typically are provided. These inherent limitations exist primarily because of: (i) the pervasive equity powers of courts properly exercising jurisdiction, (ii) the overriding goal of reorganization to which other legal rights and policies may be subordinated, (iii) the potential relevance of the exercise of judicial discretion, as evidenced by the fact that courts have accorded different degrees of significance to a variety of factual elements, (iv) facts and circumstances arising in the future that are different from those assumed herein, and (v) the nature of the trust administration and taxation of trusts and estates in general. Accordingly, the conclusions reached herein must be considered in light of these broad statutory and equitable powers of a court or regulatory committee. Consequently, we render no opinion or advice of counsel as to the interplay of the issues opined on herein with the judicial or regulatory process with respect to the Trust generally, or strategic factors or circumstances that might affect the outcome of any litigation regarding the taxation of the Trust and related matters.

This opinion is rendered pursuant to your request and is solely for your use, and may only be relied upon by you, your successors or assigns (including any trustee or any substitute or successor trustee), and may not be relied upon for any other purpose or relied upon by, or furnished or quoted to, any other Person for any purpose. This opinion speaks only on the date hereof and

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is based on our understandings and assumptions as to present facts, and on our review of the above-referenced documents and the application of state and federal law as the same exist on the date hereof, and we undertake no obligation to update or supplement this opinion after the date hereof for the benefit of any Person (including any Person granted reliance in the preceding sentence) with respect to any facts or circumstances that may hereafter come to our attention or any changes in facts or law that may hereafter occur or take effect.

Very truly yours,



Steven E. Gurian, Esq., LL.M

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EXHIBIT "A"

1. IRC Memo AM 2023-006;
2. Benson and Associates Legal Opinion dated June 3, 2002;
3. Myers and Associates Legal Opinion dated May 6, 2003;
4. Paul B. Rosen Legal Opinion dated June 12, 2019;
5. Benson Financial, LLC – Internal Revenue Code and Legal Compliance: Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust;
6. 2010 IRS Nationwide Tax Forum;
7. Copyright Master's Trust 2012 Business Trust; and
8. Master's Irrevocable Spendthrift Trust Agreement.

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Paul B. Rosen, Attorney and Counselor at Law (Reply to Counter Argument)

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July 30, 2025

To: Benson Financial Authorized Distributors

Many, if not all, Benson Financial authorized distributors have made inquiries and raised concerns regarding the effect of the IRS Memorandum dated August 9, 2023, authored by Chief Counsel for the Internal Revenue Service.

I have reviewed the legal opinion of Steven E. Gurian, Esq directly addressing the IRS memorandum. It is, in my opinion, a comprehensive, well-written and authoritative analysis substantially disputing the IRS Memorandum's conclusion. Since Mr. Gurian has an LLM degree and an expert in tax law I defer to his expertise and opinions as written.

Notwithstanding the foregoing I believe should the IRS embrace Chief Counsel's memorandum as a reasonable and valid interpretation of the application of IRS section 643, Mr. Gurian's opinions are also reasonable. Thus, it is my opinion that should the IRS embrace chief counsel's opinion it would legally represent only one of two differing/competing opinions both of which are reasonable and thus presents opportunities to legally challenge any such adverse IRS opinions/decisions.

Under the foregoing circumstances I offer the following observations and opinions, conditional upon the understanding that I am not retained counsel for you or your clients/customers, I am not a Tax lawyer nor claim any expertise in tax law, and any observations or opinions I may provide is based on my experience as a litigation attorney and is solely for the personal use of you and your attorney(s) and accountant(s) in performing your own research and evaluations, and may not be relied upon by either you or your client. With these caveats, I offer you the following:

1) The IRS Memorandum is not an actual IRS regulation or even a private letter ruling. Rather, it is an internal memorandum from counsel for the Internal Revenue Service to other IRS attorneys. By its terms is not a third-party communication. Moreover, it expressly states that “this memorandum may not be used or cited as precedent."

2) To my knowledge there has never been a private IRS letter ruling that incorporates or conforms with the IRS Memorandum.

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3) To my knowledge there has never been an appellate case interpreting section 643 in connection with irrevocable tax deferment benefits, rights or obligations, let alone one embracing the opinions contained in the IRS Memorandum.

4) It is my understanding that there have been multiple private IRS letter rulings that are contrary to the interpretation counsel for the IRS sets forth in the IRS Memorandum. Moreover, it is my understanding that private IRS letter rulings are unique to the specific case it is involved in and cannot be used as precedent.

5) There have been accountants over many years who have prepared and filed hundreds if not thousands of tax returns deferring taxable income pursuant to section 643 of the code. Presumably successfully since I am unaware of the IRS disallowing such 643 tax deferments provided that the irrevocable spendthrift trusts are set up and operated properly and in accordance with law.

6) In my opinion IRS code section 643 is, in the worst-case scenario, ambiguous. And the current IRS regulations governing section 643 do not directly express or describe the interpretation of section 643 as opined by Chief Counsel for IRS in the IRS Memorandum.

7) I am unaware of any post August 9, 2023, IRS Memorandum *audit* that incorporates and follows the opinion of Chief Counsel.

8) In my opinion should the IRS's desire to implement the opinions of Chief Counsel the department (Sec. of Treasury) would or should implement new regulations adopting the memorandum's analysis and conclusion. It is noteworthy that this has not occurred in almost 2 years since the memorandum came out. And it is likely to be several years down the line where this might occur, particularly with the current executive (presidential) administration

9) Should the IRS implement such a regulation and/or otherwise disallow section 643 tax deferment treatment for properly created and implemented irrevocable trusts it could and should be challenged.

10) In challenging any such amended or new regulation careful consideration should be given to last year's Supreme Court opinion in Loper Bright Enters. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244 (2024). This opinion effectively eliminates the so-called Chevron deference which held there is a presumption that statutory ambiguities are implicitly delegated to government agencies to interpret. Under Loper, when there is a statutory *ambiguity,* it is the courts, *not the government agency* (e.g. IRS), that has the power of interpretation, which is in accordance with the Administrative Procedure Act, 5 U.S.C.S. § 551 et seq. eliminating the erroneous concept that the agency's interpretation is binding on the courts.

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11) It is my belief that the interpretation proposed by Chief Counsel for the IRS is likely to take years to be implemented, *if ever*. And it is unlikely to affect many, if any, taxpayers adversely until a regulation is implemented.

12) And should IRS Chief Counsel's opinion become an IRS regulation, upon an adverse taxpayer ruling, a timely legal challenge would be proper and should be undertaken. Such litigation and appeals are likely to take years to resolve and even if adversely, are unlikely to be retroactively applied (except as to the taxpayer involved in the litigation)

Paul B. Rosen, Esq

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Frequently Asked Questions

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General

What are the abbreviations for a Grantor, Trustee, Compliance Overseer, Beneficiary and Trust?
GR = Grantor (ie. Settlor, Trustor, Creator)
TTE = Trustee
CO = Compliance Overseer
BEN = Beneficiary
TR = Trust

Why do you have two different Trusts?
Because there are two different types of income: Passive and Active.
Our **Beneficial Trust** was drafted solely for **PASSIVE income** and *to hold title to any and all assets*.
Our **Business Trust** was drafted solely for **ACTIVE income** and does *not* hold title to any assets.

What are some examples of Passive and Active Income activities?

Passive Income Cash, Stocks, Bonds, Mutual Funds, CD's, Precious Metals, Jewelry, Artwork, Cryptocurrency, Real Estate, etc.

Active Income 1099 Independent Contractors –> Consulting, Marketing, Sales
Business Owners –> Car Dealership, Flower Shop, Restaurant
Professionals –> Architects, Attorneys, CPA's, Engineers, Physicians

Grantors

What is a Grantor?
The Grantor sometimes called the Creator, Settlor or Trustor, is any person who creates a trust for the benefit of beneficiaries. To establish our trust, there is an initial funding by the Grantor who is neither a Trustee or Beneficiary. After the trust is established, the Trustee may convey additionally assets, tangible and intangible, to the trust for the benefit of the Beneficiaries. The Grantor has no rights, equitable interest, or beneficial interest in the Trust.

Is there a Grantor in a Non-Grantor Trust?
Yes. The grantor in a non-grantor trust is an independent third-party and ***not*** you. This prevents the trust from acting as an alter-ego of yourself.

What powers, if any, does the Grantor have?
The Grantor permanently relinquishes all control and powers once they convey the Trust to the initial Trustee and sign (and double-witness) a document to "depart" from the trust.

Trustees and Compliance Overseers

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What is a Trustee?
The Trustee is a person that holds the legal title "in trust" for the trust estate. There may be one or more Trustees. If a Trustee is unable or unwilling to serve, then a Successor Trustee steps in to hold and manage the trust estate. The trustee is obligated to act in accordance with the terms and conditions of the trust for the benefit of the trust beneficiaries.

Someone suggested I get a bank-managed trust, what do you recommend?
Our goal is to have *you*, as Trustee of the trust, be in full-control of all trust assets. We do not recommend utilizing a trust wherein a third-party is in control of trust assets.

What is a Compliance Overseer?
The Compliance Overseer shall be responsible for the oversight of the actions of the Trustee(s) to ensure that the Trustee(s) actions conform to the terms and conditions of this Trust and the intent of the Grantor in establishing the trust. The Compliance Overseer shall have the power to remove and replace any Trustees at any time with reason or cause. Furthermore, the Compliance Overseer shall have the power to cause all the interests of a Beneficiary in this Trust to immediately cease by delivering a written notice of the cessation of such interest to the Trustee(s). Such decision to cause a Beneficial interest to cease shall be made with respect to any Beneficiary of our Trust, at any time, in the sole and absolute discretion of the Compliance Officer, with or without cause.

May a non-citizen foreigner purchase a Spendthrift Trust if they *first* obtain an ITIN (Individual Tax Identification Number) from the SSA (Social Security Administration) in the United States?
Yes.

Is the Trustee or Compliance Overseer considered an employee or otherwise contracted by the trust?
No.

How do I, as the Trustee, get assets into the Trust?
Assets are sold at your "Basis" into the trust using a "Bill of Sale" and "Promissory Note".

Basis The cost basis is your after-tax dollars in an asset before any capital gains.
Formula: **Purchase Price + Improvements (Less Depreciation) = "Basis"**

Bill of Sale Is evidence of a sale transaction. (ie. Used when selling motor vehicles.)

Promissory Note Is evidence of a debt owed when taking out a loan against an asset. (ie. Used when obtaining a mortgage on a home.) It is also the financial consideration for the sale of your assets into the trust.

Do I receive a Bill of Sale and Promissory Note (BOSPN) for assets I sell into the Trust?
Yes. The cost basis of any assets sold to the Trust will be reflected in the Promissory / Demand Note which is signed and notarized.

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Am I required to sell everything I own into the trust all at once, or may I capitalize items at the time of my choosing?
While it is recommended you transfer (ie. sell) all of your assets into the trust all at once, it is at your discretion to do so.

Beneficiaries

What is a Beneficiary?
The Beneficiary is the person(s) or entities which benefits from the trust estate. The rights of beneficiaries depend on the terms and conditions of the trust. Beneficiaries have no "equitable title" only a "beneficial interest" in the property or assets held in the trust. Beneficiaries have no right of management of the trust nor have any right to access business records or knowledge of trust business activities or actions.

May a Beneficiary witness signatures on documentation pertaining to the Trust?
No.

When traveling to visit or inspect Trust assets, may the Trust pay for the travel accommodations of Beneficiaries without it being a taxable event to the Beneficiaries?
Yes.

May a Beneficiary, whose children are grown, be eligible to travel with their grandchildren and have the expenses paid by the Trust when traveling on Trust business?
Yes.

May Beneficiaries convey (ie. sell) their own assets into a Beneficial Trust for which they are a Beneficiary and draw their principal out tax-free?
Yes. Beneficiaries may sell assets into the Trust, however:

1.) The Trust owns the assets;
2.) The Beneficiary may never take the asset back without buying it from the Trust; and
3.) The Beneficiary takes a promissory / demand note for their cost basis in the assets. The principal payments on the note are tax-free, but the interest on the note will be taxable. This income to the Beneficiary must be reported with applicable state and federal taxes paid annually.

Corpus and Trust Assets

What does Corpus mean?
"Corpus" is Latin for "Body". Think of a dead-body or "corps" to help remember its meaning.

What is the function or purpose of the Trust?

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The Trust functions for the benefit of the Beneficiaries to manage, operate and maintain the Trust and Trust assets. The Trustee is a fiduciary and may not benefit from the Trust or its assets for personal expenditures.

How is household furniture valued?
Household furnishings may be valued up to the amount authorized by your homeowner's insurance policy (usually 25% of insured value of a home). So, lump all household furniture, fixtures, appliances and other household items as one item.

How does the Business Trust make use of all the assets, equipment, intellectual property, real estate and motor vehicles owned by the Beneficial Trust?
The Beneficial Trust owns ***all*** assets and may lease offices, desks, chairs, phones, computers, software, client lists, intellectual property, vans, trucks, trailers and equipment, etc, to the Business Trust.

May I charge Trust expenses to my personal credit cards and then pay them off with Trust funds?
Yes.

What happens if the Trust paid for "personal expenses" of the Trustee (or Beneficiary) on the Trust's debit card?
The Trust will issue a 1099 to the Trustee (or K-1 to the Beneficiary) for any "personal expenses" paid by the Trust during the course of the taxable year. However, the Trustee may take those "earnings" off their promissory / demand note with the Trust and record the new balances.

If the Trust gives a Beneficiary $20,000 in cash to go and purchase their own vehicle, is that a taxable event to the Beneficiary?
Yes. That is a "distribution" and would be a taxable event to the Beneficiary.

If the Trust purchases a $20,000 vehicle for a Beneficiary, and the vehicle is titled in the name of the Beneficiary, is that a taxable event to the Beneficiary?
Yes. That is *still* a distribution and would be a taxable event to the Beneficiary.

If the Trust purchase a $20,000 vehicle for a Beneficiary, but the vehicle is titled in the name of the Trust, is that a taxable event to the Beneficiary?
No. The Trust assets, while having changed *form* (ie. from cash to a vehicle), remain "in corpus" and is not a taxable event.

May the Trust then pay for the tax, plates, licensing, registration, insurance, fuel, maintenance, accessories and any other expenditures surrounding the vehicle?
Yes.

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May the Trust pay for construction costs of a house, if the house is being built on land which belongs to the Trust?
The Trust must own the land and must be the Payee on the Interim Construction Note (if a note is needed) for the Trust to pay for the construction costs.

If the Trust purchases a home and the title is placed in the name of the Trust, may all of the mortgages, property taxes, gas, water, power, trash, electric, sewer, internet, phones, furnishings and utilities be paid by the Trust?
Yes.

May I sell Trust Assets at any time?
Yes. There is no "seasoning" with any Trust assets. As the Trustee you may, in your sole and exclusive discretion, sell any Trust assets at any time.

If I purchased a Trust today, may I back-date its creation date by a few months?
No.

Banking

Must each Trust have at least one bank account?
Yes.

May each Trust have more the one bank account with differing financial institutions?
Yes.

May the Beneficial Trust have a Brokerage account and/or cryptocurrency wallet?
Yes.

May the Trust have a debit card or credit card?
Yes. Generally the Trust will have a debit card but might not have a credit card because the issuing financial institution would be unable to collect on the debt in the event of a default.

May my personal work checks be deposited into the Trust bank account?
Yes. While you may have the checks from your job deposited or endorsed to the Trust's bank account, the checks may not be issued in the name of the Trust. Your W-2 wages would still be reported as income on your personal 1040 tax return.

May I obtain loans through the Trust to purchase vehicles, real estate or other assets?
Yes. Any loans made to the Trust would be non-recourse loans, as the assets of the Trust are impenetrable. Many financial institutions will not loan to our Trust because (we believe) they are unable to turn-around and sell the loan to Wall Street as a mortgage-backed security. So, sometimes you may need to secure the loan in your individual name, an LLC, or other method such as a hard-money loan, owner-financing and/or private equity lenders.

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May a non-citizen of the United States be a Beneficiary of the Trust?
Yes. A foreign-national may be a Beneficiary of the Trust as long as they do not receive any taxable distributions from the Trust, unless they have first obtained an United States SSN or ITIN (ie. Social Security Number or Individual Tax Identification Number).

If any asset is purchased with Trust assets (from a Trust bank account) and is immediately titled in the name of the Trust upon purchase, are the funds leaving the Trust bank account for the said acquisition subject to taxation?
No. Because while the *form* of the Trust assets may have changed, the underlying asset itself remains owned by the Trust. Sales Tax (as applicable from State to State) must be paid.

Churches, Charities and Other Registered Non-Profit Organizations

May a Trust make charitable donations to churches, charities or non-profit organizations?
Yes. The Trust may make charitable contributions to any organization with a 501(c)3 tax status and take the deduction on the Trust's federal 1041 tax return.

How does the Trust give to a ministry?
Most ministries and missions work through 501(c)3 organizations, and donations to a registered 501(c)3 organization are fully tax-deductible to the Trust as a charitable contribution. Payments to another trust or foundation which is a Beneficiary of your Trust would receive a K-1. If the trust (who received the payment) is also a Spendthrift Trust, their K-1 'income' would be considered an "Extraordinary Dividend". Giving funds over $600 to an individual or organization who is not a registered 501(c)3 organization, nor a Beneficiary of your Trust, would receive a 1099 from your Trust.

Insurance and Annuities

When purchasing auto, home or renter's insurance for Trust assets, who pays the premiums?
The Trust pays the insurance premiums.

May I pay for health insurance out of the Trust?
Yes. The Trust may pay for education and medical expenses for both the Trustee and the Beneficiaries. Expenses must be paid directly to the provider and not to the Trustee or Beneficiary.

May I purchase a non-qualified annuity from the Trust and pay it to an outside person?
While the Trust may purchase a non-qualified annuity, the Beneficiary may not be an outsider. The Trust would be the owner and Beneficiary of the annuity and the annuitant would be the Trustee or Trust Beneficiary.

Medical

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May the Trust pay for alternate forms of medical treatments such as reiki, acupressure or acupuncture, etc?
Yes, to the extent such medical treatments are doctor prescribed or recommended.

May withdrawals from my IRA be placed into the Trust?
Yes. While qualified retirement plans may *not* be placed into the Trust, distributions from retirement accounts (ie. Social Security, 401 K's, 401 B's, IRA's, Roth's, etc.) may be deposited directly into the Trust to fund the Trust and would be added to your Demand Note, but the incoming tax reporting will still appear on your personal 1040 income tax return.

May Beneficiaries annually receive the maximum gift amount allowed by law from the Trust without being subject to taxation?
No. Trusts may not give gifts. Any funds given to a Trustee or Beneficiary are taxable income. The Trustee receives a Form 1099 and the Beneficiary receives a K-1.

Taxation

Does each Trust have its own EIN (Employer Identification Number)?
Yes.

Whose SSN (Social Security Number) is used to obtain the EIN (Employer Identification Number) with the IRS (Internal Revenue Service)?
One of the Trustees or one of the Compliance Overseers.

Does either Trust file any State tax returns?
No.

Must each Trust file a Federal 1041 tax return annually?
Yes.

Should I keep receipts to document all trust purchases and expenses, including fuel?
Yes. You should maintain all receipts for any trust purchases and expenses, just like you would for an entity. Bank and credit card statements may not always be proof of purchases or expenses in-and-of themselves.

Must each Trust keep books and records, often referred to as "Business Formalities"?
Yes. Each trust should keep a categorized General Ledger of all expenditures and proper financial records known as a Profit and Loss statement (P&L).

Do we still take depreciation on Trust properties since it's already tax deferred?
No. The Trust does not take depreciation on its real property or any other trust assets.

Can the IRS grab money that is in the Trust?

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No.

Are the Trust accounts subject to bail-ins?
No.

Is it likely that the laws surrounding Internal Revenue Code § 643 might change, rendering the Trust ineffective or obsolete?
No. In order for IRC § 643 to amended, it would require a two-thirds majority vote from Congress (which has not happened in over 100-years) and is unlikely to ever occur given the powerful families and individuals who make use of this portion of the tax code.

If I were to take $1 Million of Trust assets and, as the Trustee, invest it into income-producing real estate, would the passive rental income from the property be subject to taxation within the trust?
No.

What if I were to take $1 Million of Trust assets and, as the Trustee, invest it into cryptocurrency, foreign currencies, precious metals, stocks and bonds, CD's or mutual funds, would the passive income from those investments be subject to taxation within the trust?
No.

How is "Active Income" from the Business Trust turned into "Passive Income" for the Beneficial Trust?
The Business Trust leases everything it needs to function from the Beneficial Trust. When (active) income is generated by the Business Trust it pays the Beneficial Trust in accordance with their Lease Agreements for the use of those assets (as tax deductible business expenses). The Beneficial Trust then reports this (passive) lease income, which is tax deferred under IRC §643 (b).

Is this a scheme to avoid taxation for perpetuity?
No.

When *are* there taxable events?
While there are no taxable events when assets are *inside* the Beneficial Trust "Corpus", ***there are taxable events*** as soon as Trust assets come *out* of the Beneficial Trust "Corpus" and ***Distributions*** are made to Trust Beneficiaries. Said Beneficiaries receive a K-1 as taxable income.

At the death of the Trustee, is the Trust subject to probate court, death tax, estate tax, inheritance tax, generation-skipping tax or a stepped-up basis on Trust assets?
No. While the Trustee may have deceased, the Trust remains 'alive' and active.

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 type of Trust structure. But, if you were to receive a correspondent audit, generally the trained Enrolled Agent can assist you - similarly to if you were

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individually audited or your entity were audited. We also have attorneys, currently licensed to practice law in California, Texas and Florida, with decades of experience utilizing our Trusts to assist you.

Use of Trust

May the Trustee or Compliance Overseer be paid a salary and, if so, how much and how frequently?
Salaries, which are subject to 15.3% FICA Tax (ie. Federal Insurance Contributions Act, which includes Medicare, Medicaid, Social Security, and Unemployment), may be taken as frequently or infrequently as desired and in any amount of your choosing with no upper limits. However, taking a salary is entirely *optional* and is in no way required.

Whom, besides the Trustee, may operate a motor vehicle owned by the Trust?
Anyone the Trustee authorizes.

May the Trustee, Compliance Overseer or Beneficiary reside full-time in a property owned by the Trust *without* paying any rents?
Yes.

What ***may* the Trust pay for?**
The Trust may pay for any and all expenses associated with **M-O-M**, the **M**anagement, **O**perations and **M**aintenance of the Trust and its assets.

What may the Trust ***not* pay for?**
Should the Trust pay for any "Personal Expenses" of the Trustee or Compliance Overseer (ie. cash, food, fun, fashion, facials and fitness), they would receive a 1099 respectively and be subject to taxation for such personal expenditures.

How do I purchase or transfer ***Residential* Properties into the Trust if they are encumbered?**
Once a Residential Property has been purchased and titled in your individual name or that of an entity, we make use of Land Trusts. Land Trusts may take advantage of a federal piece of legislation under the 89th Congress called the "Garn - St. Germain Depository Institutions Act", which allow us to transfer title to residential properties (into the Land Trust) without invoking a lender's due-on-sale clause. The Beneficial Interest of the Land Trust may later be privately "assigned" to either a Limited Liability Company or Beneficial Trust once the initial transfer into the Land Trust is complete.

How do I purchase or transfer ***Commercial* Properties into the Trust if they are encumbered?**
Lenders for Commercial Properties normally require the use of a Limited Liability Company to purchase and maintain title to the property. Some commercial property lenders may allow you to amend and restate the LLC Operating Agreement to reflect your Beneficial Trust as one of the members (ie. owners). If they do not, you would need to either find another lender who allows it, pay-off the balance, or seek a lender who will provide non-recourse loans directly to your Beneficial Trust.

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May the Business Trust operate a business in its own name and EIN (Employer Identification Number)?
Yes.

May a Business Trust operate a business through an LLC (Limited Liability Company) and its corresponding EIN (Employer Identification Number)?
Yes. While this is not recommended, it is sometimes necessary. For example, some States will only issue liquor licenses to an entity formed under State law, and will not issue a liquor license to a Business Trust which is created under contract law. In such instances, the Business Trust may be one of (or the sole) Member / Owner of the LLC which assumes responsibility for the liquor license.

Are there any time intervals that are required by the Trustee to hold Beneficiary meetings on the status of the Trust or any investments the Beneficiaries should be made aware of prior to the Trustee participating in them?
No. Moreover, the Beneficiaries have no rights to know anything about the Trust or its activities.

Is there a way to remove a Compliance Overseer once they hold that position?
No, not unless the said Compliance Overseer voluntarily agrees to the removal.

May a Trust pay for all expenses for a Beneficiary function, regardless as to where it is held?
Yes.

May a Beneficiary travel to view Trust property, or any other Trust asset, if the Trustee is not present?
Only with permission, or standing permission, from the Trustee.

Miscellaneous

May the Trust be used in all 50 States?
Yes.

Are there any known restrictions on assets which may be owned by the Trust?
No.

What is the life of the Trust?
In adherence with RAP, or the “Rules Against Perpetuity”, the Trust may continue until the death of the last currently living descendants of those Beneficiaries living at the time of the creation of the Trust.

Has our Trust ever been challenged by the United States government, and was it successful?
Trust Law is not subject to any City, County, State or Federal court and no judge or court of competent jurisdiction may issue a turnover order against a Trust with Spendthrift provisions.

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Has the IRS reviewed your Trust instruments?

The IRS has thoroughly examined our Trust for compliance and even a past IRS District Director purchased one for himself. Our Trusts are in full compliance with the entirety of the IRC (Internal Revenue Code) and Treasury Regulations.

Is your Trust still copyright protected?

Yes. 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.

Do you Provide 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 [30]

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.

Notes:

[30] https://www.assetprotectionservices.com/apsa/schedule-an-appointment.html

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Client Testimonials

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Client Testimonials

https://www.assetprotectionservices.com/apsa/about/client-testimonials.html

"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 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 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."

~Patrick, Iowa

"My family and I had the most basic, rudimentary understanding of asset protection that one can find online. We had a great appreciation of the many ways in which any person or institution, for almost any reason, can strip our family of our modest estate. As a result of this awareness, we felt anxiety and fear for our financial situation due to how unprotected and vulnerable we were to abuses of power and frivolous lawsuits.

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In an effort to think outside the box to protect our assets, and through a series of fortunate events, we were referred to Jay Butler and Asset Protection Services of America Trust. Just by looking at the website and reading the articles, we felt good about the company and their asset protection services. Once we spoke to Jay during our first appointment, it was a done deal. Without a doubt, we knew Asset Protection Services of America Trust would change our financial situation for the better and forever.

Jay and Asset Protection Services of America Trust presented us with a blueprint to construct a financial structure upon which we can build and preserve our legacy for future generations. We now move through our financial environment with knowledge and an empowering sense of confidence and freedom. Asset Protection Services of America Trust is the four-leaf clover everyone is looking for."

~Lenise, New York

"I have worked with Jay for a number of years. During this time he has set up more than 20 companies for me and created a revocable living trust. Recently he came to me with a new vehicle for asset protection, tax deferment, and estate planning. This is one trust that exhibits all these characteristics. This irrevocable trust is a very complicated endeavor, however it more than satisfies the necessities for any business owner or investor to grow and protect their wealth.

After a considerable amount of research, I decided to make the investment. Part of this research included a myriad of questions for Jay and his team. I approached this with a very detailed perspective and Jay and his team walked me through each question patiently.

In hindsight, this trust though intricate and detailed, is quite simple to understand and operate. I am grateful to have been introduced to this vehicle and I expect to be very happy with it going forward.

After the transition was made Jay helped me navigate the dismantling of my previous structures so as to be compliant with state and federal agencies. As an added bonus, I no longer need to comply with the new Corporate Transparency Act (CTA) requirements."

~RM, Florida

"I have known Jay and used his services for nearly a decade, and his guidance and advice have been exceptional throughout this time. As a busy surgeon with little time for anything outside my practice, I greatly benefited from Jay's meticulous attention to detail and genuine personal interest in my situation. He provides a level of support and satisfaction I could never achieve alone. Jay's exuberant and friendly personality makes working with him pleasurable, and he is always ready to lend a helping hand. I cannot recommend him highly enough to anyone needing his services."

~Phillip A. MD, Illinois

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"Recently, we had been in search of a new type of instrument to hold assets that would provide greater asset protection for our family and future generations. Jay introduced us to a Non-Grantor Complex Discretionary Irrevocable Trust with Spendthrift Provisions, that arranges assets at a higher level. True to its name, initiating this trust was complicated and Jay oversaw every detail with impressive precision in every way. Jay's follow-up was regular, document accuracy flawless, understanding of business exemplary, interpretation of law impressive, and sense of humor refreshing. Jay is always responsive whether by e-mail, phone or appointment. Jay almost walks on water!

Without reservation, it is our great pleasure to give Jay Butler and Asset Protection Services of America Trust our highest recommendation – it is the best beyond a doubt!"

~Gary and Ruth, California

"My husband and I have been working with Jay as our asset protection advisor since 2021. We knew very little about LLCs or trusts when we started with him. He set up an LLC structure for us for real estate holdings and he has taught us so much along the way. Jay clearly cares about his clients and wants to see their hard earned assets protected. He provided us small business owners with strategic intelligence that previously seemed out of reach except for the very wealthy. We have decided to transition our structure out of LLCs and are now working with Jay to develop an irrevocable trust structure. He continues to be attentive in answering our many questions and also refers us to appropriate professionals to help us manage the trust structure properly. Overall, we recommend Jay for asset protection advising without reservation."

"It has been more than 20 years since we have been associated with Asset Protection Services setting up various asset structures that best suited our ability and goals. Whether establishing companies or trusts, Jay has provided superior guidance with a skill set impressive in the category of "genius" because he seems to know just about everything."

~Darlene, Pennsylvania

"I found it to be very cantankerous, burdensome and time consuming to operate businesses for decades with structures of LLC's (more recently including Land Trusts and Person Property Trusts), and always trying to create an impenetrable maze to protect my assets.

In my continuous search for the safest protection for my assets I found the Irrevocable Spendthrift Trusts through Jay with Asset Protection Services. At first it sounded too good to be true. But as it turns out this is everything Jay set the expectation for. This plan checks all the boxes. For decades we have had dozens of lawsuits that cost hundreds of thousands in fees because of unscrupulous attorneys. We are now enjoying a simpler hassle-free way of doing business that provides real protection as it was intended by the initial founders. Contract law is an out of the box way of thinking that has been a process to understand and explain to my children but they are learning it well and fully embracing the new system that we are functioning under.

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Since finding the Irrevocable Spendthrift Trusts I have closed six LLC's and transferred all property (land, houses, rentals, vehicles, boats, trailers, and equipment, etc) into the trusts. We are finding that the advantages are increasing and numerous including savings from income and payroll taxes, freedom from 1031 assessments on sales, vehicle and property liability protection, simplification of management and financial tracking, and much more.

If you are looking for an instrument to protect your assets, the Irrevocable Spendthrift Trusts Jay provides is the ultimate. Jay Butler has been accessible throughout the process. He has always answered correspondence or returned phone calls very timely. Jay always follows-up and his thoroughness is something that is unmatched. He certainly has not forgotten what customer service is. One of my initial concerns was not being able to speak to someone who was operating in the trust system. I understand for anonymity sake Jay's protection of his clients. I was concerned that I could not verify all that was said. Jay kept referring me to his anonymous customer testimonials as the only source to confirm what the trusts can do. It seemed to be a risk about something too good to be true, however the reward has far exceeded the risk in this case. Although I was never able to speak to another client, Jay thoroughly explained the Trusts and walked us through the transfer without hiccup. This testimony is real, and the family business behind it is real, and we're fully benefitting from the proper way to be managing our business."

~Patrick, Florida

"Working with Jay Butler at Asset Protection Services of America Trust (APSA) to establish two Irrevocable Spendthrift Trusts and one LLC was an exceptionally smooth and enlightening experience. Jay's generosity with his time was remarkable, as he patiently addressed every question I posed, no matter how detailed or repetitive. His deep knowledge and organized approach demystified the complex process of trust and LLC formation, guiding us meticulously from initial setup to the seamless transfer of assets, ensuring we felt confident at every stage.

Jay's ability to simplify the intricacies of estate planning was a game-changer for us. He not only answered all our questions proactively but also walked us through each step with clarity, making a daunting process feel manageable and tailored to our specific needs. His accessibility was unmatched—Jay was always easy to reach whenever we needed clarification or support, and his prompt turnaround of documentation often left him waiting on us, showcasing his efficiency and dedication.

I wholeheartedly recommend Jay Butler and APSA for anyone seeking expert guidance in forming Trusts, Corps, LLCs, or LPs. His professionalism, responsiveness, and thoroughness exceeded our expectations, delivering solutions that comprehensively addressed our estate planning goals. Jay's commitment to client success makes him an outstanding partner for safeguarding and structuring your financial future."

~Brian, Arizona

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“I highly recommend Jay Butler and Asset Protection Services of America Trust.

Jay is genuinely passionate, knowledgeable, patient, and incredibly informative. He approaches every situation with a professional depth that is rare, consistently going above and beyond. Our conversations are always productive because he takes the time to consider the complete picture—a truly critical perspective when dealing with complex asset protection and estate planning.

Initially, the requirement to reserve a dedicated time slot to meet felt a little unusual. However, I quickly realized it is the key to his success and the greatest benefit to the client. When you are on his calendar, Jay is 100% focused on you for the entire hour and a half. There are no distractions, no feeling rushed, no question or topic too small, and no half-attention—just complete, dedicated focus on your needs. I was surprised to find that often the hour and a half was entirely necessary, as our appointments frequently went beyond my original agenda because Jay is so knowledgeable, often introducing, analyzing and discussing various factors I hadn't considered and needed to address — which is exactly why I need his expertise.

This intentional, structured approach makes every session invaluable. For anyone seeking a truly dedicated and effective asset protection professional, I wholeheartedly recommend Jay and his team."

~Becky, Florida

"My son and I recently purchased the Benson Irrevocable Spendthrift Trust through Jay Butler at Asset Protection Services. Jay has a thorough knowledge of this Trust and the other various options available through his services to clients. We have completed the setup of the Trust which has a number of steps. Jay was with us every step of the way guiding us with his expertise. Jay kept us on tract having us complete each step in an orderly fashion before proceeding on to the next step.

I truly appreciate how easy it is to schedule time with Jay and his prompt responses to any email questions I would present to him. I had full confidence in Jay’s guidance through the entire process. I am extremely grateful for his unwavering support. Most importantly, it is a good feeling to know that I am not on my own and that I can count on Jay to always be accessible when questions on how to manage and utilize the Trust arise. I feel extremely fortunate to have Jay in my corner as a trusted resource.”

~Harry, Hawaii

"My husband and I recently worked with Jay Butler at Asset Protection Services of America Trust to establish our Irrevocable Spendthrift Trust. We have been working with Jay on other business transactions since 2015 and, as usual, we found Jay to be extremely knowledgeable, patient in outlining the processes, and his assistance from start to finish to be extremely helpful never making

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us feel rushed or overwhelmed. Jay was always responsive to whatever questions we had and treated us always as family never as another customer.

We overwhelmingly recommend Jay Butler and Asset Protection Services of America Trust to anyone looking to set up long-term protection of their hard earned property and assets. Thank you Jay for making what could have been a complicated process manageable and secure, but also stress free. We look forward to continue working with you in the future."

~Todd and Cathy, Florida

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"and Applicable Local Law"

a State by State Analysis

§ 643(a)(4)

(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.

§ 643(b)

(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.

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Alabama

https://law.justia.com/codes/alabama/title-19/

When Alabama law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 19, Chapter 3A of the Code of Alabama**, known as the **Alabama Uniform Principal and Income Act**. Alabama has codified fiduciary accounting rules by statute rather than leaving them to common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Alabama law governs trust administration.

Alabama establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Ala. Code §19-3A-103(a)**, which provides that a fiduciary shall administer a trust "in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," but immediately limits that authority by providing in **§19-3A-103(b)** that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Alabama law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Alabama's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is first treated as a **receipt**, without fiduciary accounting character. Alabama law does not assign income or principal status at the moment of receipt. Instead, **Ala. Code §19-3A-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statute requires that receipts be subjected to the allocation provisions of Chapter 3A before fiduciary accounting character attaches. By its structure, Alabama law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Ala. Code §19-3A-401 et seq.** With respect to distributions from entities, **§19-3A-401(a)** provides a default rule that money received from an entity is allocated to income. This rule does not finalize classification. Alabama law expressly conditions it on statutory displacement. That displacement occurs in **§19-3A-401(b)**, which mandates that a fiduciary allocate to principal property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Alabama law requires principal allocation under

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Ala. Code §19-3A-401(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Alabama law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Ala. Code §19-3A-104(a)**authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Alabama law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.
Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under §19-3A-104 — does a receipt become fiduciary accounting income or corpus under Alabama law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine the intermediate steps; it incorporates the **end result of Alabama's fiduciary accounting process**.

Alabama's treatment of capital transactions reinforces this structure. **Ala. Code §19-3A-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Alabama law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Alabama recognizes and enforces spendthrift provisions in private trusts. **Ala. Code §19-3B-502** provides that a beneficiary's interest is not subject to voluntary or involuntary transfer if the trust contains a valid spendthrift provision, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Alabama law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Alabama recognizes governing-law provisions in trust instruments and applies Alabama fiduciary accounting statutes whenever Alabama law governs trust administration, subject to public policy limitations. When Alabama law governs administration, the fiduciary accounting classifications produced by **Title 19, Chapter 3A** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Alabama's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Alabama fiduciary accounting classification without recharacterization.

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Alaska

https://law.justia.com/codes/alaska/title-13/

When Alaska law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 13, Chapter 13 of the Alaska Statutes**, known as the **Alaska Principal and Income Act**. Alaska has codified fiduciary accounting rules by statute, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Alaska law governs trust administration.

Alaska establishes the governing hierarchy between the trust instrument and statutory law in **AS 13.36.035**, which provides that a fiduciary shall administer a trust in accordance with the terms of the trust, except to the extent the terms of the trust are inconsistent with mandatory provisions of the chapter. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Alaska law therefore confirms that fiduciary accounting outcomes are determined by statute except where the statute itself permits variation by the governing instrument.

Alaska's fiduciary accounting system operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Alaska law does not assign income or principal status at the moment of receipt. Instead, **AS 13.13.101(6)** defines fiduciary accounting income as "money or property received by a fiduciary as current return from a principal asset," and Alaska law requires that receipts be subjected to the allocation provisions of the chapter before fiduciary accounting character attaches. By its structure, Alaska law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **AS 13.13.201 through AS 13.13.290**. With respect to distributions from entities, **AS 13.13.201(a)** provides a default rule that money received from an entity is allocated to income. This default rule does not finalize classification. Alaska law expressly conditions it on statutory displacement. That displacement occurs in **AS 13.13.201(b)**, which mandates that a fiduciary allocate to principal property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Alaska law requires principal allocation under **AS 13.13.201(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

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Alaska law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **AS 13.13.105(a)** authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Alaska law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **AS 13.13.105** — does a receipt become fiduciary accounting income or corpus under Alaska law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Alaska's fiduciary accounting process**.

Alaska's treatment of capital transactions reinforces this structure. **AS 13.13.401** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Alaska law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Alaska recognizes and enforces spendthrift provisions in private trusts. **AS 34.40.110** provides that if a trust instrument restrains voluntary or involuntary transfer of a beneficiary's interest, the interest is not subject to creditor claims until distributed, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Alaska law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Alaska recognizes governing-law provisions in trust instruments and applies Alaska fiduciary accounting statutes whenever Alaska law governs trust administration, subject to public policy limitations. When Alaska law governs administration, the fiduciary accounting classifications produced by **Title 13, Chapter 13** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Alaska's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Alaska fiduciary accounting classification without recharacterization.

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Arizona

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When Arizona law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 14, Chapter 11 of the Arizona Revised Statutes**, known as the **Arizona Uniform Principal and Income Act**. Arizona has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Arizona law governs trust administration.

Arizona establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **A.R.S. §14-1102(A)**, which provides that a trustee shall administer a trust in accordance with its terms, but subject to the requirements of Title 14. This structure parallels the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Arizona law therefore confirms that fiduciary accounting outcomes are determined by statute except where the statute itself permits modification by the governing instrument.

Arizona's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Arizona law does not assign income or principal status at the moment of receipt. Instead, **A.R.S. §14-1102(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and Arizona law requires that receipts be analyzed under the statutory allocation provisions of Chapter 11 before fiduciary accounting character attaches. By its structure, Arizona law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **A.R.S. §§14-1103 through 14-1113**. With respect to distributions from entities, **A.R.S. §14-1103(A)** provides a default rule that money received from an entity is allocated to income. This default rule does not finalize classification. Arizona law expressly conditions it on statutory displacement. That displacement occurs in **A.R.S. §14-1103(B)**, which mandates that a trustee allocate to principal property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Arizona law requires principal allocation under **A.R.S. §14-1103(B)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

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Arizona law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **A.R.S. §14-1104(A)**authorizes the trustee to adjust between principal and income if the trustee determines that the adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Arizona law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **A.R.S. §14-1104** — does a receipt become fiduciary accounting income or corpus under Arizona law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Arizona's fiduciary accounting process**.

Arizona's treatment of capital transactions reinforces this structure. **A.R.S. §14-1109** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Arizona law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Arizona recognizes and enforces spendthrift provisions in private trusts. **A.R.S. §14-10502** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest in income or principal is not subject to voluntary or involuntary transfer or creditor claims until distributed, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Arizona law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Arizona recognizes governing-law provisions in trust instruments and applies Arizona fiduciary accounting statutes whenever Arizona law governs trust administration, subject to public policy limitations. When Arizona law governs administration, the fiduciary accounting classifications produced by **Title 14, Chapter 11** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Arizona's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Arizona fiduciary accounting classification without recharacterization.

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Arkansas

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When Arkansas law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 28, Chapter 70 of the Arkansas Code**, known as the **Arkansas Uniform Principal and Income Act**. Arkansas has codified fiduciary accounting rules by statute, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Arkansas law governs trust administration.

Arkansas establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Ark. Code Ann. §28-70-103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," but immediately limits that authority in_attach **§28-70-103(b)** by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Arkansas law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Arkansas's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Arkansas law does not assign income or principal status at the moment of receipt. Instead, **Ark. Code Ann. §28-70-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statute requires that receipts be subjected to the allocation provisions of Chapter 70 before fiduciary accounting character attaches. By its structure, Arkansas law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Ark. Code Ann. §§28-70-401 through 28-70-412**. With respect to distributions from entities, **§28-70-401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Arkansas law expressly conditions it on statutory displacement. That displacement occurs in **§28-70-401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in the entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Arkansas law requires principal allocation under **Ark. Code Ann. §28-70-401(b)**, the federal exclusion applies automatically because Congress

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conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Arkansas law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Ark. Code Ann. §28-70-104(a)** authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Arkansas law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§28-70-104** — does a receipt become fiduciary accounting income or corpus under Arkansas law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Arkansas's fiduciary accounting process**.

Arkansas's treatment of capital transactions reinforces this structure. **Ark. Code Ann. §28-70-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Arkansas law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Arkansas recognizes and enforces spendthrift provisions in private trusts. **Ark. Code Ann. §28-73-502(a)** provides that a beneficiary's interest is not subject to voluntary or involuntary transfer if the trust contains a valid spendthrift provision, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Arkansas law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Arkansas recognizes governing-law provisions in trust instruments and applies Arkansas fiduciary accounting statutes whenever Arkansas law governs trust administration, subject to public policy limitations. When Arkansas law governs administration, the fiduciary accounting classifications produced by **Title 28, Chapter 70** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Arkansas's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Arkansas fiduciary accounting classification without recharacterization.

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California

https://law.justia.com/codes/california/code-prob/division-9/

When California law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is **Division 9 of the California Probate Code**, including the Uniform Fiduciary Income and Principal Act codified at **Probate Code §§16320–16375**. Probate Code §15000 provides that Division 9 applies to trusts intentionally created and administered pursuant to a governing instrument, thereby excluding constructive and resulting trusts imposed by operation of law. Once Division 9 applies, California law supplies the fiduciary accounting framework that IRC §§643(b) and 643(a)(4) expressly incorporate.

California establishes the governing hierarchy between the trust instrument and statutory law in **Probate Code §16000**, which provides that upon acceptance of the trust, "the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to this division." This hierarchy mirrors the federal language in IRC §§643(b) and 643(a)(4), both of which require income and corpus determinations to be made under the governing instrument and applicable local law. California law therefore confirms that fiduciary accounting outcomes are determined by statute except where the statute itself permits modification by the instrument.

California's fiduciary accounting system operates in a defined sequence. When a trustee receives money or property, the item is first treated as a **receipt**, not as income or principal. California law does not assign fiduciary accounting character at the moment of receipt. Instead, Probate Code §16324(a) defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and §16324(b) immediately limits that definition by providing that receipts from a sale, exchange, or liquidation of a principal asset are income only "to the extent provided in this chapter." By this structure, California law requires that **receipts be analyzed under statutory allocation rules before they acquire income or principal character**.

Those allocation rules are set forth in **Probate Code §16350**. Section 16350(a) establishes a default rule that, "[e]xcept as otherwise provided in this chapter, a trustee shall allocate to income money received from an entity." This provision does not finalize classification; it supplies an initial allocation rule that applies only unless displaced. California law then mandates displacement in **§16350(b)**, which requires that a trustee "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal as a matter of law, and fiduciary accounting income never arises with respect to that receipt.

California law further recognizes that even after the initial statutory allocation analysis, the result may not fulfill the trust's purposes or the trustee's duty of impartiality. For that reason, **Probate Code §16336(a)** authorizes the trustee to make an adjustment between principal and income when the trustee determines that the adjustment is necessary to carry out the trust purposes and the trustee's

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duty of impartiality. This adjustment does not occur after a receipt has been irrevocably classified as corpus; rather, it is part of the allocation process itself. When a valid adjustment is made, California law reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only **after** this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions, and any valid adjustment under §16336 — does a receipt become fiduciary accounting income or corpus under California law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount "determined under the terms of the governing instrument and applicable local law." Federal tax law never looks to the intermediate steps; it incorporates the **end result of California's allocation process**.

This sequencing is equally critical to IRC §643(a)(4). That provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are "allocated to corpus under the terms of the governing instrument and applicable local law." When California Probate Code §16350(b) requires allocation to principal, or when a valid adjustment under §16336 reallocates a receipt to principal, the exclusion applies automatically because California law determines that the receipt is corpus at the conclusion of the allocation process.

California's treatment of capital transactions reinforces this structure. **Probate Code §16360** requires allocation to principal of assets received from a transferor or received in exchange for trust principal. These provisions operate at the allocation stage, not after income has been recognized, confirming that capital gains and similar receipts are principal unless California law affirmatively allocates them to income.

California also recognizes and enforces spendthrift provisions in private trusts. **Probate Code §15300** provides that if the trust instrument restrains voluntary or involuntary transfer, the beneficiary's interest in income or principal is not subject to enforcement of a money judgment until paid to the beneficiary, subject to limited statutory exceptions in §§15301–15309. These provisions do not affect allocation sequencing, but they confirm that California treats fiduciary accounting classifications as legally operative interests once determined.

When California law governs trust administration, the fiduciary accounting classifications produced by this statutory process — receipt, allocation, adjustment if any, and final classification — constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4). Federal law does not override or reinterpret those classifications; it adopts them by design.

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Colorado

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When Colorado law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 103 of Title 15 of the Colorado Revised Statutes**, known as the **Colorado Uniform Principal and Income Act**. Colorado has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Colorado law governs trust administration.

Colorado establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **C.R.S. §15-1.1-103(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this article," but immediately limits that authority by providing in **§15-1.1-103(2)** that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Colorado law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Colorado's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Colorado law does not assign income or principal status at the moment of receipt. Instead, **C.R.S. §15-1.1-102(6)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statute requires that receipts be subjected to the allocation provisions of Article 103 before fiduciary accounting character attaches. By its structure, Colorado law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **C.R.S. §§15-1.1-401 through 15-1.1-412**. With respect to distributions from entities, **C.R.S. §15-1.1-401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Colorado law expressly conditions it on statutory displacement. That displacement occurs in **§15-1.1-401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in the entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Colorado law requires principal allocation under

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C.R.S. §15-1.1-401(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Colorado law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **C.R.S. §15-1.1-104(1)**authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Colorado law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§15-1.1-104** — does a receipt become fiduciary accounting income or corpus under Colorado law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Colorado's fiduciary accounting process**.

Colorado's treatment of capital transactions reinforces this structure. **C.R.S. §15-1.1-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Colorado law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Colorado recognizes and enforces spendthrift provisions in private trusts. **C.R.S. §15-5-502(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest in income or principal "is not subject to voluntary or involuntary transfer," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Colorado law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Colorado recognizes governing-law provisions in trust instruments and applies Colorado fiduciary accounting statutes whenever Colorado law governs trust administration, subject to public policy limitations. When Colorado law governs administration, the fiduciary accounting classifications produced by **Title 15, Article 103** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Colorado's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Colorado fiduciary accounting classification without recharacterization.

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Connecticut

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When Connecticut law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 802c of the Connecticut General Statutes**, known as the **Connecticut Uniform Principal and Income Act**. Connecticut has codified fiduciary accounting rules by statute, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Connecticut law governs trust administration.

Connecticut establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Conn. Gen. Stat. §45a-499a**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections 45a-499a to 45a-499w, inclusive," but qualifies that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Connecticut law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Connecticut's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Connecticut law does not assign income or principal status at the moment of receipt. Instead, **Conn. Gen. Stat. §45a-499a(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 802c before fiduciary accounting character attaches. By its structure, Connecticut law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Conn. Gen. Stat. §§45a-499d through 45a-499p**. With respect to distributions from entities, **§45a-499f(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Connecticut law expressly conditions it on statutory displacement. That displacement occurs in **§45a-499f(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Connecticut law requires principal allocation

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under **Conn. Gen. Stat. §45a-499f(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Connecticut law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Conn. Gen. Stat. §45a-499c(a)** authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Connecticut law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§45a-499c** — does a receipt become fiduciary accounting income or corpus under Connecticut law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Connecticut's fiduciary accounting process**.

Connecticut's treatment of capital transactions reinforces this structure. **Conn. Gen. Stat. §45a-499i** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Connecticut law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Connecticut recognizes and enforces spendthrift provisions in private trusts. **Conn. Gen. Stat. §45a-499aa** (and related trust-code provisions) provide that a beneficiary's interest subject to a valid spendthrift restraint is not subject to voluntary or involuntary transfer or creditor claims until distributed, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Connecticut law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Connecticut recognizes governing-law provisions in trust instruments and applies Connecticut fiduciary accounting statutes whenever Connecticut law governs trust administration, subject to public policy limitations. When Connecticut law governs administration, the fiduciary accounting classifications produced by **Chapter 802c** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Connecticut's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Connecticut fiduciary accounting classification without recharacterization.

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Delaware

https://law.justia.com/codes/delaware/title-12/

When Delaware law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 12, Chapter 61 of the Delaware Code**, known as the **Delaware Principal and Income Act**. Delaware has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Delaware law governs trust administration.

Delaware establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **12 Del. C. §6102(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," but immediately limits that authority in **§6102(b)**by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Delaware law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Delaware's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Delaware law does not assign income or principal status at the moment of receipt. Instead, **12 Del. C. §6101(6)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 61 before fiduciary accounting character attaches. By its structure, Delaware law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **12 Del. C. §§6151 through 6159**. With respect to distributions from entities, **§6151(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Delaware law expressly conditions it on statutory displacement. That displacement occurs in **§6151(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Delaware law requires principal allocation under

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12 Del. C. §6151(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Delaware law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **12 Del. C. §6103(a)**authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Delaware law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§6103** — does a receipt become fiduciary accounting income or corpus under Delaware law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Delaware's fiduciary accounting process**.

Delaware's treatment of capital transactions reinforces this structure. **12 Del. C. §6154** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Delaware law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Delaware recognizes and enforces spendthrift provisions in private trusts. **12 Del. C. §3536(a)** provides that a beneficiary's interest subject to a valid spendthrift provision "may not be transferred, assigned or subjected to claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Delaware law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Delaware recognizes governing-law provisions in trust instruments and applies Delaware fiduciary accounting statutes whenever Delaware law governs trust administration, subject to public policy limitations. When Delaware law governs administration, the fiduciary accounting classifications produced by **Title 12, Chapter 61** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Delaware's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Delaware fiduciary accounting classification without recharacterization.

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District of Columbia

https://law.justia.com/codes/district-of-columbia/title-19/chapter-13/

When the law of the **District of Columbia** governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 19 of the District of Columbia Code, Subtitle V, Chapter 19-1300**, known as the **District of Columbia Uniform Principal and Income Act**, together with mandatory provisions of the District of Columbia Trust Code in **Title 19, Chapters 19-1000 through 19-1099**. The District of Columbia has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutory provisions supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when D.C. law governs trust administration.

The District of Columbia establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **D.C. Code §19-1301(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§19-1301(b)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in **IRC §§643(b) and 643(a)(4)**, which require income and corpus determinations to be made under the governing instrument and applicable local law. D.C. law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

The District of Columbia's fiduciary accounting regime operates in a defined sequence. When a trustee first receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. D.C. law does not assign income or principal status at the moment of receipt. Instead, **D.C. Code §19-1301(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of **Chapter 19-1300** before any fiduciary accounting character attaches. By design, D.C. law makes clear that income exists only if and to the extent a receipt is allocated to income under statute.

Those allocation provisions are set forth in **D.C. Code §§19-1302 through 19-1311**. With respect to distributions from entities, **§19-1302(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. The District of Columbia law expressly conditions this default on statutory displacement. That displacement occurs in **§19-1302(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative **"applicable local law"** for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary and certain stock dividends from

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distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When D.C. law requires principal allocation under **D.C. Code §19-1302(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state (or local) fiduciary accounting classification rather than federal tax characterization.

The District of Columbia law further recognizes that even after the statutory allocation rules are applied, the resulting classification may not fulfill the trust's purposes or the trustee's duty of impartiality. For that reason, **D.C. Code §19-1301(c)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that an adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made under **§19-1301(c)**, D.C. law reclassifies the receipt, the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§19-1301(c)** — does a receipt become fiduciary accounting income or corpus under District of Columbia law. That final classification is the classification that **IRC §643(b)** adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of the District of Columbia's fiduciary accounting process**.

The District of Columbia's treatment of capital transactions reinforces this structure. **D.C. Code §19-1305** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless D.C. law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under **IRC §643(b)**.

The District of Columbia also recognizes and enforces spendthrift provisions in private trusts. **D.C. Code §19-1306(a)**provides that if a trust instrument contains a valid spendthrift provision, a beneficiary's interest "may not be transferred, assigned, or subjected to claims of creditors" prior to distribution, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that D.C. law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, the District of Columbia recognizes governing-law provisions in trust instruments and permits trust situs selection. **D.C. Code §19-1001(a)** provides that the law designated in a trust instrument governs administration unless contrary to strong public policy. When District of Columbia law governs administration, the fiduciary accounting classifications produced by **Title 19, Chapter 19-1300** constitute the **"applicable local law"** incorporated by **IRC §§643(b)** and **643(a)(4)**.

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **the District of Columbia's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the District of Columbia fiduciary accounting classification without recharacterization.

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Florida

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When Florida law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 738 of the Florida Statutes**, known as the **Florida Uniform Principal and Income Act**. Florida has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Florida law governs trust administration.

Florida establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Fla. Stat. §738.103(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act," while **§738.103(2)** qualifies that authority by providing that the terms of the trust may not override provisions of the act that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Florida law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Florida's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Florida law does not assign income or principal status at the moment of receipt. Instead, **Fla. Stat. §738.102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 738 before fiduciary accounting character attaches. By its structure, Florida law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Fla. Stat. §§738.401 through 738.412**. With respect to distributions from entities, **§738.401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Florida law expressly conditions it on statutory displacement. That displacement occurs in **§738.401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in the entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Florida law requires principal allocation under

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Fla. Stat. §738.401(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Florida law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Fla. Stat. §738.104(1)**authorizes a fiduciary to adjust between principal and income if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Florida law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§738.104** — does a receipt become fiduciary accounting income or corpus under Florida law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Florida's fiduciary accounting process**.

Florida's treatment of capital transactions reinforces this structure. **Fla. Stat. §738.402** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Florida law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Florida recognizes and enforces spendthrift provisions in private trusts. **Fla. Stat. §736.0502(2)** provides that a beneficiary's interest subject to a valid spendthrift provision "is not subject to voluntary or involuntary transfer," and **§736.0503** sets forth limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Florida law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Florida recognizes governing-law provisions in trust instruments and applies Florida fiduciary accounting statutes whenever Florida law governs trust administration, subject to public policy limitations. When Florida law governs administration, the fiduciary accounting classifications produced by **Chapter 738** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Florida's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Florida fiduciary accounting classification without recharacterization.

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Georgia

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When Georgia law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 53, Chapter 12, Article 17 of the Official Code of Georgia Annotated**, commonly referred to as Georgia's **Principal and Income provisions**. Georgia has codified fiduciary accounting rules by statute, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Georgia law governs trust administration.

Georgia establishes the governing hierarchy between the trust instrument and statutory fiduciary law in **O.C.G.A. § 53-12-401**, which provides that a trustee shall administer the trust "in accordance with the terms of the trust," but only "except as otherwise provided in this article." By using this conditional language, Georgia law confirms that while the governing instrument is primary, statutory fiduciary accounting rules remain controlling where the statute imposes mandatory classifications. This structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law.

Georgia's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Georgia law does not assign income or principal status at the moment of receipt. Instead, **O.C.G.A. § 53-12-402(6)** defines fiduciary accounting income as "money or property that a trustee receives as current return from a principal asset," and the statutory framework requires that receipts be analyzed under the allocation provisions of Article 17 before fiduciary accounting character attaches. By its structure, Georgia law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **O.C.G.A. §§ 53-12-410 through 53-12-414**. With respect to distributions from entities, **O.C.G.A. § 53-12-410(a)** provides a default rule stating that "money received from an entity is income." This rule does not finalize classification. Georgia law expressly conditions it on statutory displacement. That displacement occurs in **§ 53-12-410(b)**, which provides that "property other than money received from an entity is principal," and in **§ 53-12-410(c)**, which provides that "money received from an entity in exchange for part or all of a trust's interest in the entity" or "in total or partial liquidation of the entity" is principal. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Georgia law requires principal allocation under **O.C.G.A. § 53-12-410(b) or (c)**, the federal exclusion applies automatically because Congress

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conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Georgia law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **O.C.G.A. § 53-12-403(a)**authorizes a trustee to "adjust between principal and income" if the trustee determines that the adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Georgia law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§ 53-12-403** — does a receipt become fiduciary accounting income or corpus under Georgia law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Georgia's fiduciary accounting process**.

Georgia's treatment of capital transactions reinforces this structure. **O.C.G.A. § 53-12-414** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Georgia law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Georgia recognizes and enforces spendthrift provisions in private trusts. **O.C.G.A. § 53-12-80(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred and is not subject to enforcement of a money judgment" until distributed, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Georgia law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Georgia recognizes governing-law provisions in trust instruments and applies Georgia fiduciary accounting statutes whenever Georgia law governs trust administration, subject to public policy limitations. When Georgia law governs administration, the fiduciary accounting classifications produced by **Title 53, Chapter 12, Article 17** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Georgia's Principal and Income statutes supply the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Georgia fiduciary accounting classification without recharacterization.

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Hawaii

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When Hawaii law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 557 of the Hawaii Revised Statutes**, known as the **Hawaii Principal and Income Act**, together with related mandatory provisions of the **Hawaii Trust Code in Chapter 560**. Hawaii has codified fiduciary accounting rules by statute, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Hawaii law governs trust administration.

Hawaii establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law through **HRS §557-1**, which provides that the chapter applies "except where the instrument creating the trust otherwise provides," but only to the extent the statute does not impose mandatory rules. This structure is reinforced by **HRS §560:7-105**, which provides that the terms of a trust prevail over the Trust Code except for mandatory provisions. Read together, these statutes confirm that fiduciary accounting outcomes are governed by the trust instrument only where Hawaii law permits, and otherwise are controlled by statute. This mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law.

Hawaii's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Hawaii law does not assign income or principal status at the moment of receipt. Instead, **HRS §557-2** defines fiduciary accounting income as "the return in money or property derived from the use of principal," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 557 before fiduciary accounting character attaches. By its structure, Hawaii law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **HRS §§557-3 through 557-7**. With respect to distributions from entities, **HRS §557-3** provides the default rule that "dividends in cash or other money" received from a corporation constitute income. This default rule does not finalize classification. Hawaii law expressly displaces it in defined circumstances. **HRS §557-4** provides that "stock dividends" and other distributions payable in property other than money are principal, and **HRS §557-5** provides that amounts received "as a return of capital" or in connection with liquidation are allocable to principal. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Hawaii law requires principal allocation under **HRS §§557-4 or 557-5**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

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Hawaii law further recognizes that even after application of the statutory allocation rules, the resulting classification may not fully carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **HRS §557-6** authorizes a trustee to apportion receipts and expenses between income and principal "in accordance with what is reasonable and equitable," taking into account the interests of income and remainder beneficiaries. This authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a trustee validly exercises this statutory authority, Hawaii law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as applied.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid apportionment under **HRS §557-6** — does a receipt become fiduciary accounting income or corpus under Hawaii law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Hawaii's fiduciary accounting process**.

Hawaii's treatment of capital transactions reinforces this structure. **HRS §557-5** requires allocation to principal of amounts representing a return of capital or liquidation proceeds, confirming that sale and exchange proceeds are principal unless Hawaii law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Hawaii recognizes and enforces spendthrift provisions in private trusts. **HRS §560:7-502(a)** provides that a beneficiary's interest subject to a valid spendthrift provision "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Hawaii law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Hawaii recognizes governing-law provisions in trust instruments and applies Hawaii fiduciary accounting statutes whenever Hawaii law governs trust administration, subject to public policy limitations. When Hawaii law governs administration, the fiduciary accounting classifications produced by **Chapter 557** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Hawaii's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Hawaii fiduciary accounting classification without recharacterization.

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Idaho

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When Idaho law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 15, Chapter 7 of the Idaho Code**, known as the **Idaho Principal and Income Act**. Idaho has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Idaho law governs trust administration.

Idaho establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **I.C. §15-7-103(1)**, which provides that "a trustee shall administer the trust or estate in accordance with its terms, even if those terms are different from a provision of this chapter," but immediately limits that authority in **§15-7-103(2)** by providing that the terms of the trust may not override a provision of this chapter that is mandatory. This statutory hierarchy mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Idaho law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits modification by the governing instrument.

Idaho's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Idaho law does not assign income or principal status at the moment of receipt. Instead, **I.C. §15-7-102(5)** defines fiduciary accounting income as "money or property that the fiduciary receives as current return from a principal asset," and the statute requires that receipts be subjected to the allocation provisions of Chapter 7 before fiduciary accounting character attaches. By its structure, Idaho law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **I.C. §§15-7-401 through 15-7-417**. With respect to distributions from entities, **I.C. §15-7-401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Idaho law expressly conditions it on statutory displacement. That displacement occurs in **§15-7-401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in the entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Idaho law requires principal allocation under **I.C.**

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§15-7-401(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Idaho law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **I.C. §15-7-103(3)** authorizes a trustee to adjust between principal and income "to carry out the intention of the settlor as expressed in the terms of the trust or to comply with the terms of a power given by the trust instrument," taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Idaho law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **I.C. §15-7-103(3)** — does a receipt become fiduciary accounting income or corpus under Idaho law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Idaho's fiduciary accounting process**.

Idaho's treatment of capital transactions reinforces this structure. **I.C. §15-7-411** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Idaho law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Idaho recognizes and enforces spendthrift provisions in private trusts. **I.C. §15-5-502(a)** provides that if a trust contains a valid spendthrift provision, the beneficiary's interest is not subject to voluntary or involuntary transfer or creditor claims, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Idaho law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Idaho recognizes governing-law provisions in trust instruments and applies Idaho fiduciary accounting statutes whenever Idaho law governs trust administration, subject to public policy limitations. When Idaho law governs administration, the fiduciary accounting classifications produced by **Title 15, Chapter 7** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Idaho's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Idaho fiduciary accounting classification without recharacterization.

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Illinois

https://law.justia.com/codes/illinois/chapter-760/

When Illinois law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in the **Illinois Principal and Income Act**, codified at **760 ILCS 15/**. Illinois has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Illinois law governs trust administration.

Illinois establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **760 ILCS 15/103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Act," but immediately limits that authority in **§15/103(b)** by providing that the terms of the trust may not override provisions of the Act that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Illinois law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Illinois's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Illinois law does not assign income or principal status at the moment of receipt. Instead, **760 ILCS 15/102(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Act before fiduciary accounting character attaches. By its structure, Illinois law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **760 ILCS 15/401 through 15/412**. With respect to distributions from entities, **760 ILCS 15/401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Illinois law expressly conditions it on statutory displacement. That displacement occurs in **§15/401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Illinois law requires principal allocation under

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760 ILCS 15/401(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Illinois law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **760 ILCS 15/104(a)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Illinois law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§15/104** — does a receipt become fiduciary accounting income or corpus under Illinois law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Illinois's fiduciary accounting process**.

Illinois's treatment of capital transactions reinforces this structure. **760 ILCS 15/404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Illinois law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Illinois recognizes and enforces spendthrift provisions in private trusts. **760 ILCS 3/502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Illinois law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Illinois recognizes governing-law provisions in trust instruments and applies Illinois fiduciary accounting statutes whenever Illinois law governs trust administration, subject to public policy limitations. When Illinois law governs administration, the fiduciary accounting classifications produced by **760 ILCS 15/** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Illinois's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Illinois fiduciary accounting classification without recharacterization.

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Indiana

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When Indiana law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 3.5 of Title 30 of the Indiana Code**, known as the **Indiana Principal and Income Act**. Indiana has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Indiana law governs trust administration.

Indiana establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Ind. Code §30-2-3.5-3(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this article," but immediately limits that authority in **§30-2-3.5-3(b)** by providing that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Indiana law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Indiana's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Indiana law does not assign income or principal status at the moment of receipt. Instead, **Ind. Code §30-2-3.5-2(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 3.5 before fiduciary accounting character attaches. By its structure, Indiana law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Ind. Code §§30-2-3.5-10 through 30-2-3.5-23**. With respect to distributions from entities, **Ind. Code §30-2-3.5-10(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Indiana law expressly conditions it on statutory displacement. That displacement occurs in **§30-2-3.5-10(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Indiana law requires principal allocation under

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Ind. Code §30-2-3.5-10(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Indiana law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Ind. Code §30-2-3.5-3(c)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Indiana law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§30-2-3.5-3(c)** — does a receipt become fiduciary accounting income or corpus under Indiana law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Indiana's fiduciary accounting process**.

Indiana's treatment of capital transactions reinforces this structure. **Ind. Code §30-2-3.5-16** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Indiana law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Indiana recognizes and enforces spendthrift provisions in private trusts. **Ind. Code §30-4-2-18(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Indiana law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Indiana recognizes governing-law provisions in trust instruments and applies Indiana fiduciary accounting statutes whenever Indiana law governs trust administration, subject to public policy limitations. When Indiana law governs administration, the fiduciary accounting classifications produced by **Title 30, Article 3.5** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Indiana's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Indiana fiduciary accounting classification without recharacterization.

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Iowa

https://law.justia.com/codes/iowa/title-xv/chapter-633/
https://law.justia.com/codes/iowa/title-xv/chapter-637/

When Iowa law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 637 of the Iowa Code**, known as the **Iowa Uniform Principal and Income Act**. Iowa has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Iowa law governs trust administration.

Iowa establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Iowa Code §637.103(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," but immediately limits that authority in **§637.103(2)** by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Iowa law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Iowa's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Iowa law does not assign income or principal status at the moment of receipt. Instead, **Iowa Code §637.102(6)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 637 before fiduciary accounting character attaches. By its structure, Iowa law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Iowa Code §§637.401 through 637.412**. With respect to distributions from entities, **§637.401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Iowa law expressly conditions it on statutory displacement. That displacement occurs in **§637.401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Iowa law requires principal allocation under **Iowa Code §637.401(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Iowa law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Iowa Code §637.104(1)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Iowa law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§637.104** — does a receipt become fiduciary accounting income or corpus under Iowa law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Iowa's fiduciary accounting process**.

Iowa's treatment of capital transactions reinforces this structure. **Iowa Code §637.404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Iowa law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Iowa recognizes and enforces spendthrift provisions in private trusts. **Iowa Code §633A.2302(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Iowa law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Iowa recognizes governing-law provisions in trust instruments and applies Iowa fiduciary accounting statutes whenever Iowa law governs trust administration, subject to public policy limitations. When Iowa law governs administration, the fiduciary accounting classifications produced by **Chapter 637** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Iowa's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Iowa fiduciary accounting classification without recharacterization.

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Kansas

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When Kansas law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 4 of Chapter 58a of the Kansas Statutes Annotated**, known as the **Kansas Uniform Principal and Income Act**. Kansas has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Kansas law governs trust administration.

Kansas establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **K.S.A. 58a-401**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust or the will, even if there is a different provision in this article," while limiting that authority where the statute imposes mandatory rules. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Kansas law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Kansas's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Kansas law does not assign income or principal status at the moment of receipt. Instead, **K.S.A. 58a-401(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 4 before fiduciary accounting character attaches. By its structure, Kansas law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **K.S.A. 58a-401 through 58a-414**. With respect to distributions from entities, **K.S.A. 58a-401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Kansas law expressly conditions it on statutory displacement. That displacement occurs in **K.S.A. 58a-401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Kansas law requires principal allocation under

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K.S.A. 58a-401(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Kansas law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **K.S.A. 58a-104(a)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Kansas law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **K.S.A. 58a-104** — does a receipt become fiduciary accounting income or corpus under Kansas law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Kansas's fiduciary accounting process**.

Kansas's treatment of capital transactions reinforces this structure. **K.S.A. 58a-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Kansas law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Kansas recognizes and enforces spendthrift provisions in private trusts. **K.S.A. 58a-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Kansas law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Kansas recognizes governing-law provisions in trust instruments and applies Kansas fiduciary accounting statutes whenever Kansas law governs trust administration, subject to public policy limitations. When Kansas law governs administration, the fiduciary accounting classifications produced by **Chapter 58a, Article 4** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Kansas's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Kansas fiduciary accounting classification without recharacterization.

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Kentucky

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When Kentucky law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 386 of the Kentucky Revised Statutes**, known as the **Kentucky Uniform Principal and Income Act**. Kentucky has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Kentucky law governs trust administration.

Kentucky establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **KRS §386.010(1)**, which provides that "a fiduciary shall administer a trust…in accordance with the terms of the trust," but qualifies that authority in **KRS §386.010(2)** by providing that the terms of the trust may not override a provision of this chapter that is mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Kentucky law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Kentucky's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Kentucky law does not assign income or principal status at the moment of receipt. Instead, **KRS §386.020(6)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 386 before fiduciary accounting character attaches. By its structure, Kentucky law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **KRS §§386.101 through 386.136**. With respect to distributions from entities, **KRS §386.101(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Kentucky law expressly conditions it on statutory displacement. That displacement occurs in **KRS §386.101(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Kentucky law requires principal allocation under

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KRS §386.101(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Kentucky law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **KRS §386.010(3)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Kentucky law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **KRS §386.010(3)** — does a receipt become fiduciary accounting income or corpus under Kentucky law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Kentucky's fiduciary accounting process**.

Kentucky's treatment of capital transactions reinforces this structure. **KRS §386.114** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Kentucky law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Kentucky recognizes and enforces spendthrift provisions in private trusts. **KRS §386.310(1)(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to the claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Kentucky law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Kentucky recognizes governing-law provisions in trust instruments and applies Kentucky fiduciary accounting statutes whenever Kentucky law governs trust administration, subject to public policy limitations. When Kentucky law governs administration, the fiduciary accounting classifications produced by **Chapter 386** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Kentucky's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Kentucky fiduciary accounting classification without recharacterization.

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Louisiana

https://law.justia.com/codes/louisiana/revised-statutes/title-9/

When Louisiana law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 9 of the Louisiana Revised Statutes**, particularly **R.S. 9:2151 through 9:2167**, which govern **allocation of receipts and disbursements between income and principal** under the Louisiana Trust Code. Louisiana does not adopt the Uniform Principal and Income Act and does not rely on common-law fiduciary accounting principles. Instead, Louisiana supplies a **statutory civil-law allocation regime**, which is the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4) when Louisiana law governs trust administration.

Louisiana establishes the governing hierarchy between the trust instrument and statutory law in **La. R.S. 9:1753**, which provides that "a trustee shall administer the trust in accordance with its terms," but that those terms are subject to the mandatory provisions of the Louisiana Trust Code. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Louisiana law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute expressly permits deviation by the trust instrument.

Louisiana's fiduciary accounting regime operates in a defined sequence, although the terminology differs from common-law states. When a trustee receives money or property, the item is initially treated as a **receipt**, without final classification as income or principal. Louisiana law does not assign income or principal character at the moment of receipt. Instead, **La. R.S. 9:2152(A)** provides that "income" consists of "the return derived from the use of principal," while **La. R.S. 9:2152(B)** defines "principal" as the property held in trust for eventual distribution to the principal beneficiary. By this structure, Louisiana law requires that receipts be classified through statutory allocation rules before fiduciary accounting character attaches.

Those allocation rules are set forth in **La. R.S. 9:2153 through 9:2163**. With respect to distributions from entities, **La. R.S. 9:2156** provides that "cash dividends" received by a trust are income, establishing a default rule for ordinary distributions. That default rule does not finalize classification. Louisiana law expressly displaces it in defined circumstances. **La. R.S. 9:2157** provides that "stock dividends, stock splits, and distributions payable in property other than money" are allocated to principal, and **La. R.S. 9:2158** provides that amounts received "in liquidation or partial liquidation of a corporation" are allocated to principal. When one of these statutory categories applies, the receipt is classified as principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal classifications constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Louisiana law requires principal classification under **La. R.S. 9:2157 or 9:2158**, the federal exclusion applies automatically because

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Congress conditioned exclusion on state fiduciary accounting treatment rather than federal tax characterization.

Louisiana law also recognizes that allocation may require equitable adjustment to fulfill the trust's purposes. **La. R.S. 9:2164** authorizes the trustee to make allocations between income and principal "in a manner that is equitable and reasonable under the circumstances," taking into account the interests of income and principal beneficiaries. This authority operates **within the allocation process**, not after an item has been irrevocably classified. When a trustee validly exercises this statutory authority, Louisiana law itself determines the final classification of the receipt as income or principal.

Only after this allocation process is complete — including application of mandatory statutory classifications, governing-instrument provisions permitted by statute, and any equitable allocation under **La. R.S. 9:2164** — does a receipt become income or principal under Louisiana law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not re-examine the allocation; it incorporates the **end result of Louisiana's statutory classification process**.

Louisiana's treatment of capital transactions reinforces this structure. **La. R.S. 9:2158** requires allocation to principal of liquidation proceeds and return-of-capital distributions, confirming that capital transactions are principal unless Louisiana law expressly classifies them as income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Louisiana recognizes and enforces spendthrift provisions in private trusts. **La. R.S. 9:2005** provides that a beneficiary's interest subject to a valid spendthrift provision "may not be seized by creditors" until distributed, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Louisiana law treats income and principal classifications as legally operative interests once determined.

With respect to governing law and situs, Louisiana recognizes governing-law provisions in trust instruments and applies Louisiana fiduciary accounting statutes whenever Louisiana law governs trust administration, subject to public policy limitations. When Louisiana law governs administration, the allocation and classification rules contained in **Title 9, Part X** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under Louisiana law, **Louisiana's statutory civil-law allocation regime supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows Louisiana's income-and-principal classification without recharacterization.

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Maine

https://law.justia.com/codes/maine/title-18-c/

When Maine law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 18-C of the Maine Revised Statutes**, specifically **Article 7 (the Maine Principal and Income Act)**. Maine has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Maine law governs trust administration.

Maine establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **18-C M.R.S. §1003(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this article," but immediately limits that authority by providing in **§1003(2)** that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Maine law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Maine's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Maine law does not assign income or principal status at the moment of receipt. Instead, **18-C M.R.S. §1002(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 7 before fiduciary accounting character attaches. By its structure, Maine law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **18-C M.R.S. §§1004 through 1018**. With respect to distributions from entities, **§1008(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Maine law expressly conditions it on statutory displacement. That displacement occurs in **§1008(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Maine law requires principal allocation under

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18-C M.R.S. §1008(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Maine law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **18-C M.R.S. §1003(3)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Maine law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§1003(3)** — does a receipt become fiduciary accounting income or corpus under Maine law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Maine's fiduciary accounting process**.

Maine's treatment of capital transactions reinforces this structure. **18-C M.R.S. §1011** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Maine law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Maine recognizes and enforces spendthrift provisions in private trusts. **18-C M.R.S. §502(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Maine law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Maine recognizes governing-law provisions in trust instruments and applies Maine fiduciary accounting statutes whenever Maine law governs trust administration, subject to public policy limitations. When Maine law governs administration, the fiduciary accounting classifications produced by **Title 18-C, Article 7** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Maine's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Maine fiduciary accounting classification without recharacterization.

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Maryland

https://law.justia.com/codes/maryland/estates-and-trusts/title-14/

When Maryland law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 14.5, Subtitle 6 of the Maryland Code, Estates and Trusts Article**, known as the **Maryland Principal and Income Act**. Maryland has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Maryland law governs trust administration.

Maryland establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Md. Code, Est. & Trusts §14.5-602(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this subtitle," but immediately limits that authority in **§14.5-602(b)** by providing that the terms of the trust may not override provisions of the subtitle that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and §643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Maryland law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Maryland's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Maryland law does not assign income or principal status at the moment of receipt. Instead, **Md. Code, Est. & Trusts §14.5-601(e)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Subtitle 6 before fiduciary accounting character attaches. By its structure, Maryland law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Md. Code, Est. & Trusts §§14.5-701 through 14.5-717**. With respect to distributions from entities, **§14.5-705(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Maryland law expressly conditions it on statutory displacement. That displacement occurs in **§14.5-705(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Maryland law requires principal allocation under

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Md. Code, Est. & Trusts §14.5-705(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Maryland law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Md. Code, Est. & Trusts §14.5-603(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Maryland law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§14.5-603** — does a receipt become fiduciary accounting income or corpus under Maryland law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Maryland's fiduciary accounting process**.

Maryland's treatment of capital transactions reinforces this structure. **Md. Code, Est. & Trusts §14.5-708** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Maryland law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Maryland recognizes and enforces spendthrift provisions in private trusts. **Md. Code, Est. & Trusts §14.5-508** (and related trust-code provisions) provide that if a trust contains a valid spendthrift provision, a beneficiary's interest is not subject to voluntary or involuntary transfer or creditor claims, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Maryland law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Maryland recognizes governing-law provisions in trust instruments and applies Maryland fiduciary accounting statutes whenever Maryland law governs trust administration, subject to public policy limitations. When Maryland law governs administration, the fiduciary accounting classifications produced by **Title 14.5, Subtitle 6** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Maryland's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Maryland fiduciary accounting classification without recharacterization.

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Massachusetts

https://law.justia.com/codes/massachusetts/part-ii/title-ii/chapter-203/

When Massachusetts law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 203D of the Massachusetts General Laws**, known as the **Massachusetts Uniform Principal and Income Act**. Massachusetts has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Massachusetts law governs trust administration.

Massachusetts establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **M.G.L. c. 203D, §103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§103(b)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and §643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Massachusetts law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Massachusetts' fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Massachusetts law does not assign income or principal status at the moment of receipt. Instead, **M.G.L. c. 203D, §102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 203D before fiduciary accounting character attaches. By its structure, Massachusetts law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **M.G.L. c. 203D, §§401 through 414**. With respect to distributions from entities, **§401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Massachusetts law expressly conditions it on statutory displacement. That displacement occurs in **§401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Massachusetts law requires principal allocation

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under **M.G.L. c. 203D, §401(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Massachusetts law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **M.G.L. c. 203D, §104(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Massachusetts law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§104** — does a receipt become fiduciary accounting income or corpus under Massachusetts law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Massachusetts's fiduciary accounting process**.

Massachusetts's treatment of capital transactions reinforces this structure. **M.G.L. c. 203D, §404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Massachusetts law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Massachusetts recognizes and enforces spendthrift provisions in private trusts. **M.G.L. c. 203E, §502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Massachusetts law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Massachusetts recognizes governing-law provisions in trust instruments and applies Massachusetts fiduciary accounting statutes whenever Massachusetts law governs trust administration, subject to public policy limitations. When Massachusetts law governs administration, the fiduciary accounting classifications produced by **Chapter 203D** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Massachusetts's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Massachusetts fiduciary accounting classification without recharacterization.

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Michigan

https://law.justia.com/codes/michigan/chapter-700/statute-act-386-of-1998/

When Michigan law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article III of the Michigan Trust Code and Part 3 of Article V of the Estates and Protected Individuals Code**, specifically **MCL 700.7801 et seq.** and **MCL 555.501 et seq.**, commonly referred to as Michigan's **Principal and Income provisions**. Michigan has codified fiduciary accounting rules by statute rather than leaving them to uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Michigan law governs trust administration.

Michigan establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **MCL 700.7801(1)**, which provides that "upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes and the interests of the beneficiaries," while **MCL 700.7105(2)** limits the extent to which the terms of the trust may override mandatory statutory provisions. This statutory structure mirrors the federal directive in IRC §§643(b) and §643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Michigan law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Michigan's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Michigan law does not assign income or principal status at the moment of receipt. Instead, **MCL 555.502(e)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Principal and Income statutes before fiduciary accounting character attaches. By its structure, Michigan law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **MCL 555.503 through 555.520**. With respect to distributions from entities, **MCL 555.503(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Michigan law expressly conditions it on statutory displacement. That displacement occurs in **MCL 555.503(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Michigan law requires principal allocation under **MCL 555.503(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Michigan law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **MCL 555.505(1)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Michigan law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **MCL 555.505** — does a receipt become fiduciary accounting income or corpus under Michigan law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Michigan's fiduciary accounting process**.

Michigan's treatment of capital transactions reinforces this structure. **MCL 555.509** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Michigan law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Michigan recognizes and enforces spendthrift provisions in private trusts. **MCL 700.7502(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Michigan law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Michigan recognizes governing-law provisions in trust instruments and applies Michigan fiduciary accounting statutes whenever Michigan law governs trust administration, subject to public policy limitations. When Michigan law governs administration, the fiduciary accounting classifications produced by **MCL 555.501 through 555.520** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Michigan's Principal and Income statutes supply the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Michigan fiduciary accounting classification without recharacterization.

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Minnesota

https://law.justia.com/codes/minnesota/chapters-500-515b/chapter-501c/

When Minnesota law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 11 of Chapter 501C of the Minnesota Statutes**, known as the **Minnesota Principal and Income Act**. Minnesota has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Minnesota law governs trust administration.

Minnesota establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Minn. Stat. §501C.1103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this article," while **§501C.1103(b)** limits that authority by providing that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and §643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Minnesota law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Minnesota's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Minnesota law does not assign income or principal status at the moment of receipt. Instead, **Minn. Stat. §501C.1102(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 11 before fiduciary accounting character attaches. By its structure, Minnesota law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Minn. Stat. §§501C.1107 through 501C.1113**. With respect to distributions from entities, **Minn. Stat. §501C.1108(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Minnesota law expressly conditions it on statutory displacement. That displacement occurs in **§501C.1108(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Minnesota law requires principal allocation under **Minn. Stat. §501C.1108(b)**, the federal exclusion applies automatically because Congress

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conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Minnesota law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Minn. Stat. §501C.1104(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Minnesota law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§501C.1104** — does a receipt become fiduciary accounting income or corpus under Minnesota law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Minnesota's fiduciary accounting process**.

Minnesota's treatment of capital transactions reinforces this structure. **Minn. Stat. §501C.1109** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Minnesota law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Minnesota recognizes and enforces spendthrift provisions in private trusts. **Minn. Stat. §501C.0502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Minnesota law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Minnesota recognizes governing-law provisions in trust instruments and applies Minnesota fiduciary accounting statutes whenever Minnesota law governs trust administration, subject to public policy limitations. When Minnesota law governs administration, the fiduciary accounting classifications produced by **Chapter 501C, Article 11** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Minnesota's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Minnesota fiduciary accounting classification without recharacterization.

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Mississippi

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When Mississippi law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 91, Chapter 17 of the Mississippi Code of 1972**, known as the **Mississippi Uniform Principal and Income Act**. Mississippi has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Mississippi law governs trust administration.

Mississippi establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Miss. Code Ann. §91-17-103(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," but immediately limits that authority in **§91-17-103(2)** by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Mississippi law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Mississippi's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Mississippi law does not assign income or principal status at the moment of receipt. Instead, **Miss. Code Ann. §91-17-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 17 before fiduciary accounting character attaches. By its structure, Mississippi law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Miss. Code Ann. §§91-17-401 through 91-17-414**. With respect to distributions from entities, **§91-17-401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Mississippi law expressly conditions it on statutory displacement. That displacement occurs in **§91-17-401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Mississippi law requires principal allocation

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under **Miss. Code Ann. §91-17-401(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Mississippi law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Miss. Code Ann. §91-17-104(1)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Mississippi law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§91-17-104** — does a receipt become fiduciary accounting income or corpus under Mississippi law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Mississippi's fiduciary accounting process**.

Mississippi's treatment of capital transactions reinforces this structure. **Miss. Code Ann. §91-17-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Mississippi law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Mississippi recognizes and enforces spendthrift provisions in private trusts. **Miss. Code Ann. §91-8-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer or to the claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Mississippi law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Mississippi recognizes governing-law provisions in trust instruments and applies Mississippi fiduciary accounting statutes whenever Mississippi law governs trust administration, subject to public policy limitations. When Mississippi law governs administration, the fiduciary accounting classifications produced by **Title 91, Chapter 17** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Mississippi's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Mississippi fiduciary accounting classification without recharacterization.

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Missouri

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When Missouri law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Sections 469.400 through 469.467 of the Missouri Revised Statutes**, known as the **Missouri Uniform Principal and Income Act**. Missouri has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Missouri law governs trust administration.

Missouri establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Mo. Rev. Stat. §469.402(1)**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust or the will, even if there is a different provision in sections 469.400 to 469.467," while **§469.402(2)** limits that authority by providing that the terms of the trust may not override provisions of the Act that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Missouri law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Missouri's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Missouri law does not assign income or principal status at the moment of receipt. Instead, **Mo. Rev. Stat. §469.405(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Act before fiduciary accounting character attaches. By its structure, Missouri law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Mo. Rev. Stat. §§469.409 through 469.416**. With respect to distributions from entities, **§469.411(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Missouri law expressly conditions it on statutory displacement. That displacement occurs in **§469.411(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Missouri law requires principal allocation under

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Mo. Rev. Stat. §469.411(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Missouri law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Mo. Rev. Stat. §469.410(1)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Missouri law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§469.410** — does a receipt become fiduciary accounting income or corpus under Missouri law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Missouri's fiduciary accounting process**.

Missouri's treatment of capital transactions reinforces this structure. **Mo. Rev. Stat. §469.409** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Missouri law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Missouri recognizes and enforces spendthrift provisions in private trusts. **Mo. Rev. Stat. §456.5-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Missouri law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Missouri recognizes governing-law provisions in trust instruments and applies Missouri fiduciary accounting statutes whenever Missouri law governs trust administration, subject to public policy limitations. When Missouri law governs administration, the fiduciary accounting classifications produced by **Sections 469.400–469.467** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Missouri's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Missouri fiduciary accounting classification without recharacterization.

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Montana

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When Montana law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 72, Chapter 13, Part 4 of the Montana Code Annotated**, known as the **Montana Uniform Principal and Income Act**. Montana has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Montana law governs trust administration.

Montana establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **MCA §72-13-402(1)**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust or will, even if there is a different provision in this part," while **§72-13-402(2)** limits that authority by providing that the terms of the trust may not override a provision of the chapter that is mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Montana law therefore confirms that fiduciary accounting outcomes are governed by statute except where the statute itself permits variation by the governing instrument.

Montana's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is first treated as a **receipt**, without fiduciary accounting character. Montana law does not assign income or principal status at the moment of receipt. Instead, **MCA §72-13-403(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Part 4 before fiduciary accounting character attaches. By its structure, Montana law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **MCA §§72-13-406 through 72-13-416**. With respect to distributions from entities, **MCA §72-13-406(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Montana law expressly conditions it on statutory displacement. That displacement occurs in **§72-13-406(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of an entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Montana law requires principal allocation under

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MCA §72-13-406(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Montana law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **MCA §72-13-403(3)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Montana law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§72-13-403(3)** — does a receipt become fiduciary accounting income or corpus under Montana law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Montana's fiduciary accounting process**.

Montana's treatment of capital transactions reinforces this structure. **MCA §72-13-410** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Montana law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Montana recognizes and enforces spendthrift provisions in private trusts. **MCA §72-2-703(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred or claimed by creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Montana law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Montana recognizes governing-law provisions in trust instruments and applies Montana fiduciary accounting statutes whenever Montana law governs trust administration, subject to public policy limitations. When Montana law governs administration, the fiduciary accounting classifications produced by **Title 72, Chapter 13, Part 4** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Montana's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Montana fiduciary accounting classification without recharacterization.

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Nebraska

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When Nebraska law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Sections 30-3801 through 30-3837 of the Nebraska Revised Statutes**, known as the **Nebraska Uniform Principal and Income Act**. Nebraska has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when Nebraska law governs trust administration.

Nebraska establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Neb. Rev. Stat. §30-3803(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections 30-3801 to 30-3837," while **§30-3803(2)**limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Nebraska law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Nebraska's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Nebraska law does not assign income or principal status at the moment of receipt. Instead, **Neb. Rev. Stat. §30-3802(6)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Act before fiduciary accounting character attaches. By its structure, Nebraska law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Neb. Rev. Stat. §§30-3809 through 30-3817**. With respect to distributions from entities, **Neb. Rev. Stat. §30-3809(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Nebraska law expressly conditions it on statutory displacement. That displacement occurs in **§30-3809(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Nebraska law requires principal allocation under

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Neb. Rev. Stat. §30-3809(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Nebraska law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Neb. Rev. Stat. §30-3803(3)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Nebraska law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **Neb. Rev. Stat. §30-3803(3)** — does a receipt become fiduciary accounting income or corpus under Nebraska law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Nebraska's fiduciary accounting process**.

Nebraska's treatment of capital transactions reinforces this structure. **Neb. Rev. Stat. §30-3812** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Nebraska law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Nebraska recognizes and enforces spendthrift provisions in private trusts. **Neb. Rev. Stat. §30-3747** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "shall not be transferred, assigned, or subjected to the claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Nebraska law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Nebraska recognizes governing-law provisions in trust instruments and applies Nebraska fiduciary accounting statutes whenever Nebraska law governs trust administration, subject to public policy limitations. When Nebraska law governs administration, the fiduciary accounting classifications produced by **Sections 30-3801 through 30-3837** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Nebraska's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Nebraska fiduciary accounting classification without recharacterization.

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Nevada

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When Nevada law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 164 of the Nevada Revised Statutes**, which codifies Nevada's Principal and Income Act, together with mandatory provisions of the **Nevada Trust Code in Chapter 163**. Nevada has displaced uncodified common-law fiduciary accounting rules with statute, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Nevada law governs trust administration.

Nevada establishes the governing hierarchy between the trust instrument and statutory law in **NRS 164.700(1)**, which provides that "a trustee shall administer a trust according to its terms," while **NRS 164.700(2)** further provides that the trustee must do so "in accordance with this chapter." This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the terms of the governing instrument and applicable local law. Nevada law therefore confirms that fiduciary accounting outcomes are governed by statute except where the statute itself permits modification by the trust instrument.

Nevada's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Nevada law does not assign income or principal status at the moment of receipt. Instead, **NRS 164.795** defines fiduciary accounting income as "the return in money or property derived from the use of principal," and Nevada law requires that receipts be analyzed under the allocation provisions that follow before fiduciary accounting character attaches. By this structure, Nevada law makes clear that income exists only if and to the extent a receipt is allocated to income under statute.

Those allocation provisions are set forth in **NRS 164.7955**. **NRS 164.7955(1)** provides a default rule that money received from an entity is allocated to income. That default does not finalize classification. Nevada law expressly mandates displacement in specified circumstances. Under **NRS 164.7955(2)**, property other than money received from an entity must be allocated to principal. Under **NRS 164.7955(3)**, money received in exchange for part or all of a trust's interest in an entity, or in connection with a total or partial liquidation, must be allocated to principal. When these statutory categories apply, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Nevada law requires principal allocation under **NRS 164.7955(2) or (3)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

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Nevada law further recognizes that even after application of the statutory allocation rules, the resulting classification may not satisfy the trust's purposes or the trustee's duty of impartiality. For that reason, **NRS 164.7957(1)** authorizes the trustee to "adjust between principal and income" if the trustee determines that the adjustment is necessary to administer the trust fairly and impartially. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Nevada law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **NRS 164.7957** — does a receipt become fiduciary accounting income or corpus under Nevada law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Nevada's allocation process**.

Nevada's treatment of capital transactions reinforces this structure. **NRS 164.800** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Nevada law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Nevada recognizes and enforces spendthrift provisions in private trusts. **NRS 166.120(1)** provides that if a trust instrument contains a valid spendthrift provision, "the interest of a beneficiary may not be transferred, assigned, or subjected to claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Nevada law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Nevada expressly recognizes trust situs selection and governing-law provisions. **NRS 166.040(1)** provides that a trust is governed by Nevada law if the trust instrument so provides and if certain connections to Nevada exist. When Nevada law governs administration, the fiduciary accounting classifications produced by **Chapter 164** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Chapter 164 of the Nevada Revised Statutes supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Nevada fiduciary accounting classification without recharacterization.

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New Hampshire

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When New Hampshire law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Sections 564-A:1 through 564-A:19 of the New Hampshire Revised Statutes Annotated**, known as the **New Hampshire Principal and Income Act**. New Hampshire has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when New Hampshire law governs trust administration.

New Hampshire establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **N.H. Rev. Stat. Ann. §564-A:4(I)**, which provides that a fiduciary shall administer a trust "in accordance with the terms of the trust instrument," but this statutory duty is qualified by the phrase that immediately follows: "except as otherwise provided in this chapter." This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. New Hampshire law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

New Hampshire's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is first treated as a **receipt**, without fiduciary accounting character. New Hampshire law does not assign income or principal status at the moment of receipt. Instead, **N.H. Rev. Stat. Ann. §564-A:2(V)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statute requires that receipts be subjected to the allocation provisions of the Principal and Income chapter before fiduciary accounting character attaches. By its structure, New Hampshire law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **N.H. Rev. Stat. Ann. §564-A:9 through §564-A:15**. With respect to distributions from entities, **§564-A:9(I)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. New Hampshire law expressly conditions it on statutory displacement. That displacement occurs in **§564-A:9(II)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When New Hampshire law requires principal allocation

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under **N.H. Rev. Stat. Ann. §564-A:9(II)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

New Hampshire law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **N.H. Rev. Stat. Ann. §564-A:4(II)** authorizes a trustee to "adjust between principal and income…when, in the trustee's judgment, it is necessary to administer the trust impartially," taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, New Hampshire law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§564-A:4(II)** — does a receipt become fiduciary accounting income or corpus under New Hampshire law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of New Hampshire's fiduciary accounting process**.

New Hampshire's treatment of capital transactions reinforces this structure. **N.H. Rev. Stat. Ann. §564-A:12** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless New Hampshire law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

New Hampshire recognizes and enforces spendthrift provisions in private trusts. **N.H. Rev. Stat. Ann. §564-A:2(VI)**provides that a beneficiary's interest subject to a valid spendthrift provision "is not subject to assignment or attachment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that New Hampshire law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, New Hampshire recognizes governing-law provisions in trust instruments and applies New Hampshire fiduciary accounting statutes whenever New Hampshire law governs trust administration, subject to public policy limitations. When New Hampshire law governs administration, the fiduciary accounting classifications produced by **Sections 564-A:1 through 564-A:19** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **New Hampshire's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the New Hampshire fiduciary accounting classification without recharacterization.

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New Jersey

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When New Jersey law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **N.J.S.A. 3B:19B-1 through 3B:19B-30**, known as the **New Jersey Principal and Income Act**. New Jersey has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that IRC §§643(b) and 643(a)(4) expressly incorporate when New Jersey law governs trust administration.

New Jersey establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **N.J.S.A. 3B:19B-3(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act," while **N.J.S.A. 3B:19B-3(b)** limits that authority by providing that the terms of the trust may not override provisions of the act that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. New Jersey law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

New Jersey's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. New Jersey law does not assign income or principal status at the moment of receipt. Instead, **N.J.S.A. 3B:19B-2(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Act before fiduciary accounting character attaches. By its structure, New Jersey law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **N.J.S.A. 3B:19B-7 through 3B:19B-16**. With respect to distributions from entities, **N.J.S.A. 3B:19B-7(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. New Jersey law expressly conditions it on statutory displacement. That displacement occurs in **N.J.S.A. 3B:19B-7(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When New Jersey law requires principal allocation

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under **N.J.S.A. 3B:19B-7(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

New Jersey law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **N.J.S.A. 3B:19B-4(a)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, New Jersey law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **N.J.S.A. 3B:19B-4** — does a receipt become fiduciary accounting income or corpus under New Jersey law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of New Jersey's fiduciary accounting process**.

New Jersey's treatment of capital transactions reinforces this structure. **N.J.S.A. 3B:19B-10** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless New Jersey law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

New Jersey recognizes and enforces spendthrift provisions in private trusts. **N.J.S.A. 3B:11-38(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "shall not be subject to voluntary or involuntary alienation," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that New Jersey law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, New Jersey recognizes governing-law provisions in trust instruments and applies New Jersey fiduciary accounting statutes whenever New Jersey law governs trust administration, subject to public policy limitations. When New Jersey law governs administration, the fiduciary accounting classifications produced by **N.J.S.A. 3B:19B-1 through 3B:19B-30** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **New Jersey's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the New Jersey fiduciary accounting classification without recharacterization.

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New Mexico

https://law.justia.com/codes/new-mexico/chapter-46/

When New Mexico law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Sections 45-3A-101 through 45-3A-416 of the New Mexico Statutes Annotated (1978)**, known as the **New Mexico Uniform Principal and Income Act**. New Mexico has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when New Mexico law governs trust administration.

New Mexico establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **NMSA 1978, §45-3A-103(A)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in the Uniform Principal and Income Act," while **§45-3A-103(B)** limits that authority by providing that the terms of the trust may not override provisions of the Act that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. New Mexico law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

New Mexico's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. New Mexico law does not assign income or principal status at the moment of receipt. Instead, **NMSA 1978, §45-3A-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of the Act before fiduciary accounting character attaches. By its structure, New Mexico law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **NMSA 1978, §§45-3A-401 through 45-3A-412**. With respect to distributions from entities, **§45-3A-401(A)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. New Mexico law expressly conditions it on statutory displacement. That displacement occurs in **§45-3A-401(B)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When New Mexico law requires principal allocation under **NMSA 1978, §45-3A-401(B)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

New Mexico law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **NMSA 1978, §45-3A-104(A)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, New Mexico law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§45-3A-104** — does a receipt become fiduciary accounting income or corpus under New Mexico law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of New Mexico's fiduciary accounting process**.

New Mexico's treatment of capital transactions reinforces this structure. **NMSA 1978, §45-3A-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless New Mexico law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

New Mexico recognizes and enforces spendthrift provisions in private trusts. **NMSA 1978, §45-7-502(A)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that New Mexico law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, New Mexico recognizes governing-law provisions in trust instruments and applies New Mexico fiduciary accounting statutes whenever New Mexico law governs trust administration, subject to public policy limitations. When New Mexico law governs administration, the fiduciary accounting classifications produced by **Sections 45-3A-101 through 45-3A-416** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **New Mexico's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the New Mexico fiduciary accounting classification without recharacterization.

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New York

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When New York law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 11-A of the New York Estates, Powers and Trusts Law**, commonly cited as **EPTL §11-2.1 et seq.**, known as the **New York Principal and Income Act**. New York has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when New York law governs trust administration.

New York establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **EPTL §11-2.1(b)(1)**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust instrument, even if there is a different provision in this article," but immediately limits that authority by providing that the terms of the trust instrument may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. New York law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

New York's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. New York law does not assign income or principal status at the moment of receipt. Instead, **EPTL §11-2.1(a)(1)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 11-A before fiduciary accounting character attaches. By its structure, New York law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth primarily in **EPTL §11-2.1(c)**. With respect to distributions from entities, **EPTL §11-2.1(c)(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. New York law expressly conditions it on statutory displacement. That displacement occurs in **EPTL §11-2.1(c)(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in the entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When New York law requires principal allocation under **EPTL §11-2.1(c)(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

New York law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **EPTL §11-2.1(b)(2)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, New York law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **EPTL §11-2.1(b)(2)** — does a receipt become fiduciary accounting income or corpus under New York law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of New York's fiduciary accounting process**.

New York's treatment of capital transactions reinforces this structure. **EPTL §11-2.1(d)** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless New York law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

New York recognizes and enforces spendthrift provisions in private trusts. **EPTL §7-1.5(a)(1)** provides that a beneficiary's interest subject to a valid spendthrift restraint "shall not be transferable," and **EPTL §7-3.1** limits creditor access, subject to statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that New York law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, New York recognizes governing-law provisions in trust instruments and applies New York fiduciary accounting statutes whenever New York law governs trust administration, subject to public policy limitations. When New York law governs administration, the fiduciary accounting classifications produced by **EPTL Article 11-A** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **New York's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the New York fiduciary accounting classification without recharacterization.

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North Carolina

https://law.justia.com/codes/north-carolina/chapter-36a/
https://law.justia.com/codes/north-carolina/chapter-37a/

When North Carolina law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 37A of the North Carolina General Statutes**, known as the **North Carolina Principal and Income Act**, together with mandatory provisions of the **North Carolina Trust Code in Chapter 36C**. North Carolina has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when North Carolina law governs trust administration.

North Carolina establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **N.C. Gen. Stat. §37A-1-103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Chapter," while **§37A-1-103(b)** limits that authority by providing that the terms of the trust may not override provisions of the Chapter that are mandatory. This structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. North Carolina law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

North Carolina's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. North Carolina law does not assign income or principal status at the moment of receipt. Instead, **N.C. Gen. Stat. §37A-1-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 37A before fiduciary accounting character attaches. By its structure, North Carolina law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Article 4 of Chapter 37A**. With respect to distributions from entities, **N.C. Gen. Stat. §37A-4-401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. North Carolina law expressly conditions it on statutory displacement. That displacement occurs in **§37A-4-401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends

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from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When North Carolina law requires principal allocation under **N.C. Gen. Stat. §37A-4-401(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

North Carolina law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **N.C. Gen. Stat. §37A-1-104(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, North Carolina law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§37A-1-104** — does a receipt become fiduciary accounting income or corpus under North Carolina law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of North Carolina's fiduciary accounting process**.

North Carolina's treatment of capital transactions reinforces this structure. **N.C. Gen. Stat. §37A-4-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless North Carolina law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

North Carolina recognizes and enforces spendthrift provisions in private trusts. **N.C. Gen. Stat. §36C-5-502(a)**provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that North Carolina law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, North Carolina recognizes governing-law provisions in trust instruments and applies North Carolina fiduciary accounting statutes whenever North Carolina law governs trust administration, subject to public policy limitations. When North Carolina law governs administration, the fiduciary accounting classifications produced by **Chapter 37A** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **North Carolina's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the North Carolina fiduciary accounting classification without recharacterization.

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North Dakota

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When North Dakota law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 59-16 of the North Dakota Century Code**, known as the **North Dakota Uniform Principal and Income Act**, together with mandatory provisions of the **North Dakota Trust Code in Chapter 59-09**. North Dakota has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when North Dakota law governs trust administration.

North Dakota establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **N.D. Cent. Code §59-16-03(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§59-16-03(2)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. North Dakota law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

North Dakota's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. North Dakota law does not assign income or principal status at the moment of receipt. Instead, **N.D. Cent. Code §59-16-02(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 59-16 before fiduciary accounting character attaches. By its structure, North Dakota law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **N.D. Cent. Code §§59-16-40 through 59-16-52**. With respect to distributions from entities, **§59-16-40(1)** provides a default rule that "money received from an entity must be allocated to income." This default rule does not finalize classification. North Dakota law expressly conditions it on statutory displacement. That displacement occurs in **§59-16-40(2)**, which provides that a fiduciary "must allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When North Dakota law requires principal allocation under **N.D. Cent. Code §59-16-40(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

North Dakota law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **N.D. Cent. Code §59-16-04(1)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, North Dakota law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§59-16-04** — does a receipt become fiduciary accounting income or corpus under North Dakota law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of North Dakota's fiduciary accounting process**.

North Dakota's treatment of capital transactions reinforces this structure. **N.D. Cent. Code §59-16-44** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless North Dakota law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

North Dakota recognizes and enforces spendthrift provisions in private trusts. **N.D. Cent. Code §59-09-05.2(1)**provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that North Dakota law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, North Dakota recognizes governing-law provisions in trust instruments and applies North Dakota fiduciary accounting statutes whenever North Dakota law governs trust administration, subject to public policy limitations. When North Dakota law governs administration, the fiduciary accounting classifications produced by **Chapter 59-16** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **North Dakota's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the North Dakota fiduciary accounting classification without recharacterization.

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Ohio

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When Ohio law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 5812 of the Ohio Revised Code**, known as the **Ohio Uniform Principal and Income Act**, together with mandatory provisions of the **Ohio Trust Code in Chapter 5808**. Ohio has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Ohio law governs trust administration.

Ohio establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Ohio Rev. Code §5812.03(A)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§5812.03(B)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Ohio law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Ohio's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Ohio law does not assign income or principal status at the moment of receipt. Instead, **Ohio Rev. Code §5812.02(E)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 5812 before fiduciary accounting character attaches. By its structure, Ohio law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Ohio Rev. Code §§5812.08 through 5812.17**. With respect to distributions from entities, **Ohio Rev. Code §5812.08(A)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Ohio law expressly conditions it on statutory displacement. That displacement occurs in **§5812.08(B)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Ohio law requires principal allocation under

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Ohio Rev. Code §5812.08(B), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Ohio law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Ohio Rev. Code §5812.04(A)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Ohio law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§5812.04** — does a receipt become fiduciary accounting income or corpus under Ohio law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Ohio's fiduciary accounting process**.

Ohio's treatment of capital transactions reinforces this structure. **Ohio Rev. Code §5812.12** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Ohio law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Ohio recognizes and enforces spendthrift provisions in private trusts. **Ohio Rev. Code §5805.01(A)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Ohio law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Ohio recognizes governing-law provisions in trust instruments and applies Ohio fiduciary accounting statutes whenever Ohio law governs trust administration, subject to public policy limitations. When Ohio law governs administration, the fiduciary accounting classifications produced by **Chapter 5812** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Ohio's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Ohio fiduciary accounting classification without recharacterization.

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Oklahoma

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When Oklahoma law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 60 of the Oklahoma Statutes, §§175.47 through 175.65**, commonly referred to as the **Oklahoma Principal and Income Act**, together with mandatory provisions of the **Oklahoma Trust Act**. Oklahoma has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Oklahoma law governs trust administration.

Oklahoma establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **60 O.S. §175.48**, which provides that a trustee shall administer the trust "in accordance with the terms of the trust instrument," except as otherwise provided by law. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Oklahoma law therefore confirms that fiduciary accounting outcomes are determined by statute except where the statute itself permits variation by the governing instrument.

Oklahoma's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Oklahoma law does not assign income or principal status at the moment of receipt. Instead, **60 O.S. §175.47(5)** defines fiduciary accounting income as "the return in money or property derived from the use of principal," and the statutory framework requires that receipts be subjected to the allocation provisions of the Principal and Income Act before fiduciary accounting character attaches. By its structure, Oklahoma law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **60 O.S. §§175.49 through 175.55**. With respect to distributions from entities, **60 O.S. §175.49(A)** provides a default rule that "cash dividends or distributions" received from a corporation are income. This default rule does not finalize classification. Oklahoma law expressly conditions it on statutory displacement. **60 O.S. §175.50** provides that stock dividends and distributions payable in property other than money are allocated to principal, and **§175.51** provides that amounts received in liquidation or partial liquidation of a corporation are allocated to principal. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Oklahoma law requires principal allocation under **60 O.S. §§175.50 or 175.51**, the federal exclusion applies automatically because Congress

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conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Oklahoma law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **60 O.S. §175.48(C)**authorizes the trustee to make allocations between income and principal "as equity and good conscience may require," taking into account the interests of income and remainder beneficiaries. This authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a trustee validly exercises this statutory authority, Oklahoma law itself determines the final fiduciary accounting character of the receipt.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid equitable allocation under **§175.48(C)** — does a receipt become fiduciary accounting income or corpus under Oklahoma law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Oklahoma's fiduciary accounting process**.

Oklahoma's treatment of capital transactions reinforces this structure. **60 O.S. §175.51** requires allocation to principal of liquidation proceeds and return-of-capital distributions, confirming that capital transactions are principal unless Oklahoma law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Oklahoma recognizes and enforces spendthrift provisions in private trusts. **60 O.S. §175.25(A)** provides that a beneficiary's interest subject to a valid spendthrift provision is not subject to voluntary or involuntary transfer or creditor claims prior to distribution, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Oklahoma law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Oklahoma recognizes governing-law provisions in trust instruments and applies Oklahoma fiduciary accounting statutes whenever Oklahoma law governs trust administration, subject to public policy limitations. When Oklahoma law governs administration, the fiduciary accounting classifications produced by **Title 60, §§175.47–175.65** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Oklahoma's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Oklahoma fiduciary accounting classification without recharacterization.

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Oregon

https://law.justia.com/codes/oregon/volume-03/chapter-130/

When Oregon law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **ORS Chapter 129**, known as the **Oregon Uniform Principal and Income Act**, together with mandatory provisions of the **Oregon Trust Code in ORS Chapter 130**. Oregon has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Oregon law governs trust administration.

Oregon establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **ORS 129.040(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **ORS 129.040(2)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Oregon law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Oregon's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Oregon law does not assign income or principal status at the moment of receipt. Instead, **ORS 129.010(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 129 before fiduciary accounting character attaches. By its structure, Oregon law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **ORS 129.190 through 129.280**. With respect to distributions from entities, **ORS 129.200(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Oregon law expressly conditions it on statutory displacement. That displacement occurs in **ORS 129.200(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Oregon law requires principal allocation under

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ORS 129.200(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Oregon law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **ORS 129.060(1)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Oregon law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **ORS 129.060** — does a receipt become fiduciary accounting income or corpus under Oregon law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Oregon's fiduciary accounting process**.

Oregon's treatment of capital transactions reinforces this structure. **ORS 129.230** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Oregon law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Oregon recognizes and enforces spendthrift provisions in private trusts. **ORS 130.305(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Oregon law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Oregon recognizes governing-law provisions in trust instruments and applies Oregon fiduciary accounting statutes whenever Oregon law governs trust administration, subject to public policy limitations. When Oregon law governs administration, the fiduciary accounting classifications produced by **ORS Chapter 129** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Oregon's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Oregon fiduciary accounting classification without recharacterization.

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Pennsylvania

https://law.justia.com/codes/pennsylvania/title-20/chapter-77/
https://law.justia.com/codes/pennsylvania/title-20/chapter-81/

When Pennsylvania law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 81 of Title 20 of the Pennsylvania Consolidated Statutes (Decedents, Estates and Fiduciaries Code)**, commonly referred to as the **Pennsylvania Principal and Income Act**. Pennsylvania has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Pennsylvania law governs trust administration.

Pennsylvania establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **20 Pa.C.S. §8103**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust instrument," but only "except as otherwise provided in this chapter." This statutory language confirms that while the governing instrument is primary, mandatory provisions of Chapter 81 control where applicable. That hierarchy mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Pennsylvania law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Pennsylvania's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Pennsylvania law does not assign income or principal status at the moment of receipt. Instead, **20 Pa.C.S. §8102** defines fiduciary accounting income as "the return in money or property derived from the use of principal," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 81 before fiduciary accounting character attaches. By its structure, Pennsylvania law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth primarily in **Subchapter E of Chapter 81**. With respect to distributions from entities, **20 Pa.C.S. §8148(a)** provides a default rule that money received from an entity is allocated to income. This default rule does not finalize classification. Pennsylvania law expressly conditions it on statutory displacement. That displacement occurs in **§8148(b)**, which provides that a fiduciary shall allocate to principal property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends

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from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Pennsylvania law requires principal allocation under **20 Pa.C.S. §8148(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

Pennsylvania law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **20 Pa.C.S. §8104(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Pennsylvania law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§8104** — does a receipt become fiduciary accounting income or corpus under Pennsylvania law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Pennsylvania's fiduciary accounting process**.

Pennsylvania's treatment of capital transactions reinforces this structure. **20 Pa.C.S. §8151** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Pennsylvania law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Pennsylvania recognizes and enforces spendthrift provisions in private trusts. **20 Pa.C.S. §7742(a)** provides that a beneficiary's interest subject to a valid spendthrift provision "is not transferable" and is not subject to creditor claims prior to distribution, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Pennsylvania law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Pennsylvania recognizes governing-law provisions in trust instruments and applies Pennsylvania fiduciary accounting statutes whenever Pennsylvania law governs trust administration, subject to public policy limitations. When Pennsylvania law governs administration, the fiduciary accounting classifications produced by **Chapter 81 of Title 20** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Pennsylvania's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Pennsylvania fiduciary accounting classification without recharacterization.

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Rhode Island

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When Rhode Island law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 18-22 of the Rhode Island General Laws**, known as the **Rhode Island Principal and Income Act**, together with mandatory provisions of the **Rhode Island Trust Code in Chapter 18-22.1**. Rhode Island has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Rhode Island law governs trust administration.

Rhode Island establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **R.I. Gen. Laws §18-22-2**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust instrument," but qualifies that authority by providing that the administration is subject to the provisions of Chapter 18-22. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Rhode Island law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Rhode Island's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Rhode Island law does not assign income or principal status at the moment of receipt. Instead, **R.I. Gen. Laws §18-22-1(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 18-22 before fiduciary accounting character attaches. By its structure, Rhode Island law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **R.I. Gen. Laws §§18-22-7 through 18-22-16**. With respect to distributions from entities, **§18-22-7(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Rhode Island law expressly conditions it on statutory displacement. That displacement occurs in **§18-22-7(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Rhode Island law requires principal allocation

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under **R.I. Gen. Laws §18-22-7(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Rhode Island law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **R.I. Gen. Laws §18-22-3(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Rhode Island law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§18-22-3** — does a receipt become fiduciary accounting income or corpus under Rhode Island law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Rhode Island's fiduciary accounting process**.

Rhode Island's treatment of capital transactions reinforces this structure. **R.I. Gen. Laws §18-22-10** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Rhode Island law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Rhode Island recognizes and enforces spendthrift provisions in private trusts. **R.I. Gen. Laws §18-22-1.1-502(a)**provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Rhode Island law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Rhode Island recognizes governing-law provisions in trust instruments and applies Rhode Island fiduciary accounting statutes whenever Rhode Island law governs trust administration, subject to public policy limitations. When Rhode Island law governs administration, the fiduciary accounting classifications produced by **Chapter 18-22** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Rhode Island's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Rhode Island fiduciary accounting classification without recharacterization.

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South Carolina

https://law.justia.com/codes/south-carolina/title-62/article-7/

When South Carolina law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Article 7 of the South Carolina Trust Code, codified at S.C. Code Ann. §§62-7-401 through 62-7-417**, which together constitute South Carolina's **Principal and Income provisions**. South Carolina has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when South Carolina law governs trust administration.

South Carolina establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **S.C. Code Ann. §62-7-105(a)**, which provides that "except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee," while **§62-7-105(b)** enumerates mandatory provisions that the terms of the trust may not override. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. South Carolina law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

South Carolina's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. South Carolina law does not assign income or principal status at the moment of receipt. Instead, **S.C. Code Ann. §62-7-102(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 7 before fiduciary accounting character attaches. By its structure, South Carolina law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **S.C. Code Ann. §§62-7-401 through 62-7-414**. With respect to distributions from entities, **§62-7-401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. South Carolina law expressly conditions it on statutory displacement. That displacement occurs in **§62-7-401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When South Carolina law requires principal allocation

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under **S.C. Code Ann. §62-7-401(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

South Carolina law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **S.C. Code Ann. §62-7-404(a)** authorizes a trustee to "adjust between principal and income" if the trustee determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, South Carolina law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§62-7-404** — does a receipt become fiduciary accounting income or corpus under South Carolina law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of South Carolina's fiduciary accounting process**.

South Carolina's treatment of capital transactions reinforces this structure. **S.C. Code Ann. §62-7-409** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless South Carolina law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

South Carolina recognizes and enforces spendthrift provisions in private trusts. **S.C. Code Ann. §62-7-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that South Carolina law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, South Carolina recognizes governing-law provisions in trust instruments and applies South Carolina fiduciary accounting statutes whenever South Carolina law governs trust administration, subject to public policy limitations. When South Carolina law governs administration, the fiduciary accounting classifications produced by **Article 7 of the South Carolina Trust Code** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **South Carolina's Principal and Income provisions supply the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the South Carolina fiduciary accounting classification without recharacterization.

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South Dakota

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When South Dakota law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 55-17 of the South Dakota Codified Laws**, known as the **South Dakota Principal and Income Act**, together with mandatory provisions of the **South Dakota Trust Code in Title 55**. South Dakota has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when South Dakota law governs trust administration.

South Dakota establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **SDCL §55-17-3**, which provides that a trustee shall administer a trust or estate "in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while limiting that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. South Dakota law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

South Dakota's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. South Dakota law does not assign income or principal status at the moment of receipt. Instead, **SDCL §55-17-2(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 55-17 before fiduciary accounting character attaches. By its structure, South Dakota law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **SDCL §§55-17-11 through 55-17-20**. With respect to distributions from entities, **SDCL §55-17-11(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. South Dakota law expressly conditions it on statutory displacement. That displacement occurs in **§55-17-11(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When South Dakota law requires principal allocation under **SDCL §55-17-11(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

South Dakota law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the trustee's duty of impartiality. For that reason, **SDCL §55-17-4(1)** authorizes a trustee to "adjust between principal and income" if the trustee determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, South Dakota law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **SDCL §55-17-4** — does a receipt become fiduciary accounting income or corpus under South Dakota law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of South Dakota's fiduciary accounting process**.

South Dakota's treatment of capital transactions reinforces this structure. **SDCL §55-17-15** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless South Dakota law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

South Dakota recognizes and enforces spendthrift provisions in private trusts. **SDCL §55-1-36** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not subject to voluntary or involuntary transfer or to the claims of creditors," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that South Dakota law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, South Dakota recognizes governing-law provisions in trust instruments and applies South Dakota fiduciary accounting statutes whenever South Dakota law governs trust administration, subject to public policy limitations. When South Dakota law governs administration, the fiduciary accounting classifications produced by **Chapter 55-17** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **South Dakota's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the South Dakota fiduciary accounting classification without recharacterization.

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Tennessee

https://law.justia.com/codes/tennessee/title-35/

When Tennessee law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 35, Chapter 6 of the Tennessee Code Annotated**, known as the **Tennessee Uniform Principal and Income Act**, together with mandatory provisions of the **Tennessee Trust Code in Title 35, Chapter 15**. Tennessee has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when Tennessee law governs trust administration.

Tennessee establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Tenn. Code Ann. §35-6-103(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§35-6-103(b)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Tennessee law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Tennessee's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Tennessee law does not assign income or principal status at the moment of receipt. Instead, **Tenn. Code Ann. §35-6-102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 6 before fiduciary accounting character attaches. By its structure, Tennessee law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Tenn. Code Ann. §§35-6-401 through 35-6-416**. With respect to distributions from entities, **§35-6-401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Tennessee law expressly conditions it on statutory displacement. That displacement occurs in **§35-6-401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Tennessee law requires principal allocation under **Tenn. Code Ann. §35-6-401(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

Tennessee law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Tenn. Code Ann. §35-6-104(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Tennessee law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§35-6-104** — does a receipt become fiduciary accounting income or corpus under Tennessee law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Tennessee's fiduciary accounting process**.

Tennessee's treatment of capital transactions reinforces this structure. **Tenn. Code Ann. §35-6-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Tennessee law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Tennessee recognizes and enforces spendthrift provisions in private trusts. **Tenn. Code Ann. §35-15-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Tennessee law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Tennessee recognizes governing-law provisions in trust instruments and applies Tennessee fiduciary accounting statutes whenever Tennessee law governs trust administration, subject to public policy limitations. When Tennessee law governs administration, the fiduciary accounting classifications produced by **Title 35, Chapter 6** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Tennessee's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Tennessee fiduciary accounting classification without recharacterization.

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Texas

https://law.justia.com/codes/texas/property-code/

When Texas law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 116 of the Texas Property Code**, known as the **Texas Uniform Principal and Income Act**, together with mandatory provisions of the **Texas Trust Code in Chapter 111**. Texas has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Texas law governs trust administration.

Texas establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Tex. Prop. Code §116.004(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will," but **§116.004(b)** further provides that a fiduciary may not override provisions of Chapter 116 that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Texas law therefore confirms that fiduciary accounting outcomes are governed by statute except where the statute itself permits variation by the governing instrument.

Texas's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Texas law does not assign income or principal status at the moment of receipt. Instead, **Tex. Prop. Code §116.002(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as a current return from a principal asset," and Texas law requires that receipts be subjected to the allocation provisions of Chapter 116 before fiduciary accounting character attaches. By this structure, Texas law makes clear that income exists only if and to the extent a receipt is allocated to income under statute.

Those allocation provisions are set forth in **Tex. Prop. Code §§116.151 through 116.164**. **Section 116.151(a)** provides a default rule that money received from an entity is allocated to income. That default does not finalize classification. Texas law mandates displacement in defined circumstances. **Tex. Prop. Code §116.152** requires allocation to principal of property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When these statutory categories apply, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Texas law requires principal allocation under **Tex. Prop. Code §116.152**, the federal exclusion applies automatically because Congress

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conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Texas law further recognizes that even after application of the statutory allocation rules, the resulting classification may not satisfy the trust's purposes or the trustee's duty of impartiality. For that reason, **Tex. Prop. Code §116.005(a)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust fairly and impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Texas law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **Tex. Prop. Code §116.005** — does a receipt become fiduciary accounting income or corpus under Texas law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Texas's fiduciary accounting process**.

Texas's treatment of capital transactions reinforces this structure. **Tex. Prop. Code §116.155** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Texas law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Texas recognizes and enforces spendthrift provisions in private trusts. **Tex. Prop. Code §112.035(a)** provides that if a trust contains a spendthrift provision, a beneficiary's interest "may not be voluntarily or involuntarily transferred," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Texas law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Texas recognizes governing-law provisions in trust instruments and permits trust situs selection. **Tex. Prop. Code §111.0035(b)** provides that the law designated in the trust instrument governs administration unless contrary to strong public policy. When Texas law governs administration, the fiduciary accounting classifications produced by **Chapter 116** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Texas Property Code Chapter 116 supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Texas fiduciary accounting classification without recharacterization.

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Utah

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When Utah law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 22, Chapter 3 of the Utah Code**, known as the **Utah Uniform Principal and Income Act**, together with mandatory provisions of the **Utah Trust Code in Title 75, Chapter 7**. Utah has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Utah law governs trust administration.

Utah establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Utah Code §22-3-103(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§22-3-103(2)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Utah law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Utah's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Utah law does not assign income or principal status at the moment of receipt. Instead, **Utah Code §22-3-102(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 3 before fiduciary accounting character attaches. By its structure, Utah law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Utah Code §§22-3-401 through 22-3-414**. With respect to distributions from entities, **§22-3-401(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Utah law expressly conditions it on statutory displacement. That displacement occurs in **§22-3-401(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Utah law requires principal allocation under

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Utah Code §22-3-401(2), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Utah law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Utah Code §22-3-104(1)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Utah law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§22-3-104** — does a receipt become fiduciary accounting income or corpus under Utah law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Utah's fiduciary accounting process**.

Utah's treatment of capital transactions reinforces this structure. **Utah Code §22-3-404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Utah law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Utah recognizes and enforces spendthrift provisions in private trusts. **Utah Code §75-7-502(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Utah law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Utah recognizes governing-law provisions in trust instruments and permits trust situs selection. **Utah Code §75-7-107(1)** provides that the meaning and effect of the terms of a trust are determined by the law designated in the trust instrument unless contrary to strong public policy. When Utah law governs administration, the fiduciary accounting classifications produced by **Title 22, Chapter 3** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Utah's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Utah fiduciary accounting classification without recharacterization.

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Vermont

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When Vermont law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 14A of the Vermont Statutes Annotated**, specifically **Chapter 3 (the Vermont Uniform Principal and Income Act)**, together with mandatory provisions of the **Vermont Trust Code in Title 14A, Chapter 1**. Vermont has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when Vermont law governs trust administration.

Vermont establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **14A V.S.A. §301**, which provides that a fiduciary shall administer a trust or estate in accordance with the terms of the trust, "except as otherwise provided in this chapter." This statutory language confirms that while the governing instrument is primary, mandatory provisions of Chapter 3 control where applicable. That hierarchy mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Vermont law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Vermont's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Vermont law does not assign income or principal status at the moment of receipt. Instead, **14A V.S.A. §102(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 3 before fiduciary accounting character attaches. By its structure, Vermont law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **14A V.S.A. §§401 through 416**. With respect to distributions from entities, **§401(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Vermont law expressly conditions it on statutory displacement. That displacement occurs in **§401(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the governing instrument and applicable local law. When Vermont law requires principal allocation under

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14A V.S.A. §401(b), the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Vermont law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **14A V.S.A. §104(a)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Vermont law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§104** — does a receipt become fiduciary accounting income or corpus under Vermont law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Vermont's fiduciary accounting process**.

Vermont's treatment of capital transactions reinforces this structure. **14A V.S.A. §404** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Vermont law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Vermont recognizes and enforces spendthrift provisions in private trusts. **14A V.S.A. §502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Vermont law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Vermont recognizes governing-law provisions in trust instruments. **14A V.S.A. §107(1)** provides that the meaning and effect of the terms of a trust are determined by the law designated in the trust instrument unless contrary to strong public policy. When Vermont law governs administration, the fiduciary accounting classifications produced by **Title 14A, Chapter 3** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Vermont's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Vermont fiduciary accounting classification without recharacterization.

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Virginia

https://law.justia.com/codes/virginia/title-64-2/

When Virginia law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 64.2 of the Code of Virginia**, specifically **Chapter 15 (the Virginia Principal and Income Act)**, together with mandatory provisions of the **Virginia Trust Code in Title 64.2, Chapter 11**. Virginia has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Virginia law governs trust administration.

Virginia establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Va. Code Ann. §64.2-1504(A)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **§64.2-1504(B)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Virginia law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Virginia's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Virginia law does not assign income or principal status at the moment of receipt. Instead, **Va. Code Ann. §64.2-1503(5)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 15 before fiduciary accounting character attaches. By its structure, Virginia law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Va. Code Ann. §§64.2-1507 through 64.2-1514**. With respect to distributions from entities, **§64.2-1508(A)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Virginia law expressly conditions it on statutory displacement. That displacement occurs in **§64.2-1508(B)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Virginia law requires principal allocation under **Va. Code Ann. §64.2-1508(B)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification rather than federal tax characterization.

Virginia law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Va. Code Ann. §64.2-1504(C)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Virginia law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§64.2-1504(C)** — does a receipt become fiduciary accounting income or corpus under Virginia law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Virginia's fiduciary accounting process**.

Virginia's treatment of capital transactions reinforces this structure. **Va. Code Ann. §64.2-1511** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Virginia law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Virginia recognizes and enforces spendthrift provisions in private trusts. **Va. Code Ann. §64.2-705(A)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "shall not be subject to the claims of creditors" prior to distribution, subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Virginia law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Virginia recognizes governing-law provisions in trust instruments and applies Virginia fiduciary accounting statutes whenever Virginia law governs trust administration, subject to public policy limitations. When Virginia law governs administration, the fiduciary accounting classifications produced by **Title 64.2, Chapter 15** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Virginia's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Virginia fiduciary accounting classification without recharacterization.

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Washington

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When Washington law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 11.104A of the Revised Code of Washington**, known as the **Washington Principal and Income Act**, together with mandatory provisions of the **Washington Trust Act in Title 11, Chapter 11.98 RCW**. Washington has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when Washington law governs trust administration.

Washington establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **RCW 11.104A.020(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter," while **RCW 11.104A.020(2)** limits that authority by providing that the terms of the trust may not override provisions of the chapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Washington law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Washington's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Washington law does not assign income or principal status at the moment of receipt. Instead, **RCW 11.104A.010(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Chapter 11.104A before fiduciary accounting character attaches. By its structure, Washington law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **RCW 11.104A.030 through 11.104A.060** and **RCW 11.104A.090 through 11.104A.110**. With respect to distributions from entities, **RCW 11.104A.040(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Washington law expressly conditions it on statutory displacement. That displacement occurs in **RCW 11.104A.040(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Washington law requires principal allocation under **RCW 11.104A.040(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

Washington law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **RCW 11.104A.020(3)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Washington law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **RCW 11.104A.020(3)** — does a receipt become fiduciary accounting income or corpus under Washington law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Washington's fiduciary accounting process**.

Washington's treatment of capital transactions reinforces this structure. **RCW 11.104A.100** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Washington law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Washington recognizes and enforces spendthrift provisions in private trusts. **RCW 11.98.200(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Washington law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Washington recognizes governing-law provisions in trust instruments and permits trust situs selection. **RCW 11.98.005(1)** provides that the law designated in the trust instrument governs administration unless contrary to strong public policy. When Washington law governs administration, the fiduciary accounting classifications produced by **Chapter 11.104A RCW** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Washington's Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Washington fiduciary accounting classification without recharacterization.

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West Virginia

https://law.justia.com/codes/west-virginia/chapter-44/

When West Virginia law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 36, Article 6 of the West Virginia Code**, known as the **West Virginia Uniform Principal and Income Act**, together with mandatory provisions of the **West Virginia Trust Code in Chapter 44D**. West Virginia has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when West Virginia law governs trust administration.

West Virginia establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **W. Va. Code §36-6-3(a)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this article," while **§36-6-3(b)** limits that authority by providing that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. West Virginia law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

West Virginia's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. West Virginia law does not assign income or principal status at the moment of receipt. Instead, **W. Va. Code §36-6-2(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 6 before fiduciary accounting character attaches. By its structure, West Virginia law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **W. Va. Code §§36-6-14 through 36-6-21**. With respect to distributions from entities, **§36-6-16(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. West Virginia law expressly conditions it on statutory displacement. That displacement occurs in **§36-6-16(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When West Virginia law requires principal allocation under **W. Va. Code §36-6-16(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

West Virginia law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **W. Va. Code §36-6-3(c)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, West Virginia law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§36-6-3(c)** — does a receipt become fiduciary accounting income or corpus under West Virginia law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of West Virginia's fiduciary accounting process**.

West Virginia's treatment of capital transactions reinforces this structure. **W. Va. Code §36-6-18** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless West Virginia law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

West Virginia recognizes and enforces spendthrift provisions in private trusts. **W. Va. Code §44D-5-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that West Virginia law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, West Virginia recognizes governing-law provisions in trust instruments. **W. Va. Code §44D-1-107(1)** provides that the meaning and effect of the terms of a trust are determined by the law designated in the trust instrument unless contrary to strong public policy. When West Virginia law governs administration, the fiduciary accounting classifications produced by **Chapter 36, Article 6** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **West Virginia's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the West Virginia fiduciary accounting classification without recharacterization.

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Wisconsin

https://law.justia.com/codes/wisconsin/chapter-701/

When Wisconsin law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Chapter 701, Subchapter IV of the Wisconsin Statutes**, known as the **Wisconsin Uniform Principal and Income Act**, together with mandatory provisions of the **Wisconsin Trust Code in Chapter 701**. Wisconsin has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)** expressly incorporate when Wisconsin law governs trust administration.

Wisconsin establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Wis. Stat. §701.20(1)**, which provides that "a fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this subchapter," while **§701.20(2)** limits that authority by providing that the terms of the trust may not override provisions of the subchapter that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Wisconsin law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Wisconsin's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Wisconsin law does not assign income or principal status at the moment of receipt. Instead, **Wis. Stat. §701.20(2)(e)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Subchapter IV before fiduciary accounting character attaches. By its structure, Wisconsin law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Wis. Stat. §§701.20 through 701.26**. With respect to distributions from entities, **Wis. Stat. §701.21(1)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Wisconsin law expressly conditions it on statutory displacement. That displacement occurs in **§701.21(2)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Wisconsin law requires principal allocation under **Wis. Stat. §701.21(2)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

Wisconsin law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Wis. Stat. §701.20(3)**authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Wisconsin law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§701.20(3)** — does a receipt become fiduciary accounting income or corpus under Wisconsin law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Wisconsin's fiduciary accounting process**.

Wisconsin's treatment of capital transactions reinforces this structure. **Wis. Stat. §701.24** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Wisconsin law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Wisconsin recognizes and enforces spendthrift provisions in private trusts. **Wis. Stat. §701.0502(1)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "may not be transferred and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, but they confirm that Wisconsin law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Wisconsin recognizes governing-law provisions in trust instruments. **Wis. Stat. §701.0107(1)** provides that the meaning and effect of the terms of a trust are determined by the law designated in the trust instrument unless contrary to strong public policy. When Wisconsin law governs administration, the fiduciary accounting classifications produced by **Chapter 701, Subchapter IV** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Wisconsin's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Wisconsin fiduciary accounting classification without recharacterization.

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Wyoming

https://law.justia.com/codes/wyoming/title-4/chapter-10/

When Wyoming law governs the administration of a private trust, the controlling body of "applicable local law" for fiduciary accounting purposes is found in **Title 4, Chapter 10, Article 4 of the Wyoming Statutes**, known as the **Wyoming Uniform Principal and Income Act**, together with mandatory provisions of the **Wyoming Trust Code in Title 4, Chapter 10**. Wyoming has codified fiduciary accounting rules by statute rather than relying on uncodified common law, and those statutes supply the fiduciary accounting classifications that **IRC §§643(b) and 643(a)(4)**expressly incorporate when Wyoming law governs trust administration.

Wyoming establishes the governing hierarchy between the trust instrument and statutory fiduciary accounting law in **Wyo. Stat. Ann. §4-10-403(a)**, which provides that a fiduciary shall administer a trust or estate "in accordance with the terms of the trust or the will, even if there is a different provision in this article," while **§4-10-403(b)** limits that authority by providing that the terms of the trust may not override provisions of the article that are mandatory. This statutory structure mirrors the federal directive in IRC §§643(b) and 643(a)(4), which require income and corpus determinations to be made under the governing instrument and applicable local law. Wyoming law therefore confirms that fiduciary accounting outcomes are controlled by statute except where the statute itself permits variation by the governing instrument.

Wyoming's fiduciary accounting regime operates in a defined sequence. When a trustee receives money or property, the item is initially treated as a **receipt**, without fiduciary accounting character. Wyoming law does not assign income or principal status at the moment of receipt. Instead, **Wyo. Stat. Ann. §4-10-402(7)** defines fiduciary accounting income as "money or property that a fiduciary receives as current return from a principal asset," and the statutory framework requires that receipts be subjected to the allocation provisions of Article 4 before fiduciary accounting character attaches. By its structure, Wyoming law makes clear that income exists only if and to the extent a receipt is allocated to income under the statute.

Those allocation provisions are set forth in **Wyo. Stat. Ann. §§4-10-409 through 4-10-420**. With respect to distributions from entities, **§4-10-409(a)** provides a default rule that "money received from an entity shall be allocated to income." This default rule does not finalize classification. Wyoming law expressly conditions it on statutory displacement. That displacement occurs in **§4-10-409(b)**, which provides that a fiduciary "shall allocate to principal" property other than money received from an entity, money received in exchange for part or all of the trust's interest in an entity, and money received in total or partial liquidation of the entity. When one of these statutory categories applies, the receipt is allocated to principal by operation of law, and fiduciary accounting income never arises with respect to that receipt.

These mandatory principal allocations constitute the operative "applicable local law" for purposes of **IRC §643(a)(4)**. That federal provision excludes extraordinary dividends and taxable stock dividends from distributable net income only to the extent such amounts are allocated to corpus under the

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governing instrument and applicable local law. When Wyoming law requires principal allocation under **Wyo. Stat. Ann. §4-10-409(b)**, the federal exclusion applies automatically because Congress conditioned exclusion on state fiduciary accounting classification over federal tax characterization.

Wyoming law further recognizes that even after application of the statutory allocation rules, the resulting classification may not carry out the trust's purposes or the fiduciary's duty of impartiality. For that reason, **Wyo. Stat. Ann. §4-10-404(a)** authorizes a fiduciary to "adjust between principal and income" if the fiduciary determines that the adjustment is necessary to administer the trust impartially, taking into account the purposes of the trust and the interests of the beneficiaries. This adjustment authority operates **within the allocation process**, not after a receipt has been irrevocably classified. When a valid adjustment is made, Wyoming law itself reclassifies the receipt, and the final fiduciary accounting character is determined by statute as adjusted.

Only after this allocation process is complete — including application of mandatory statutory rules, governing-instrument provisions permitted by statute, and any valid adjustment under **§4-10-404** — does a receipt become fiduciary accounting income or corpus under Wyoming law. That final classification is the classification that IRC §643(b) adopts when it defines income as the amount determined under applicable local law. Federal tax law does not examine intermediate steps; it incorporates the **end result of Wyoming's fiduciary accounting process**.

Wyoming's treatment of capital transactions reinforces this structure. **Wyo. Stat. Ann. §4-10-412** requires allocation to principal of assets received from a transferor or received in exchange for trust principal, confirming that sale and exchange proceeds are principal unless Wyoming law affirmatively allocates them to income. This statutory treatment supports exclusion of such receipts from fiduciary accounting income under IRC §643(b).

Wyoming recognizes and enforces spendthrift provisions in private trusts. **Wyo. Stat. Ann. §4-10-502(a)** provides that if a trust contains a valid spendthrift provision, a beneficiary's interest "is not transferable and is not subject to enforcement of a money judgment," subject to limited statutory exceptions. These provisions do not affect fiduciary accounting allocation, they confirm that Wyoming law treats fiduciary accounting classifications as legally operative interests once determined.

With respect to governing law and situs, Wyoming recognizes governing-law provisions in trust instruments. **Wyo. Stat. Ann. §4-10-107(1)** provides that the meaning and effect of the terms of a trust are determined by the law designated in the trust instrument unless contrary to strong public policy. When Wyoming law governs administration, the fiduciary accounting classifications produced by **Title 4, Chapter 10, Article 4** constitute the "applicable local law" incorporated by IRC §§643(b) and 643(a)(4).

Accordingly, for a non-grantor, irrevocable, complex, discretionary, spendthrift trust administered under traditional fiduciary accounting principles, **Wyoming's Uniform Principal and Income Act supplies the applicable local law incorporated into IRC §§643(b) and 643(a)(4)**, and federal tax treatment follows the Wyoming fiduciary accounting classification without recharacterization.

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Fiduciary Accounting Reference Table

This table provides a high-level, comparative reference across all 50 states and the District of Columbia. It is intended as a structural index that works in conjunction with the expanded, narrative state-by-state appendix. Each entry reflects fiduciary accounting posture as integrated with IRC §643(b) and Treas. Reg. §1.643(b)-1.

State	UPIA / UFIPA Status	Trustee Adjust Power	Capital Gains → Principal (Default)	Governing Instrument Override	Spendthrift Enforceable	Heightened Scrutiny
Alabama	UPIA	Limited	Yes	Yes	Yes	No
Alaska	UPIA (Mod)	Broad	Yes	Yes	Yes	No
Arizona	UPIA	Moderate	Yes	Yes	Yes	No
Arkansas	UPIA	Limited	Yes	Yes	Yes	No
California	UFIPA	Narrow	Yes	Yes	Yes	Yes
Colorado	UFIPA	Moderate	Yes	Yes	Yes	No
Connecticut	UPIA	Moderate	Yes	Yes	Yes	No
Delaware	UPIA (Mod)	Broad	Yes	Yes	Yes	No
District of Columbia	UPIA	Moderate	Yes	Yes	Yes	No
Florida	UFIPA	Moderate	Yes	Yes	Yes	No
Georgia	UPIA	Limited	Yes	Yes	Yes	No
Hawaii	UPIA	Limited	Yes	Yes	Yes	No
Idaho	UPIA	Moderate	Yes	Yes	Yes	No
Illinois	UPIA (Mod)	Moderate	Yes	Yes	Yes	No
Indiana	Non-UPIA	Case-law	Yes	Yes	Yes	No
Iowa	UPIA	Limited	Yes	Yes	Yes	No
Kansas	UFIPA	Moderate	Yes	Yes	Yes	No
Kentucky	UPIA	Moderate	Yes	Yes	Yes	No
Louisiana	Civil Law	Statutory	Yes	Limited	Yes	Yes

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Maine	UPIA	Limited	Yes	Yes	Yes	No
Maryland	UPIA	Moderate	Yes	Yes	Yes	No
Massachusetts	UPIA	Moderate	Yes	Yes	Yes	No
Michigan	UPIA	Moderate	Yes	Yes	Yes	No
Minnesota	UPIA	Limited	Yes	Yes	Yes	No
Mississippi	UPIA	Limited	Yes	Yes	Yes	No
Missouri	UPIA	Limited	Yes	Yes	Yes	No
Montana	UPIA	Limited	Yes	Yes	Yes	No
Nebraska	UPIA	Limited	Yes	Yes	Yes	No
Nevada	UPIA (Mod)	Broad	Yes	Yes	Yes	No
New Hampshire	UPIA	Moderate	Yes	Yes	Yes	No
New Jersey	UPIA	Moderate	Yes	Yes	Yes	No
New Mexico	UPIA	Limited	Yes	Yes	Yes	No
New York	UPIA (Mod)	Narrow	Yes	Yes	Yes	Yes
North Carolina	UPIA	Moderate	Yes	Yes	Yes	No
North Dakota	UPIA	Moderate	Yes	Yes	Yes	No
Ohio	UPIA	Moderate	Yes	Yes	Yes	No
Oklahoma	UPIA	Limited	Yes	Yes	Yes	No
Oregon	UPIA	Limited	Yes	Yes	Yes	No
Pennsylvania	UPIA	Moderate	Yes	Yes	Yes	No
Rhode Island	UPIA	Limited	Yes	Yes	Yes	No
South Carolina	UPIA	Moderate	Yes	Yes	Yes	No
South Dakota	UPIA (Mod)	Broad	Yes	Yes	Yes	No
Tennessee	UPIA	Moderate	Yes	Yes	Yes	No
Texas	UPIA (Mod)	Limited	Yes	Yes	Yes	No
Utah	UPIA	Moderate	Yes	Yes	Yes	No
Vermont	UPIA	Limited	Yes	Yes	Yes	No

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Virginia	UPIA	Moderate	Yes	Yes	Yes	No
Washington	UPIA	Limited	Yes	Yes	Yes	No
West Virginia	UPIA	Limited	Yes	Yes	Yes	No
Wisconsin	UPIA	Limited	Yes	Yes	Yes	No
Wyoming	UPIA	Broad	Yes	Yes	Yes	No

Federal Tax Integration (Subchapter J)

Federal tax treatment follows fiduciary accounting classifications by statute. IRC §643(b) defines income by reference to applicable local law, and IRC §643(a)(4) excludes principal-classified extraordinary dividends from DNI. Treasury Regulations §§1.643(b)-1 and 1.643(a)-3 confirm that federal tax characterization tracks fiduciary accounting determinations.

Federal Authority:

- IRC §§643(a)(4) and 643(b): https://www.law.cornell.edu/uscode/text/26/643
- Treas. Reg. §1.643(b)-1: https://www.law.cornell.edu/cfr/text/26/1.643(b)-1
- Treas. Reg. §1.643(a)-3: https://www.law.cornell.edu/cfr/text/26/1.643(a)-3

Notes:

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Course Outline Based Upon

The Law of Trusts

First Edition

By

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Course Sections of Study

Section I	**Trust History**
Section II	**Definitions and Distinctions**
Section III	**Creation of Trusts**
Section IV	**Trust Property**
Section V	**Trustees and Administration**
Section VI	**Beneficiary Trustor\Creator**

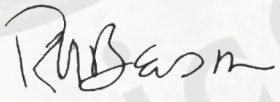
Preface

This training course has as its objective the following: (1) to familiarize the paralegal student with the vocabulary of trust law and (2) in the process expose the student to trust concepts. At first, it may seem somewhat complex and, therefore, some introductory comments are in order.

Trust law is unique and applicable only to English law, which we inherited, and our own American law, which built on it. While other countries and their legal systems have similar legal concepts to ours in other fields such as contracts, mortgages, and guardianships, no other legal system has analogous concepts to our own trust law.

Our trust law system has been several hundred years in development, and every year brings new changes, modifications, and applications. Early on, I was a student of Professor Scott, or "Scotty" as he was affectionately known, in a yearlong class that was exciting and unique. He was not merely a lecturer but carried on a dialogue with his students in discussing the case law. His comments and one-liners were tossed off as frequently as by a late night TV entertainer. A favorite expression of his was the caution that "the law is a seamless web."

He was making us aware that present day trust law may involve many other areas of law as well: tax, bankruptcy, security, inheritance and other disciplines. This course outline is an excellent starter but only the first step in understanding the unique concepts of trust law.



Robert N. Benson

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Section I - Trust History

The first known use of a type of Trust dates back to Biblical times around the time of Abraham and before. In ancient times it was often not legal for a person of another country to do business in a country of which they were not a citizen. The USE was devised as a means to circumvent this awkward problem in commerce and trade.

The USE was a simple yet complex system by which one could conduct business and commerce anywhere in the world and meet the laws and restrictions that were a hindrance to commerce. It worked in the following manner. A merchant would make an agreement with another person in a foreign country to deliver him a sum of money to hold for him to use. An agent of the merchant would work with the person holding the money to purchase goods. When the agent made a deal for merchandise the person holding the money would pay for the merchandise on behalf of the merchant and arrange shipping to the country of the merchant. A reasonable compensation was arranged in advance and the USE was complete.

The USE lasted until the fifteenth century when the Trust was created and evolved into the current format and entity of today.

The Romans, under Roman law, allowed similar Trust type arrangements through the usus or usufructus or fidei commissum or bonorum possessio which were very popular with the Roman Senators and elite of the Roman Empire, but these had no connection between USE or Trust even though there were similarities or had analogy between these and the USE or Trust.

In Hindu law there is a device like a Trust called Benami wherein an owner of real property allows it to appear in the name of an ostensible owner with the understanding that the latter, the Benamidar, transacts all business relating to the property for the benefit of the actual owner.

Scholarship has shown that a USE or Trust was not a product of civil law but were rather derived through Germanic origin.

The most important development concerning Equity was the advent and development of the Trust. This development created and developed by Englishmen from century to century of the Trust idea, in the field of jurisprudence reflected true genius.

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The Trust was created and developed as an institute of great elasticity and was as elastic in general concept, because it is a device for making effective dispositions of property.

No other system of law is for this purpose so flexible in nature or fact. This is what makes the Trust unique.

Bailment, executorships, guardianship and mortgage are all limited but the Trust is available for all kinds of purposes.

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 the creators. There are no technical rules restricting the creation of Trusts.

Trusts were the first and still are the only entities that put the Equity of the Trust beyond the reach of all creditors.

Through Trusts married women first gained economic independence by the creation of equitable separate estates.

Under common law women could not own property. This also prevented wives from claiming dower.

The use of Trusts evolved far beyond the effecting of family settlements. Trusts are used for a wide variety of business transactions.

Trusts have become the “Premier” Universal Tool available for the purposes of organization, financing, risk-shifting, credit operations, settling of disputes and liquidation of affairs. Trusts have been widely used in place of corporations, partnerships and all business formats.

Trusts have been extensively used in all forms of real estate transactions and anywhere the splitting of legal ownership is required.

Trusts have been used for security devices in the assignment for the benefit of creditors and in issuing corporate bonds secured by deeds of trust and have been an invaluable tool for voting,

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equipment transactions, investments, and transfers.

Through the employment of Trusts charitable purposes are accomplished without applying for legislature charter of incorporation, and to devote property to the purposes of unincorporated associations of social character.

Around the fifteenth century in England there were separate courts of law and equity and for hundreds of years thereafter. This brought on the advent of the Trust and for this reason the Trust might never have come into existence. The fact that it was essentially different from the procedures of law and was procedure in equity gave birth to its existence.

Judgment in action at law declares the plaintiff's rights and creates rights in the plaintiff. A decree in equity imposes duties upon the defendant. Equity acts in personam. This makes it possible for one person to have the legal title to property and for another to compel him to exercise his legal rights for the other's benefit.

The courts of equity gave the Beneficiary an interest in the property and gave him protection in the enjoyment of that interest. Therefore the Beneficiary has the equitable ownership and the Trustee holds the legal title. The Beneficiary is not the equitable owner of the Trust property because the Trustee is the owner, and this gives rise to the fact that with adverse interests the Beneficiary and Trustee cannot be owners of the same thing. Therefore in complete understanding of the Trust the Trustee has the legal title to the subject matter of the Trust and the Beneficiary has the equitable or beneficial interest in it.

Law and equity do not conflict in the Trust in the sense that the courts of law and courts of equity do not issue conflicting orders or declare conflicting rights.

Both the court of law and court of equity regard the Trustee as the holder of the legal title to the Trust property and the Beneficiary as the equitable and beneficial owner. This is called the System of Equitable Ownership.

So in the fifteenth century the interest of the Beneficiary was protected against purchasers with notice of his interest of Beneficiary, against heirs of the Trustees, and against gratutitous transferees (usurpation by creditors).

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History of USEs and Trusts has been broken down into four periods in history. The first period is considered to be the employment of USE and continued until the beginning of the fifteenth century. The second period continued until the actment of the Statute of Uses in the sixteenth century. The third period continued until the late seventeenth century. The fourth period continues through modern day Trusts.

In the first period Uses were usually used in England and Europe for temporary purposes and were employed to a considerable extent, yet were not enforced by the courts. USE depended entirely on the honorary obligations resting upon the good faith of the feoffee the cestui que uses had no legal rights, but on the other hand he was free from the burdens of ownership, which were troublesome in those times.

The second period began when English chancellors first undertook to enforce the USE and continued until the enactment of the Statute of Uses in 1535. For the first time feofees (holders of property in USE) were made accountable to the King's Council and required to perform the duties and circumstances by which the USE bound them. They were required to perform their obligations under common law. The USE avoided feudal claims of overlords in those times. The overlord was usually entitled to a relief and in some cases to a heriot when a tenant died and was able to escheat the land. He was entitled to aids when his eldest son was knighted and when his eldest daughter was married. These various burdensome incidents could be avoided in part at least by conveying the land to feoffees to the USE of the tenant. There was not tenure of equitable estates. The cestui que use owed homage or fealty to no overlord. This period began to formulate the development of equity and the philosophy of equity jurisdiction.

The third period is considered to be the development of the law of uses and Trusts during which was enacted the Statute of Uses in 1535 and lasted for about one hundred years.

With the struggles of creditors and purchasers being defrauded by the USE every advantage which a tenant gained by enfeoffing others to his use involved a corresponding disadvantage to someone else like his heirs, who were disinherited in favor of younger sons or daughters or strangers, to the overlords, who were deprived of their feudal rights, above all to the Crown, which was always lord and never tenant. Henry VIII insisted that something should be done about this situation and this started the motion.

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The Statute of Uses provided that where any person be seized of land to the use of any other person shall hence forth be seized of the same lands in such like estates as they had in use.

After the enactment of the Statute the USE was no longer an equitable interest to be dealt with by the court of chancery, but became a legal interest to be dealt with by the court of common law. This changed greatly the way the USE was used by many.

The fourth period began in the seventeenth century when it was established that it was possible to separate the beneficial interest from the legal title. It was established by the common law courts that the Statute of Uses did not apply to active Trusts.

It was determined in this period that the feoffee be directed to defend the property against third persons and to convey the property to the cestui que use or as he might direct and that when other further active duties was imposed upon the feoffee an active Trust was created and the Statute of Uses did not effect it.

With the advent of the modification of the old philosophy of uses the English chancellors of the fifteenth century rendered Trusts subtle and intricate based upon clearer conceptions of public policy and of the nature and purposes of the law. It can therefore be said that Lord Nottingham who held the Great Seal in those times, established the basis of noble, rational and uniform systems of law where Trusts are made to answer the exigencies of families and all purposes, without producing inconvenience, fraud or private mischief which the Statute of Uses meant to avoid.

We therefore today have the current forms of Trusts that have evolved from uses in all areas of society and will continue to be used for legal and moral reasons throughout the years to come. Accepted by the courts, IRS, banks, financial institutions and all areas of family and business relationships throughout the entire world.

Over the centuries the wealthiest families in every country of the world used Trusts to manage their assets, monies and power. They have passed on estates to heirs and prevented creditors from attaching incomes and estates. Today as in yesteryear the Trust reigns supreme of all management tools for all persons in all walks of life for property and debt management.

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From the time of the Conquests, Trusts were used as chattels and have evolved to the point today where disputes are settled and taken care of under what today we call the law of bailment or the law of contract. Fiduciaries today are under a duty to account to his principal for monies received by the Trust. Where heretofore it was rare today it is commonplace to convey chattels or money or securities in Trust for another.

The term Bailment implies the owner of chattel delivering it to another for the use of a third person and this term is believed to have evolved from the Trust format. However the typical Trust today is a Trust of which the subject matter is income-producing assets.

The equity system was involved in the American Colonies and with this equity system in America came the general acceptance of the Trust. The Trust has been recognized in America since Colonial times and evolved into an important vehicle in social and economic systems in our country.

The Trust was further refined in America with the acceptance and appointment of corporate Trustees. In England as late as 1743 a corporation could not be a Trustee. The earliest instance in America of a corporation granted power as Trustee happened with Farmers' Fire Insurance & Loan Company, which was chartered in the State of New York in 1822. Since that time the power of corporations with power to administer Trusts is common.

With the inception of corporations as Trustees in America the practice has spread to other countries and become common.

In America the position of Trustee became professionalized and Trustees are compensated, while in England the individual Trustee receives no compensation for his oversight unless otherwise provided by the Trust instrument. So a profession of professional Trustee was born in the United States.

The law of Trusts is to be found in the decisions of the courts and not in statutes. The laws that deal with Trusts are mainly dealing with specific questions, such as what are proper Trust investments. While in England the statutes are comprehensive and set standards and regulations. Some States of the United States have certain Trust regulations but none of them restrict the general purposes of Trusts. All legal Trusts of today conform to the Internal Revenue Code.

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Section I - True or False?

1	The first known use of a type of Trust dates back to Biblical times around the time of Abraham and before.	**T___ F___**
		True
2	The USE was devised as a means to circumvent this awkward problem in commerce and trade.	**T___ F___**
		True
3	The USE was a simple yet complex system by which one could conduct business and commerce anywhere in the world and meet the laws and restrictions that were a hindrance to commerce.	**T___ F___**
		True
4	In the use of the USE an agent of a merchant would work with the person holding money to purchase goods. When the agent made a deal for merchandise the person holding the money would pay for the merchandise on behalf of the merchant and arrange shipping to the country of the merchant.	**T___ F___**
		True
5	The USE lasted until the 14th century when the Trust was invented and evolved into the current document and entity of today.	**T___ F___**
	It was the 15th century.	**False**
6	The "*usus*" or "*usufructus*" or "*fidei commissum*" or "*bonorum possessio*" that were very popular with Roman Senators and the elite of the Roman Empire were just like the USE or Trust.	**T___ F___**
	They had no connection to the USE or Trust.	**False**
7	In Hindu law there is a device that is a Trust called Benami wherein a owner of real property allows it to appear in the name of an ostensible owner with the understanding that the latter, the Benamidar, shall transact all business relating to the property for the benefit of the actual owner.	**T___ F___**
	In Hindu law there is a device that is like a Trust called Benami .	**False**
8	The USE or Trust was not a product of civil law but were derived through Germanic origin.	**T___ F___**

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		True
9	The most important invention concerning Equity was the advent and development of the Trust. This invention was created and developed by the Germans from century to century of the Trust idea.	**T___ F___**
	This invention was created and developed by Englishmen.	**FALSE**
10	The Trust was created and developed, as an institute of great elasticity and as was elastic as a general concept, because it is a device for making dispositions of property.	**T___ F___**
		True
11	No other system of law is so flexible in nature or fact as the Trust. This is what makes the Trust unique.	**T___ F___**
		True
12	Bailment, executorships, guardianship or mortgage are all specific and are designed for all kinds of purposes.	**T___ F___**
	They are designed for limited purposes.	**False**
13	A Trust may be created for any purpose, which is not illegal, or against public policy.	**T___ F___**
		True
14	Trusts were the first and still are the only entities that put the Equity of the Trust beyond the reach of all creditors.	**T___ F___**
		True
15	Under common law women could not own property.	**T___ F___**
		True
16	The use of Trusts evolved far beyond the effecting of family settlements. Trusts are used for a wide variety of business transactions.	**T___ F___**
		True
17	Trusts have been widely used in place of incorporations, partnerships and all business formats.	**T___ F___**
		True

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18	Trusts have been extensively used in all forms of real estate transactions and anywhere the splitting of legal ownership is required.	**T___ F___**
		True
19	Trusts have rarely been used for security devices in the assignment for the benefit of creditors and in issuing corporate bonds secured by deeds of trust and have been an invaluable tool for voting, equipment transactions, investments, and transfers.	**T___ F___**
	The trusts have ~~rarely~~ been used for security devices.	**False**
20	Around the fifteenth century in England there were separate courts of law and equity and for hundreds of years thereafter. This brought on the advent of the Trust and for this reason the Trust might never have come into existence.	**T___ F___**
		True
21	The fact that the Trust was essentially different from the procedures of law and was procedure in equity gave birth to its existence.	**T___ F___**
		True
22	A decree in equity imposes duties upon the defendant. Equity acts in "*personam*". This makes it possible for one person to have the legal title to property and for another to compel him to exercise his legal rights for the other's benefit.	**T___ F___**
		True
23	Therefore the Beneficiary has the equitable ownership and the Trustee holds the legal title. The Beneficiary is not the equitable owner of the Trust property because the Trustee is the owner, and this gives rise to the fact that with adverse interests the Beneficiary and Trustee cannot be owners of the same thing. Therefore in complete understanding of the Trust the Trustee has the legal title to the subject matter of the Trust and the Beneficiary has the equitable or beneficial interest in it.	**T___ F___**
		True
24	Law and equity conflict in the Trust in the sense that the courts of law and courts of equity issued no conflicting orders or declares conflicting rights.	**T___ F___**
	Law and equity do not conflict in the Trust.	**False**

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25	Both the court of law and court of equity regard the Trustee as the holder of the legal title to the Trust property and the Beneficiary as the equitable and beneficial owner. This is called the System of Equitable Ownership.	**T___ F___**
		True
26	In the fifteenth century the interest of the Beneficiary was protected against purchasers with notice of his interest of Beneficiary, against heirs of the Trustees, and against gratutitous transferees (usurpation by creditors).	**T___ F___**
		True
27	History of USEs and Trusts has been broken down into four periods in history. The first period is considered to be the employment of USE and continued until the beginning of the fifteenth century.	**T___ F___**
		True
28	The second period began when English chancellors first undertook to enforce USE and continued until the enactment of the Statute of Uses in 1535.	**T___ F___**
		True
29	The third period continued until the late seventeenth century.	**T___ F___**
		True
30	It was established by the common law courts that the Statute of Uses did not apply to active Trusts. It was determined in this period that the feoffee be directed to defend the property against third persons and to convey the property to the cestui que use or as he might direct and that when other further active duties were imposed upon the feoffee an active Trust was created and the Statute of Uses did not effect it.	**T___ F___**
		True
31	Today as in yesteryear the Trust reigns supreme of all management tools for all persons in all walks of life.	**T___ F___**
		True

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32	Well before the time of the Conquests, Trusts were used as chattels and have evolved to the point today where disputes are settled and taken care of under what today we call the law of Bailment or the law of contract. Fiduciaries today are under a duty to account to his principal for monies received by the Trust. Where heretofore it was rare today it is commonplace to convey chattels or money or securities in Trust for another.	**T___ F___**
	From the time of the Conquests.	**False**
33	The Trust has been recognized in America since Colonial times and evolved into an important in social and economic systems in our country.	**T___ F___**
		True
34	In England as late as 1743 a corporation could not be a Trustee. The earliest instance in America of a corporation granted power as Trustee happened with Farmers' Fire Insurance & Loan Company, which was chartered in the State of New York in 1822. Since that time the power of corporations with power to administer Trusts is common.	**T___ F___**
		True
35	In America the position of Trustee became professionalized, still the Trustees are not compensated, as in England the individual Trustee receives no compensation for his oversight unless otherwise provided by the Trust instrument.	**T___ F___**
	Trustees in America are compensated.	**False**
36	The law of Trusts is to be found in the decisions of the courts and not in statutes. The laws that deal with Trusts are mostly dealing with specific questions, such as what are proper Trust investments. While in England the statutes are comprehensive and set standards and regulations.	**T___ F___**
		True
37	Some States of the United States have certain Trust regulations but none of them restrict the general purposes of Trusts. All legal Trusts of today conform to the Internal Revenue Code.	**T___ F___**
		True
38	The Trust was further refined in America with the acceptance and appointment of corporate Trustees.	**T___ F___**

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		True
39	The equity system was involved in the American Colonies and with this equity system in America came the general acceptance of the Trust.	**T___ F___**
		True
40	With the advent of the modification of the old philosophy of uses the English chancellors of the fifteenth century rendered Trusts subtle and intricate based upon clearer conceptions of public policy and of the nature and purposes of the law.	**T___ F___**
		True
41	Trusts are made to answer the exigencies of families and all purposes, without producing inconvenience, fraud or private mischief which the Statute of Uses meant to avoid.	**T___ F___**
		True
42	In the first period Trusts were usually used in England and Europe for temporary purposes and were employed to a considerable extend yet were not enforced by the courts.	**T___ F___**
	In the first period USES were usually used.	**FALSE**
43	The USE depended entirely on the honorary obligations resting upon the good faith of the feoffee the cestui que uses had no legal rights, but was free from the burdens of ownership.	**T___ F___**
		True

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Section II - Basic Trust Types

Webster says: a firm belief in the honesty, reliability, etc. of another; faith; the one trusted; confident expectation, hope etc.; responsibility resulting from confidence placed in one; care; custody; something entrusted to one; faith in a buyer's ability to pay; credit; a combination of corporations to establish a monopoly; the fact of having nominal ownership of property to keep, use, or administer for another such property; to be confident; to have confidence in; to commit to a person's care; to allow to do something without misgivings; to believe; to hope; expect; to grant business credit to; relating to a trust; acting as Trustee; in trust entrusted to another care.

Scott on Trusts further outlines Trust as: Shall include fiduciary relationships not only in the narrower sense, but bailment, executorships, guardianship and agency. In England the separation of courts of law and courts of equity evolved from the ancient USE. To hold in Trust is to hold but not own and use but not own and to control but not own and to be for the benefit but not owned.

A good modern definition says: Trusts are legal tools that can be used to transfer and manage property or asset. It is an ingenious device because the person who creates the trust (known as the Settlor) does not necessarily have to give up all control over that property or assets, nor does he have to relinquish the income or benefits derived from them. It strictly depends on the form of the trust used and the needs of the people it is created to serve.

Trust Classifications

- Express Trusts
- Resulting Trusts
- Constructive Trusts

An Express Trust arises as a result of a manifestation of an intention to impose a duty and a court enforces the duty for the purpose of the intention of the Trust. Express Trusts can be private or charitable Trusts

A Resulting Trust arises when a court of equity compels one person to deal with the property for the benefit of another and to surrender it to another.

A Constructive Trust is not based upon the intention of the parties but is imposed by the court in the

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interests of justice, to redress a wrong or to prevent unjust enrichment.

Basic Trust Types

REVOCABLE TRUSTS are those trusts that the creator chooses to end at any time.

ASSETS PROTECTION TRUSTS are designed to protect a person's assets from claims of future creditors, these are frequently established in the U.S. and throughout the world.

CHARITABLE TRUSTS are established to benefit a particular charity or the public. These are used to avoid imposition of Federal and State estate and gift taxes.

CONSTRUCTIVE TRUSTS are trusts established by operation of law. Fraud and bankruptcy are examples where Trustees of the Court hold equitable title of property for the benefit of creditors and claimants.

EXPRESS TRUSTS are specifically created by the grantor under a trust agreement or declaration of trust.

IMPLIED TRUSTS are determined by courts where a formal declaration of trust was not made but there was an intention on the part of the property owner that the property be used for a particular purpose or go to a particular person or cause.

INTER VIVOS TRUSTS are trusts created during the lifetime of the Settlor.

IRREVOCABLE TRUSTS are trusts that cannot be altered, changed, modified, or revoked after their creation. Once the Settlor transfers property or assets to the trust they can no longer take the property back from the trust.

LIVING TRUSTS are trusts created during the lifetime of a grantor, which can be altered, changed, modified or revoked. The creator is usually the Trustee and Beneficiary, usually with relatives as other Beneficiaries.

RESULTING TRUSTS are trusts created by operation of law, when the legal title of property is

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transferred, but the beneficial interest is to be enjoyed by someone other than the person who got the legal title.

SPECIAL NEEDS TRUSTS are trusts created for a person receiving government benefits in order not to disqualify the Beneficiary from such government benefits.

SPENDTHRIFT TRUSTS are trust established for a Beneficiary, which does not allow the Beneficiary to sell or pledge away his or her interest in the trust. Spendthrifts are beyond the reach of the Beneficiaries creditors, until such time as the trust property is distributed out of the trust and placed in the hands of the Beneficiary. In about 1994 in a case in Dallas, Texas it was ruled that the creditors of a Beneficiary could not reach the property that has been distributed to the Beneficiary. This made these Trusts the most powerful asset protection Trusts in the world.

TAX BY PASS TRUSTS are trusts created to allow one spouse to leave money to the other, while limiting the amount of Federal Estate Tax bite that would be payable on the death of the second spouse.

TESTAMENTARY TRUSTS are trusts created by the terms and conditions of a will.

TOTTEN TRUSTS are trusts created during the lifetime of the grantor by depositing money into an account at a financial institution in his or her name as the Trustee for another.

RABINICAL TRUSTS are trusts that serve as religious purposes of various kinds.

NON-GRANTOR IRREVOCABLE TRUSTS are trusts created by an entity other than a grantor for the purpose of charity and other business related activities.

Trust Characteristics
A. It has a relationship.
B. It is a relationship of a fiduciary character.
C. It is a relationship with respect to property, not one involving merely personal duties.
D. It involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another.
E. It arises as a result of a manifestation of intention to create the relationship.

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The combination of all these descriptive characteristics define the Trust as is outlined in Anglo-American law.

Trust as A Relationship
A Trust is the whole juridical device, or legal institution. The legal relationship between the parties with respect to property which is subject matter, which includes not merely the duties of the Trustee toward the Beneficiary and the rest of society, but also the rights, privileges, powers, and immunities that the Beneficiary has against the Trustee and against all of society.

Fiduciary Relationship
Is the relationship between the Trustee and Beneficiary. Included are the relationship of guardian, ward, agent, principal, attorney and client. Each member of the Trust has a fiduciary relation to the other parties. The duty to act for the benefit of the other party as to matters within the scope of the Trust. To make full disclosure to all parties. It is distinguished from a merely confidential relationship but goes beyond that to include the confidence of the parties. In a fiduciary relationship a Trustee that enters into a transaction with a Beneficiary in respect of property cannot set aside his duty even if the transaction does not include Trust property.

Trust Property Relationship
A Trust has rights and duties with respect to property; there is always some property, which is the subject matter of the Trust. The subject matter of the Trust may be land or chattels, tangible or intangible that is legal or equitable interests. A Trust is created only where property is held by one person for the benefit of another.

Relationship Involving Equitable Duties
All duties of the Trustee with respect to Trust property are equitable duties and are enforceable in a court of chancery or a court having and exercising the powers of a chancery.

Relationship Arising from a Manifestation of Intention
A Trust has its inception in the manifestation of the intention to create it. In the case of a express Trust that arises by act of parties and a constructive Trust by operation of law, both the legal duties which arise are imposed by law, either by intention of a Settlor to create the relation and to impose the duties of a Trustee to assume the duties or the duties are imposed regardless of the existence or

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nonexistence of the intention. Constructive Trusts duties are imposed regardless of the existence or nonexistence of intentions. It is the manifestation of intention, which controls and not the actual intention where that differs from the manifestation of intension.

Trust Settlor
A Settlor is one who creates a Trust whether the Trust is created inter vivos or by will. On occasion other terms are used as Grantor, Creator, or Guardian.

Trust Property
Property held in Trust is referred to as “the Trust property”, “the Trust estate”, and “the subject matter of the Trust” and/or “the Trust res” which is an old term seldom used anymore.

Trust Beneficiary
The Beneficiary, for whom a Trust was created, was formerly commonly referred to as the “cestui que trust” and the person for whose benefit a USE was created was called the “cestui que use”. In modern times the person for whose benefit the Trust is created is called the Beneficiary. The ancient terms are now history.

Trust Terms
The terms of the Trust are set fourth in the provisions with respect to the duties and powers of the Trustee and the rights of Beneficiaries. When the terms of the Trust are in harmony with the rules or policies of the law and in concert with the Internal Revenue Code the Trust is valid and enforceable.

Distinctions Between Trust and Other Relationships
Certain other relationships resemble Trusts but are not Trusts. A USE is not a Trust and the difference is understood by considering what a USE is not. The USE passed title to a third party legally and really for the benefit of a second party and is not a Trust where the title to the material Trust is not owned by anyone. Any other relationship that does not fit the characteristics of a Trust is not a Trust.

Trust and Bailment
While the term Trust is used sometimes in a sense to include bailment, a bailment is not a Trust. A bailee is entrusted merely with the possession of property of a chattel, the Trustee holds title to Trust property. In the case of the Trustee the legal title of ownership passes to the Trustee where in

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bailment the legal ownership is in the bailor, with the bailee having possession and not title and may or may not be for a specific purpose.

Bank as Trustee or Bailee
Banks are often entrusted with the possessions or property of a client but the title of the property is not vested in the bank. This relationship is one of bailment and not of Trust and the duties of the bank with relation to the property depends upon the agreement between the bank and the client. Many arrangements between the bank and the client may exist but they are not Trusts.

Trust and Executorship
While an executor is often called a Trustee the personal property of the decedent is vested in him and he is under a duty to deal with the property for the benefit of others, the relationship of an executor or administrator and legatees and distributes is a fiduciary one. Executors are not Trustees. While the idea of executorship is common to systems of law, the Trust is peculiar of the Anglo-American system. This difference is clearly defined throughout the pages of history and set in judicial records defining the relationship of the executor in relation to the decadent. While executors deal with descendants, Trustees deal with Beneficiaries.

Removal and Renunciation
When a testator by will names the same person as executor and Trustee the revocation of his appointment as executor will not necessarily terminate his Trusteeship. However when the powers of the Trustee and the terms of the will blend the two together the revocation of his appointment as executor revokes his power to act as a Trustee, therefore a person named as both executor and Trustee may accept one position and decline the other, unless by the will the duties are blended together.

Liability of Sureties
Where a person is named both executor and Trustee the sureties on his bond as executor are not liable for his failure to perform the duties as the Trustee. Likewise the sureties on his bond as Trustee are not liable for his failure to perform hid duty as executor.

Requirement of Unanimity
When more that one Trustee is named in a Trust all Trustees must act as a group with unanimity. One Trustee does not have the power to transfer or otherwise deal with the trust property or any part of the

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estate without the consent of the others.

Real Property
All the real property and chattels held in Trust are referred to as the corpus of Trust.

Trust and Guardianship
When a guardian of property of a person who is incapacitated holds the property for that person he has the responsibilities of a Trustee. While he is under a duty to deal with the property for the person's benefit and has a fiduciary responsibility he is not a Trustee in Trust. He is entrusted with the property and management of it but does not take title to the property. Guardian powers are much narrower than that of a Trustee whereas by the Trust instrument's broad powers are enjoyed by the Trustee. The powers of a guardian may be fixed by law but may not reflect the terms of any written instrument.

Trust and Agency
While an agent is in a fiduciary relationship to a principal and acts for and in behalf of the principal, and is subject to the control of the principal, Trustees are not subject to the control of the Beneficiaries, although they have a duty to deal with the Trust property for the benefit of the Beneficiaries as set forth by the articles of the Trust and can be compelled by the Beneficiaries to perform their duty. Agents do not hold title to the property of the principal. An agent has the power to subject the principal to liabilities in contract and in tort; the Trustee has no such power.

Personal Liability of Devisee
Where property is devised charged with the payment of money to third parties the devisee might become personally liable to pay the amount of the charge. This liability depends entirely upon the language of the will. The devisee becomes personally liable and by accepting the property devised to him he impliedly agrees to pay the amount of the charge. A Trustee is not personally liable to the Beneficiary merely because the Trust property is insufficient for the accomplishment of the purposes of the Trust and the Trustee incurs a personal liability only if he is guilty of a breach of Trust.

Intention to Create Charge or Trust
When an equitable charge or Trust is created it depends on the express intent of the transferor. When the creator intends to impose a duty upon the transferee to deal with the property for the benefit of a third party and gives the third party the beneficial interest in the property a Trust is created; if a

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testator devises land and directs the devisee to sell the land and pay the proceeds or a part of the proceeds to a third party a Trust is created. However if a testator devises land subject to the payment of certain sums of money to a third party an equitable charge but not a Trust is created. If land is devised to a person on condition that he pay a certain sum to a third party an equitable charge is created and not a Trust.

Trust and Condition
When an owner of property conveys it to another or devises it upon condition that he deal with the property in a certain manner for the benefit of a third party this becomes a conveyance upon a condition subsequent. It can also be a conveyance in Trust but not both. Conveyance of condition subsequent is retrievable to the conveyor but conveyance to a Trust is not.

Nature of Interest of Beneficiary and Creditor
Trusts involve the duty to deal as fiduciary with specific property for the benefit of another. Debt involves the personal obligation to pay a sum of money to another. The creditor can enforce his claim by judicial proceedings to reach the debtor's property and subject it to the satisfaction of the claim but until he does so he has not legal or equitable interest in the property of his debtor. Whereas in Trusts the Beneficiary of a Trust has an equitable interest in the Trust property. The Beneficiary of a Trust has something than the personal claim, which a creditor has against his debtor. The Beneficiary is the equitable owner of the Trust property; there is a fiduciary relationship between the Trustee and the Beneficiary and not between the Beneficiary as debtor and a creditor as such. Therefore the Trustee is under no obligation and cannot be compelled to pay the debt of the Beneficiary. The interest of the Beneficiary in the Trust property is out of reach of any creditor and may never be touched by the creditor.

Accidental Loss
If money held in Trust is lost by accident without any fault on the part of the Trustee he is under no liability to the Beneficiary.

Effect of Insolvency
If money is held in Trust and the Trustee becomes insolvent the Beneficiary is entitled to the money if it is identified in the hands of the Trustee or it can be traced into a product. It is not shared or claimed by the creditors of the Trustee. Therefore any moneys owed by the insolvent Trustee may not be paid from the Trust and the Trust may not obligate to pay the debts of the Trustee.

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Bank Deposits
(If all other definitions and distinctions are forgotten remember this one above all others.)
A distinction between a Trust and a debt is shown in the cases where money is deposited in banks that become insolvent and fail. In ordinary general deposits the relation between the bank and the depositor is that of a debtor and creditor and if the bank fails the depositor is not entitled to priority over the other creditors of the bank. However when money or property is deposited with a bank with instructions to hold in it separate and apart from the other property of the bank, in such case the bank is not a debtor but becomes a Trustee or a bailee. Where normal money is deposited with a bank the bank becomes a debtor and subject to a mere personal liability to the depositor, even in cases where the transaction does not amount to a general deposit since it is not to be drawn against by check in the usual way. In such cases the depositor is not entitled to priority over any other creditors on the failure of the bank. However if the bank becomes a Trustee or bailee and subsequently becomes insolvent or fails, the depositor is entitled to priority over creditors of the bank if he can point out the property deposited or traces it into a product. (Deposit slips, bankbooks, receipts and etc.). Also if the bank obtains a deposit by fraud the bank becomes a constructive Trustee of all money deposited, but only if the depositor can trance (through the documents mentioned above) his money into the assets of the bank.

Stockbrokers
A distinction must be made and articles in place in dealing with stockbrokers or brokerage firms. If the broker acts for the Trust an arrangement between the Trust and the broker and brokerage firm must be in place or the broker could and may use the money to purchase securities for the Trust or use the money as his own for investments. When a Trust places securities with a stockbroker on the Trust account and the broker sells them it depends on the arrangement between the broker and the Trust whether the broker holds the securities or the proceeds from them if sold or whether he can use them as his own becoming a debtor to the customer.

Novation-Substitution of Debt for Trust
When through agreement between the Trustee and Beneficiary a novation is agreed to the Trustee ceases to be a Trustee and becomes a debtor to the Trust. An example of this is where commercial paper is deposited with a bank for collection and credit to the account of the depositor. The bank at the beginning is a Trustee of the paper and after collection it mingles the proceeds of the paper with its own money and becomes a debtor. This arrangement requires an agreement between the Trustee

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and the Beneficiaries of the Trust.

Novation-Substitution of Trust for Debt
When a creditor agrees with a debtor for the debtor to hold property in Trust for the creditor and that the debt shall be thereby cancelled this is a novation and is effected whereby the parties remain the same the debtor takes the place of the creditor. The novation may be made before or after the creation of the debt. No Trust is created unless the debtor sets aside property to be held by the creditor.

Trust and Contract to Convey Land
Where a contract for the purchase and sale of land is enforceable, the purchaser is held to acquire an equitable interest in land before it is conveyed to him. It can be said, therefore, that the seller, prior to the conveyance, is a Trustee for the purchaser. This is not a Trust in that the relation between buyer and seller is different than between a Trustee and Beneficiary in that the seller is not in a fiduciary relation to the purchaser and the seller is under no duty to make full disclosure to the buyer. Trustees cannot transfer property to another person subject to the Trust since he is under a duty not to delegate Trust property however the seller can properly sell his interest subject to the contract with the buyer.

Trust and Contract for Benefit of Third Parties
Trusts are distinguished from a contracts for the benefit of third parties. Whether a Trust results from a contract for the benefit of third parties depends upon whether there is property held by one person for the benefit of third parties or a simple undertaking to make payment to the third parties.

Promisor as Trustee
When a person transfers property to another person who agrees to hold it or deal with the property for the benefit of a third party a Trust is created. If the person transferring the property to the second person and that person agrees to sell the property and to pay the proceeds or a certain amount of the proceeds to the third party, the second person then holds the property in Trust for the third party. However when a person conveys property to a second person as consideration for his promise to pay a certain sum to the third party out of his general assets, where the second person is not bound to use the property for the benefit of the third party but can use it for his own purposes in this case no Trust is created and there is a contract for the benefit of a third party.

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Promisee as Trustee
Whether or not a person receiving the money or other property undertakes to hold it or deal with it for the benefit of the third party, or whether he is under a merely personal liability to the third party determines this distinction.

Consequences of The Distinction Between Trust and Contract
In America, Beneficiaries of a contract as well as Beneficiaries of a Trust have rights, which are enforceable by law so the distinction is not always important. In England, however, distinction between contract and Trust is of vital importance. The English courts hold that persons who are not party to a contract cannot enforce it. This basic concept is usually important when a person entrusted with money or other property becomes insolvent, if he holds in Trust the Beneficiaries are entitled to priority over the general creditors. Major differences exist between the consequences, which flow from a Trust, and those that flow from a contract for benefit of third parties. Trustees are in a fiduciary relation to Beneficiaries of Trusts and there is no fiduciary relation in contract for the benefit of third parties between the Promisor and the third parties.

Trust and Assignment of a Chose in Action
Assignors like Trustees have the legal right under the terms of assignment the assignee like the Beneficiaries of a Trust have the beneficial interest in it. When choses in action first became assignable the interest of the assignee like that of the Beneficiaries of a Trust was equitable. Therefore, the right of assignee to sue at law in his own name for the assignor is established in law. The assignor is under no active duty to the assignee his only duty being not to interfere with the assignee's enforcing the chose in action. The Trustee is under an obligation and an affirmative duty in a chose action to enforce it for the Beneficiaries and to hold the proceeds in Trust for the Beneficiaries.

Trust and Partial Assignment of a Chose in Action
In a partial assignment of a chose in action the result is that a relation between the assignor and assignee becomes nearly like a Trust, but is not one. The assignee of a part of a claim unlike an assignee of the entire claim cannot maintain an action at law against the obligor. He can maintain a suit joining the partial assignor and the obligor as defendants and thus recover from the obligor his share of the claim. In a chose in action where a Trust holds the equity the Beneficiaries can maintain a suit in equity joining the obligor and Trustee as parties but only if the Trustee refuses to enforce the claim. After making partial assignment the assignor collects the whole amount of the claim from the debtor he holds the proceeds pro tanto for the benefit of the partial assignee.

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Section II - True or False?

44	The Characteristics of a Trust are: It has a relationship. It is a relationship of a fiduciary character. It is a relationship with respect to property, not one involving merely personal duties. It involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. It arises as a result of a manifestation of intention to create the relationship. The combination of all these descriptive characteristics define the Trust as is outlined in Anglo-American law.	
		True
45	A Trust is the whole juridical device, or legal institution, the legal relationship between the parties with respect to property which is subject matter, which includes only the duties of the Trustee toward the Beneficiary and the rest of society, but also the rights, privileges, powers, and immunities that the Beneficiary has against the Trustee and against all of society.	T___ F___
	Subject matter, which includes not merely the duties of the Trustee.	**False**
46	Each member of the Trust has a fiduciary relation to the other parties. The duty to act for the benefit of the other party as to matters within the scope of the Trust. To make full disclosure to all parties. It is distinguished from a merely confidential relationship but goes beyond that to include the confidence of the parties.	T___ F___
		True
47	The subject matter of the Trust may be land or chattels, tangible or intangible, and are legal or equitable interests. A Trust is created only where one person for the benefit of another holds property.	T___ F___
		True
48	All duties of the Trustee with respect to Trust property are equitable duties and are enforceable in a court of chancery or a court having and exercising the powers of a chancery.	T___ F___
		True
49	A Trust has its inception in the manifestation of the intention to create it.	T___ F___
		True

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50	A Grantor (ie. Settlor / Creator) is one who creates a Trust whether the Trust is created inter vivos or by will.	T___ F___
		True
51	Property held in Trust is referred to as "the Trust property", "the Trust estate", "the subject matter of the Trust", and/or "the Trust res".	T___ F___
		True
52	The entity, for which a Trust is created, commonly referred to as the "cestui que trust" and the person for whose benefit a USE was created was called the "cestui que use".	T___ F___
	It is not the "entity", it is the Beneficiary.	**False**
53	The person for whose benefit the Trust is created is called the Trustee.	T___ F___
	It is not the "Trustee", it is the Beneficiary.	**False**
54	The term "cestui que trust" designates that it is a Trust and not a contract.	T___ F___
	The term "cestui que trust" denotes a Beneficiary status in a trust".	**False**
55	The terms and conditions of the Trust are the terms and conditions that the Trustee makes in the provisions with respect to the duties and powers of the Trustee and the rights of Beneficiaries.	T___ F___
	The terms and conditions that the Settlor makes in the provisions.	**False**
56	A USE is a Trust and the difference is understood only by considering what a USE is not.	T___ F___
	A USE is not a Trust.	**False**
57	Any other relationship that does not fit the characteristics of a Trust is not a Trust.	T___ F___
		True
58	A bailee is entrusted merely with the possession of property of a chattel, where the Trustee holds title to Trust property.	T___ F___
		True
59	In the case of the Trustee the legal title of ownership passes to the Trustee wherein Bailment the legal ownership is in the bailor, with the bailee having possession and not title and may or may not be for a specific purpose.	T___ F___

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		True
60	Banks are often entrusted with the possessions or property of a client but the title of the property is not vested in the bank.	T___ F___
		True
61	This relationship is one of Bailment and not of Trust.	T___ F___
		True
62	Executors are not Trustees.	T___ F___
		True
63	While executors deal with Beneficiaries, Trustees deal with decedents.	T___ F___
	Executors deal with Descendants, Trustees deal with Beneficiaries.	**False**
64	When a testator by will names the same person as executor and Trustee the revocation of his appointment as executor will not necessarily terminate his Trusteeship.	T___ F___
		True
65	Where a person is named both executor and Trustee the sureties on his bond as executor are liable for his failure to perform the duties as the Trustee. Likewise the sureties on his bond as Trustee are liable for his failure to perform hid duty as executor.	T___ F___
	The sureties are not liable for their duties in either role.	**False**
66	When more that one Trustee is named in a Trust all Trustees must act as a group with unanimity. One Trustee does not have the power to transfer or otherwise deal with the trust property or any part of the estate without the consent of the others.	T___ F___
		True
67	All real property and chattels held in Trust are referred to as the corpus of Trust.	T___ F___
		True
68	When a guardian of property of a person who is incapacitated holds the property for that person, he is a Trustee. While he is under a duty to deal with the property for the person's benefit, and has a fiduciary responsibility, he is not a Trustee in Trust. He is entrusted with the property and management of it, but does not take title to the property.	T___ F___

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	A Guardian is not a Trustee, but has the responsibilities of a Trustee.	**False**
69	Guardian powers are much broader that of a Trustee whereas by the Trust instrument broad powers are enjoyed by the Trustee as well. The powers of a guardian are not fixed by law and do not depend upon the terms of any written instrument.	T___ F___
	Guardian powers are "much narrower" and "may be fixed by law".	**False**
70	While an agent is in fiduciary to a principal and act for and in behalf of the principal and is subject to the control of the principal, Trustees are not subject to the control of the Beneficiaries, although he has a duty to deal with the Trust property for the benefit of the Beneficiaries as set fourth by the articles of the Trust and can be compelled by the Beneficiaries to perform his duty. Agents do not hold title to the property of the principal, an agent has the power to subject the principal to liabilities in contrast and in tort; the Trustee has no such power.	T___ F___
		True
71	Where property is devised charged with the payment of money to third parties the devisee might become personally liable to pay the amount of the charge. This liability depends entirely upon the language of the will. The devisee becomes personally liable by accepting the property devised to him he impliedly agrees to pay the amount of the charge. A Trustee is not personally liable to the Beneficiary merely because the Trust property is insufficient for the accomplishment of the purposes of the Trust and the Trustee incurs a personal liability only if he is guilty of a breach of Trust.	T___ F___
		True
72	A Trust is not a Trust where the equitable charge does not involve a fiduciary relation.	T___ F___
	(Note: This defines an "equitable charge" which is distinct from a trust.)	**True**
73	When the creator of a Trust intends to impose duty upon the transferee to deal with the property for the benefit of a third party and gives the third party the beneficial interest in the property a Trust is created; if a testator devises land and directs the devisee to sell the land and pay the proceeds or a part of the proceeds to a third party a Trust is created.	T___ F___
		True

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74	When a testator devises land subject to the payment of certain sums of money to a third party or pays a third party an equitable charge a Trust is created.	T___ F___
	This creates an "equitable charge", not a trust.	**False**
75	If land is devised to a person on condition that he pay a certain sum to a third party an equitable charge is created.	T___ F___
		True
76	When an owner of property conveys it to another or devises it upon condition that he deals with the property in a certain manner for the benefit of a third party this becomes a conveyance upon a condition subsequent.	T___ F___
		True
77	Conveyance of condition subsequent is retrievable to the conveyor but conveyance to a Trust is not.	T___ F___
		True
78	Debt involves the personal obligation to pay a sum of money to another. The creditor can enforce his claim by judicial proceedings to reach the debtor's property and subject it to the satisfaction of the claim but until he does so he has not legal or equitable interest in the property of his debtor.	T___ F___
		True
79	Whereas in Trusts the Beneficiary of a Trust has an equitable interest in the Trust property, the Beneficiary of a Trust has something more than the personal claim, which a creditor has against his debtor. The Beneficiary is the equitable owner of the Trust property. There is a fiduciary relationship between the Trustee and the Beneficiary and not between the Beneficiary as debtor and creditor as such. Therefore the Trustee is under no obligation and cannot be compelled to pay the debt of the Beneficiary. The interest of the Beneficiary in the Trust property is out of reach of any creditor and may never be touched by the creditor.	T___ F___
		True
80	If money held in Trust is lost by accident without any fault on the part of the Trustee he is under liability to the Beneficiary.	T___ F___
		True

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81	If money is held in Trust and the Trustee becomes insolvent the Beneficiary is entitled to the money if it is identified in the hands of the Trustee or it can be traced into a product. It is not shared or claimed by the creditors of the Trustee.	T___ F___
		True
82	If the bank obtains a deposit by fraud the bank becomes a constructive Trustee of all money deposited, but only if the depositor can trance (through the documents mentioned above) his money into the assets of the bank.	T___ F___
		True
83	If a broker acts for the Trust an arrangement between the Trust and the broker and brokerage firm must be in place or the broker could and may use the money to purchase securities for the Trust or use the money as his own for investments.	T___ F___
		True
84	Through an agreement between the Trustee and Beneficiary a novation is agreed to, the Trustee ceases to be a Trustee and becomes a debtor to the Trust.	T___ F___
		True
85	A novation arrangement requires an agreement between the Trustee and the Settlor of the Trust.	T___ F___
	An agreement between the Trustee and the Beneficiaries of the Trust.	**False**
86	When a creditor agrees with a debtor for the debtor to hold property in Trust for the creditor and that the debt shall be thereby cancelled this is a novation and is effected whereby the parties remain the same the debtor takes the place of the creditor.	T___ F___
		True
87	It can be said therefore that the seller prior to the conveyance is a Trustee for the purchaser. This is not a Trust in that the relation between buyer and seller is different than between a Trustee and Beneficiary in that the seller is not in a fiduciary relation to the purchaser and the seller is under no duty to make full disclosure to the buyer.	T___ F___
		True

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88	Trustees can transfer property to another person subject to the Trust because he is under a duty to delegate Trust property however the seller can properly sell his interest subject to the contract with the buyer.	T___ F___
	Trustees cannot delegate trust property.	**False**
89	Whether it is a Trust or a contract for the benefit of third parties depends upon whether there is property held by one person for the benefit of third parties or a simple undertaking to make payment to the third parties.	T___ F___
		True
90	When a person transfers property to another person who agrees to hold it or deal with the property for the benefit of a third party a Trust is created.	T___ F___
		True
91	When a person conveys property to a second person as consideration for his promise to pay a certain sum to the third party out of his general assets, where the second person is not bound to use the property for the benefit of the third party but can use it for his own purposes in this case a Trust is created and there is a contract for the benefit of a third party.	T___ F___
	In this case no Trust is created.	**False**
92	Whether or not a person receiving the money or other property undertakes to hold it or deal with it for the benefit of the third party, or whether he is under a merely personal liability to the third party determines this distinction.	T___ F___
		True
93	In America Beneficiaries of a contract as well as Beneficiaries of a Trust have rights, which are enforceable by law so distinction is not always important.	T___ F___
		True
94	In England the distinction between contract and Trust is of vital importance.	T___ F___
		True

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95	Major differences exist between the consequences, which flow from a Trust, and those that flow from a contract for benefit of third parties.	T___ F___
		True
96	Trustees are fiduciary relations to Beneficiaries of Trusts and there is a fiduciary relation in contract for the benefit of third parties between the Promisor and the third parties.	T___ F___
	There is no fiduciary relation in a contract for the benefit of third parties.	**False**
97	When choses in action first became assignable the interest of the assignee like that of the Beneficiaries of a Trust was equitable.	T___ F___
		True
98	A Trustee is under obligation and an affirmative duty in a chose action to enforce it for the Beneficiaries and to hold the proceeds in Trust for the Beneficiaries.	T___ F___
		True
99	In a partial assignment of a chose in action the result is that a relation between the assignor and assignee becomes nearly like a but is not one.	T___ F___
		True
100	In a chose in action where a Trust holds the equity the Beneficiaries can maintain a suit in equity joining the obligor and Trustee as parties but only if the Trustee refuses to enforce the claim.	T___ F___
		True

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Section II - Definitions and Distinctions

In this Section of the Examination match the number of the Definition or Distinction with the Name of the type of Trust. Definitions or Distinctions are on the following pages.

_____ Asset Protection Trusts
_____ Charitable Trusts
_____ Constructive Trusts
_____ Express Trusts
_____ Implied Trusts
_____ Inter Vivos Trusts
_____ Irrevocable Trusts
_____ Living Trusts
_____ Non-Grantor Irrevocable Trusts
_____ Rabbinical Trusts
_____ Resulting Trusts
_____ Revocable Trusts
_____ Special Needs Trusts
_____ Spendthrift Trusts
_____ Tax Bypass Trusts
_____ Testamentary Trusts
_____ Totten Trusts
_____ Trusts

101	Trusts established for a Beneficiary, which does not allow the Beneficiary to sell or pledge away his or her interest in the trust. Spendthrifts are not subject to turn over orders of courts and are beyond the reach of the Beneficiaries creditors, until such time as the trust property is distributed out of the trust and placed in the hands of the Beneficiary.
	Spendthrift Trusts
102	Trusts created for a person receiving government benefits in order not to disqualify the Beneficiary from such government benefits.
	Special Needs Trusts
103	Trusts created by operation of law, when the legal title of property is transferred, but the beneficial interest is to be enjoyed by someone other than the person who got the legal title. A good example is the way states get and use roadside parks and make other parks for public uses.
	Resulting Trusts
104	Trusts that cannot be altered, changed, modified or revoked after its creation. Once the creator transfers property or assets to the trust they can no longer take the property back from the trust. These are the only Trusts that are beyond the reach of creditors or claims.
	Irrevocable Trusts

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105	Trusts created during the lifetime of a grantor, which can be altered, changed, modified or revoked. The creator is the Trustee and Beneficiary usually with relatives as other Beneficiaries.
	Living Trusts
106	Trusts determined by courts where a formal declaration of trust was not made but there was an intention on the part of the property owner that the property be used for a particular purpose or go to a particular person or cause.
	Implied Trusts
107	Trusts created during the lifetime of the creator. These Trusts can be revocable or irrevocable at the desire of the creator of the Trust.
	Inter Vivos Trusts
108	Trusts specifically created by the grantor under a trust agreement or declaration of trust.
	Express Trusts
109	Trusts established by operation of law.
	Constructive Trusts
110	Trusts established to benefit a particular charity or the public.
	Charitable Trusts
111	Trusts designed to protect a person's assets from claims of future creditors, frequently established in the U.S. and through out the world.
	Asset Protection Trusts
112	Trusts that the creator chooses to end at any time.
	Revocable Trusts
113	Trusts created to allow one spouse to leave money to the other, while limiting the amount of Federal Estate Tax bite that would be payable on the death of the second spouse.
	Tax Bypass Trusts
114	Trusts created by the terms and conditions of a will.
	Testamentary Trusts
115	Trusts created during the lifetime of the grantor by depositing money into an account at a financial institution in his or her name as the Trustee for another.

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	Totten Trusts
116	Trusts that serve as religious purposes of various kinds.
	Rabbinical Trusts
117	Trusts created by an entity other than a grantor for the purpose of charity and other business related activities. These are very cumbersome and long and very expensive.
	Non-Grantor Irrevocable Trusts
118	Legal tools that can be used to transfer and manage property or asset. It is an ingenious device because the person who creates the trust (known as the Settlor) does not necessarily have to give up all control over that property or assets, nor do they have to relinquish the income or benefits derived from them.
	Trusts

Section III - Creation of Trusts

Methods of Creating a Trust
The most common way a Trust is created is by a transfer of property to another person as a Trustee while the Settlor is alive (inter vivos) or by will. This can be for creating a Trust by conveyance inter vivos for a third party or for the Settlor or for both the Settlor and third parties. Such a type of Trust is usually created in America inter vivos for the benefit of the Settlor himself for his lifetime and the remainder to others on his death. These Trusts are known as living Trusts. When a Trust is created by a will the testator who is the creator of the Trust must outline the terms of the Trust in the will. The terms of the Trust are outlined in the instrument of conveyance. A Trust may be created by both transfer inter vivos or by will, or through a declaration made by the owner of property to hold in Trust. Exercise of power of appointment can also create a Trust. A Trust is created through the making of enforceable promises to a second party as Trustee accomplished by the transfer of the subject property.

Declaration of Trust
A Trust is created by declaration of Trust. A Trust can be created without the simultaneous transfer of property. Owners of property may through declaration of Trust make themselves Trustee of property for the benefit of others. When the Settlor receives no compensation for declaring the Trust the Trust is nevertheless a valid Trust. No transfer of property is necessary for the creation of this type of Trust since the purpose is that the Settlor himself will continue to hold the property, which is not to his benefit, but for the benefit of others. Through the manifestation of intention to create such a Trust the Trust declaration is made subject to the legal compliance to the Statute of Frauds or is in substance a testamentary disposition under the Statute of Wills. A Trust is created through the execution of an instrument declaring that the person creating the Trust holds the property to himself in trust. Therefore manifestation of intention through declaration forms a Trust.

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Exercise of Power of Appointment
Persons having no title to property but have the power over the property by appointment can appoint the property to a Trustee rather than to the party they wish to benefit. This appointment power must be by deed or will. Through the appointment of a Trustee they become the Settlors of the Trust. By this manner, by special appointment the donor of the power and not the donee is the Settlor of the Trust.

Promise in Trust
Trusts are created when one person makes a promise to another as a Trustee. The promise is binding only if an instrument evidences it. Therefore, where a person gives consideration to a second party for a promise made by the second party to the first party to be Trustee for a third party a Trust is the result.

By Declaration of Trust
Any owner of property has the capacity to create a Trust by declaring himself a Trustee of the property for the benefit of another, if he has capacity to transfer the property. The courts have ruled that there are not special rules for the capacity to create a Trust as long as the legal rules, which are applicable to analogous transactions, are followed.

By Transfer Inter Vivos in Trust
Any person having the ability to purchase property has the power to create a Trust by buying the property in the name of another as Trustee for the benefit of another.

By Transfer of Will in Trust
Any owner of property that has the capacity to bequeath the property can create a Trust by will if the terms of Trust are specified in the will. No special court rules are established as to capacity to create a Trust by will.

By Exercise of Power of Appointment
Through special power of appointment a person though not the owner of property can create a Trust, even if they are not the owner of the property if a power of appointment over the property is given them by the owner whether general or special. A donee of the power of appointment must have the power of appointment and the capacity to appoint upon Trust.

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By Making a Promise in Trust
A Trust is created by a promise made by a person to a third party and held in Trust by a Trustee or second party. The person must have the ability to bind himself or herself by a promise made to another as a Trustee.

Requirement of Manifestation of Intention
A Trust is created only if the Settlor properly manifests an intention to create a Trust. Such an outward expression is properly exhibited through written or spoken words or by conduct.

Mode of Manifestation of Intention
Particular forms or words or conduct are not necessary for manifestation of intention to create a Trust. Sufficient manifestation exists where an owner of property transfers it to another with a direction to transfer it to or hold it or deal with it for the benefit of third parties.

Trust and Successive Legal Estates
Successive legal estates are created when property is devised or bequeathed for the benefit of more than one person in succession and is determined by the testator whether the property is to be held in Trust for them or whether they take successive estates.

Communication of Intention
Trusts can be created without a Settlor's intention being communicated to a Beneficiary through an undisclosed intention where he has expressed the intention to create such a Trust in the undisclosed intention. The Settlor must manifest his intentions by outward acts or written intention. There is no rule of law stating that communication to anyone be given in the creation of a Trust.

Precatory Words
These are words of desire used in a bequest instead of words of command, which are precatory rather than mandatory words. Vague words leave the devisee or legatee in a state of undetermined decision.

Family Purposes
Property may be placed in Trust for the benefit of the Settlor and his family. The expressed intention determines whether a Trust is created or whether the property is given to them absolutely. Therefore if a person places property in Trust to a Trustee for the benefit of himself or his family by manifestation

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of intention and the property passes to the Trustee by legal deed in Trust a family Trust is the result.

Charitable Purposes
A charitable Trust results when a person through manifestation of intention and declaration of Trust provides that an absolute transfer of ownership to the Trust for the benefit of charitable causes and a relative of the Settlor has no power to benefit from the Trust but that the property be applied only to charitable causes.

No Intention to Create a Present Trust
No Trust is created by an owner of property through an intention to create a Trust in the future. Any promise to create a Trust in the future by the transfer of property to a Trustee at a future date or by appointing themselves, as a Trustee does not form a Trust.

Postponement of Enjoyment
A Trust that is created and the benefit of the Trust is withheld from the Beneficiaries for a period of time is a postponement of enjoyment of beneficial interest. A Settlor may create a Trust and retain the income from property and other means for his lifetime, only passing the income to the Beneficiaries at his death or at the expiration of some predetermined time. At the time of the transfer of property to a Trustee the Trust is created.

Where Some of the Elements of Trust are Determined in the Future
No Trust can be created or be valid unless the elements of the Trust are determined and present leaving nothing to be determined at a future date. Where terms of the Trust are to be determined by the Settlor at a later date no Trust arises before the terms and conditions of the Trust are determined even though the intentions of the Settlor are to create a Trust.

After-Acquired Property
No Trust can be created by transfer of property, which is not owned by the Settlor at the time the Trust is created. No transfer can be made by promise or the rights of a Promisee under a contract to create a Trust. The property must be owned and the Settlor has the right to transfer the property to form a Trust.

Promisee as Trustee
A promise to create a Trust at a future time is not the creation of a present Trust, however a present

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Trust may be created of the rights of a Promisee under a contract. When a person makes a promise to a Trustee for the benefit of a Beneficiary if the promise is binding with consideration, the Trustee immediately becomes Trustee for the Beneficiary of the consideration transferred by the Settlor.

Whether Trust Subsequently Arises
When a person promises to transfer property to a Trustee at a future time the Trust does not arise until the Settlor make the transfer of the rights to receive the property through contract. This is a binding obligation on behalf of the Settlor when the right to receive the property by a contract executed by the Settlor to purchase the property is delivered to a Trustee for the benefit of a Beneficiary.

Consideration for Declaration of Trust
The owner of personal property whether tangible or intangible can declare himself Trustee of the property for the benefit of another even if no consideration is paid for the declaration of Trust. Since the property is not an interest in land and not testamentary in character no formalities are required for a declaration of Trust.

Gratuitous Declaration of Trust of Land
This is where land or property is conveyed to a Trust without a deed, without the formalities necessary for a sale but the legal title remains with the Settlor. It has been upheld by courts of law that the owner of the property gratuitously declares himself Trustee of the property for the benefit of Beneficiaries that the Trust is enforceable in equity.

Consideration for Promise to Create a Trust
A promise to create a Trust is binding as a contract only if it is made for consideration or under seal. A promise to create a future Trust is not enforceable unless the requirements for the formation of a contract are complied with.

Conveyance Inter Vivos to a Person for His Own Benefit
When a person has intention to make an outright gift to another the transaction to make the outright gift does not involve the creation of a Trust. If the gift is effective the donee takes the legal and beneficial interest in the property, which is subject matter of the gift. The courts generally refuse to torture an imperfect gift into a declaration of Trust. (Second National Bank v. Curie 116 N. J. Eq. 101, 172 Atl. 560 1934). The law as to gifts in the case

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of chattel that a gift is ineffective unless the chattel is delivered to the donee or to a third party for him, or unless a deed of gift or possibly a writing evidencing the gift although not under seal is delivered. If the chattel is in the possession of the donee no further act of deliver is necessary. If the chattel is in a locked receptacle, the delivery of the key is sufficient. If the owner of a chattel or chose in action manifests an intention to make a gift but does not deliver it or deliver a deed of gift or other instrument evidencing the gift the gift is incomplete. Therefore when property tangible or intangible is placed in Trust for the benefit of a Beneficiary no gift can result by this action because not document exists or implies delivery of the gift to the Beneficiary.

Purposes for Which a Trust can Be Created

Since the Trust is the most flexible judicial device in the legal system its chief advantages is that it can be created generally for any purpose and subject to such provisions as the Settlor chooses. The intention of the Settlor as set forth in the Trust instrument is the Trustee's charter. The intention of the Settlor is the governing factors of Trusts. Only affirmative public policy restricts the creation of Trusts. Trusts are not like other juridical instruments having restrictions of an arbitrary or artificial character, which are due to historical background. Trusts can be created for any reason or purpose, which is not against public policy or otherwise illegal in any manner. So any provision in the terms of a Trust that are valid and legal is a legal and properly created Trust.

Section III - True or False?

119	The most common way a Trust is created is by a transfer of property to another person as a Trustee, by a transfer through inter vivos or by will.	T___ F___
		True
120	When a Trust is created by a will the testator who is the creator of the Trust must outline the terms of the Trust in the will. The terms of the Trust are outlined in the instrument of conveyance.	T___ F___
		True
121	A Trust may be created by both transfer inter vivos (by will) or through a declaration made by the owner of property to hold in Trust.	T___ F___
		True
122	Exercise of power of appointment cannot create a Trust.	T___ F___
	The exercise of power of appointment <u>can</u> create a trust.	**False**
123	A Trust is created through the making of enforceable promises to a second party as Trustee.	T___ F___
		True

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124	A Trust is created by declaration of Trust.	T___ F___
		True
125	A Trust cannot be created without the transfer of property.	T___ F___
	A Trust can be created without a transfer of property (ie. by Declaration)	**False**
126	When the Settlor receives compensation for declaring the Trust, the Trust is a valid Trust.	T___ F___
	A Trust is valid even if the Settlor receives no compensation.	**False**
127	Through the manifestation of intention to create such a Trust the Trust declaration is made subject to the legal compliance to the Statute of Frauds or is in substance a testamentary disposition under the Statue of Wills.	T___ F___
		True
128	A Trust is created through the execution of an instrument declaring that the person creating the Trust holds the property to himself in trust.	T___ F___
		True
129	The manifestation of intention through declaration forms a Trust.	T___ F___
		True
130	Persons having no title to property but has the power over the property by appointment can appoint the property to a Trustee rather than to the party they wish to benefit.	T___ F___
		True
131	Trusts are created when one person makes a promise to another as a Trustee. The promise is binding only if an instrument evidences it.	T___ F___
		True
132	Where a person gives consideration to a second party for a promise made by the second party to the first party to be Trustee for a third party a Trust is the result.	T___ F___
		True
133	Any owner of property has the capacity to create a Trust by declaring himself a Trustee of the property for the benefit of another, if he has capacity to transfer the property.	T___ F___

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		True
134	The courts ruled that there are special rules for the capacity to create a Trust.	T___ F___
	There are no special rules.	**False**
135	Any person having the ability to purchase property has the power to create a Trust by buying the property in the name of another as Trustee for the benefit of another.	T___ F___
		True
136	Any owner of property that has the capacity to bequeath the property can create a Trust by will if the terms of Trust are devised in the will. Special court rules are established as to capacity to create a Trust by will.	T___ F___
	There are no special court rules established .	**False**
137	Through special power of appointment a person, though not the owner of property, can create a Trust, even if they are not the owner of the property if, a power of appointment over the property is given them by the owner whether general or special.	T___ F___
		True
138	A Trust is created herein by a promise made by a person to a third party and held in Trust by a Trustee or second party. The person must have the ability to bind themselves by a promise made to another as a Trustee.	T___ F___
		True
139	If there is an outward expression of intention an express Trust is created if the Settlor properly manifests an intention to create a Trust.	T___ F___
		True
140	Outward expression is not properly manifested only through written or spoken words or by conduct.	T___ F___
	Outward expression is properly manifested.	**False**
141	Particular forms or words or conduct are necessary for manifestation of intention to create a Trust.	T___ F___
	Particular forms or words or conduct are not necessary.	**False**

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142	Sufficient manifestation exists where an owner of property transfers it to another with a direction to transfer it to or hold it or deal with it for the benefit of third parties.	T___ F___
		True
143	Successive legal estates are created when property is devised or bequeathed for the benefit of more than one person in succession and is determined by the testator whether the property is to be held in Trust for them or whether they take successive estates.	T___ F___
		True
144	Trusts can be created without a Settlor's intention being communicated to a Beneficiary through an undisclosed intention where there is a manifestation of intention to create a Trust in the undisclosed intention.	T___ F___
	An intention to create a trust in the future, does not create a trust.	**False**
145	The Settlor must manifest his intentions by outward acts or written intention. There is a rule of law stating that communication must be given in the creation of a Trust.	T___ F___
	There is no rule of law stating that communication must be given.	**False**
146	Precatory are words that leave the devisee or legatee in a state of undetermined decision.	T___ F___
	Vague words leave the devisee or legatee in a state .	**False**
147	Sufficient manifestation exists where an owner of property transfers it to another with a direction to transfer it to or hold it or deal with it for the benefit of third parties.	T___ F___
		True
148	Successive legal estates are created when property is devised or bequeathed for the benefit of more than one person in succession and is determined by the testator whether the property is to be held in Trust for them or whether they take successive estates.	T___ F___
		True
149	The manifestation of intention determines whether a Trust is created or whether the property is given to them absolutely.	T___ F___
		True

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150	A Charitable Trust results when a person through manifestation of intention and declaration of Trust provides that an absolute transfer of ownership to the Trust for the benefit of charitable causes and a relative of the Settlor has no power to benefit from the Trust but that the property be applied only to charitable causes.	T___ F___
	A Settlor may create a Trust and retain the income.	**False**
151	A Trust is created by an owner of property through an intention to create a Trust in the future.	T___ F___
	An intention to create a trust in the future, does not create a trust.	**False**
152	Any promise to create a Trust in the future by the transfer of property to a Trustee at a future date or by appointing themselves, as a Trustee does not form a Trust.	T___ F___
		True
153	A Trust that is created and the benefit of the Trust are withheld from the Beneficiaries for a period of time is a postponement of enjoyment of beneficial interest.	T___ F___
		True
154	A Settlor may not create a Trust and retain the income from property and other means for his lifetime, only passing the income to the Beneficiaries at his death or at the expiration of some predetermined time.	T___ F___
	A Settlor may create a Trust and retain the income.	**False**
155	At the time of the transfer of property to a Trustee the Trust the Trust is created.	T___ F___
		True
156	A Trust can be created and is valid with the elements of the Trust being determined at a future date.	T___ F___
	A Trust is not valid if elements are to be determined in the future.	**False**
157	Where terms of the Trust are to be determined by the Settlor at a later date no Trust arises before the terms and conditions of the Trust are determined even though the intentions of the Settlor are to create a Trust.	T___ F___
		True

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158	Transfer of property, which is not owned by the Settlor at the time the Trust is created, can create no Trust. Promise or the rights of a Promisee under a contract to create a Trust can make no transfer. The property must be owned and the Settlor has the right to transfer the property to form a Trust.	T___ F___
		True
159	A promise to create a Trust at a future time is not the creation of a present Trust, however a present Trust may be created of the rights of a Promisee under a contract.	T___ F___
		True
160	When a person makes a promise to a Trustee for the benefit of a Beneficiary if the promise is binding with consideration, the Trustee immediately becomes Trustee for the Beneficiary of the claim against the Settlor.	T___ F___
	For the Beneficiary of the consideration transferred by the Settlor.	**False**
161	When a person promises to transfer property to a Trustee at a future time the Trust does not arise until the Settlor makes the transfer of the rights to receive the property through contract.	T___ F___
		True
162	A promise to create a Trust is binding as a contract only if it is made for consideration or under seal.	T___ F___
		True
163	The owner of personal property whether tangible or intangible can declare himself Trustee of the property for the benefit of another even if no consideration is paid for the declaration of Trust. Since the property is not an interest in land and not testamentary in character no formalities are required for a declaration of Trust.	T___ F___
		True
164	It has not been upheld by courts of law that the owner of the property gratuitously declares himself Trustee of the property for the benefit of Beneficiaries that the Trust is enforceable in equity.	T___ F___
	It has been upheld by courts of law.	**False**
165	A promise to create a future Trust is not enforceable unless the requirements for the formation of a contract are complied with.	T___ F___

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		True
166	When a person has intention to make an outright gift to another the transaction to make the outright gift does not involve the creation of a Trust.	T___ F___
		True
167	The law as to gifts in the case of chattel is held that a gift is ineffective unless the chattel is delivered to the donee or to a third party for him, or unless a deed of gift or possibly a writing evidencing the gift although not under seal is delivered. If the chattel is in the possession of the donee no further act of deliver is necessary.	T___ F___
		True
168	When property tangible or intangible is placed in Trust for the benefit of a Beneficiary no gift can result by this action because not document exists or implies delivery of the gift to the Beneficiary.	T___ F___
		True
169	Since the Trust is the most flexible juridical devices in the legal system its chief advantages is that it can be created for any purpose and subject to such provisions as the Settlor chooses.	T___ F___
		True
170	The intention of the Settlor is the as set forth in the Trust instrument is the Trustee's charter. The intention of the Settlor is the governing factors of Trusts.	T___ F___
		True
171	Trusts are not like other juridical instruments having restrictions of an arbitrary or artificial character, which are due to historical background. Trusts can be created for any reason or purpose, which is not against public policy or otherwise illegal in any manner.	T___ F___
		True
172	Any provision in the terms of a Trust that are valid and legal is a legal and properly created Trust.	T___ F___
		True

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Section IV - Trust Property

The Necessity of Trust Property
The creation of a Trust is a method of disposing of property, tangible or intangible. Through the creation of a Trust the Settlor transfers to and effectuates a complete separation of interest in the property of the Trust giving the Beneficiaries the equitable interest without the legal title.

This is very important where the creditors of Beneficiaries gain judgments against them. Owing to the fact that the legal title of the property never passes to the Beneficiaries the property is out of the reach of the creditors of the Beneficiaries.

What Can Be Held in Trust
Any property tangible or intangible may be held in Trust. However certain interests, which someone has, are not property and cannot be placed in a Trust. Examples would be the interest in freedom from harmful bodily contact or the interest in the right to bear arms and the interest of a parent in a child, which cannot be disposed of as property. Some examples of intangible property would be a copyright, a seat on a stock exchange or a membership in a board of trade, which can be conveyed to a Trust.

Where the Trust Property Ceases to Exist
Since a Trust is not created without some Trust property either tangible or intangible, if the Trust property ceases to exist (the original Trust property and all products of it) the Trustee has nothing to hold in Trust with legal title which the Beneficiaries have the beneficial interest in, therefore the Trust is no longer a viable Trust. However, while a Trust cannot be created without Trust property in a character acceptable to a Trust the Trust is not terminated when there is no longer property in Trust. The Trust is simply not an operating Trust but the fiduciary relation continues although it ceases to be a relation in respect to specific property.

Intention that Property Be Held in Trust
Even when a Settlor has property that he wishes to place in Trust, no Trust is created unless he manifests an intention that the property be held in Trust.

Non-Existent Interests
Nonexistent interests cannot be placed or declared to be in Trust. Only existing interests can be conveyed to a Trust at its inception.

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Indefinite Subject Matter
All subject matter to create a Trust must be specifically ascertainable at the time of the creation of the Trust.

Transferable Property
Property, which an owner can sell or transfer by gift, can be transferred to a Trust. Any subject matter, tangible, intangible, land, chattels or chose in action or other intangible things may also be transferred to a Trust.

Non-Transferable Property
The owner of property who cannot transfer the property absolutely cannot transfer the property to a Trust.

Limited Transferability
Interest that must be held by a particular class or group must have the interest transferred to Trust in favor of Beneficiaries strictly within that class or group.

Insurance Policies
Life insurance policies that are payable to an estate can be assigned to a Trust or another person in a Trust.

Patents and Copyrights
Persons who obtain patents or copyrights for inventions or literary works can transfer their interest either absolutely or in part to Trusts. Similarly contracts to assign patents are likewise transferable.

Good Will and Trademarks
An identifiable business asset is its good will and when the business is in Trust the good will is subject to the Trust and Trustees are accountable for it. Trademarks are also assets of the business and can be held in Trust.

Trade Secrets
Trade secrets are part of Trust property, therefore, a secret process employed in a business may be held in Trust in connection with a Trust of the Business.

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Future Earnings
Rights under a contract or employment in existence at the time of an assignment can be effectively assigned to a Trust.

Future Crops and Unborn Young Animals
The owner of land is treated as having a present interest in the future crops to be raised on the land. The owner of the land or animals has a future interest in the young, which may be born to these animals, and his interest can be assigned to a Trust.

Personal Property
The Trustee of the Trust must accept the entire legal interest in all personal property of a Trust such as, chattels, securities and other personal properties.

Section IV - Agree or Disagree?

Read the statements that follow and state whether you Agree or Disagree with the statements.

173	The creation of a Trust is a method of disposing of property, tangible or intangible. Through the creation of a Trust the Settlor effectuates a complete separation of their interest in the subject matter of the Trust giving the Beneficiaries the equitable interest without the legal title.	A___ D___
		Agree
174	Owing to the fact that the title of the property passes to the Beneficiaries the property is out of the reach of the creditors of the Beneficiaries.	A___ D___
	Legal title <u>never</u> passes to the Beneficiaries.	**Disagree**
175	Any property tangible or intangible may be held in Trust. However certain interests, which someone has, are not property and cannot be placed in a Trust.	A___ D___
		Agree
176	The interest in freedom from harmful bodily contact or the interest in the right to bear arms and the interest of a parent in a child, are all property that can be held in Trust.	A___ D___
	These interests are <u>not</u> property and cannot be held in Trust.	**Disagree**
177	A copyright, a seat on a stock exchange or a membership in a board of trade, is property, which cannot be conveyed to a Trust.	A___ D___

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	These items <u>can</u> be conveyed to a Trust.	**Disagree**
178	Even when a Settlor has property that he wishes to place in Trust, no Trust is created unless he manifests an intention that the property be held in Trust.	A___ D___
		Agree
179	Nonexistent interests can be placed or declared to be in Trust.	A___ D___
	Nonexistent interests <u>cannot</u> be placed or declared to be in Trust.	**Disagree**
180	Only real property that is conveyed to a Trustee for Trust can be conveyed to a Trust.	A___ D___
	Real property, <u>tangible or intangible</u>, may be conveyed.	**Disagree**
181	All subject matter to create a Trust must be definite or definitely ascertainable for facts existing at the time of the creation of the Trust.	A___ D___
		Agree
182	Property, which an owner can sell or transfer by gift, cannot be transferred to a Trust.	A___ D___
	Property, which an owner can sell or transfer by gift, <u>can</u> be transferred.	**Disagree**
183	Any subject matter, tangible, intangible, land, chattels or chose in action or other intangible things can be transferred to a Trust.	A___ D___
		Agree
184	The owner of property who cannot transfer the property absolutely cannot transfer the property to a Trust.	A___ D___
		Agree
185	Interest that must be held by a particular class or group must have the interest transferred to Trust in favor of Beneficiaries strictly within that class or group.	A___ D___
		Agree
186	Life insurance policies that are payable to an estate cannot be assigned to a Trust or another person in a Trust.	A___ D___
	Life insurance policies that are payable to an estate <u>may</u> be assigned.	**Disagree**

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187	Persons who obtain patents or copyrights for inventions or literary works cannot transfer their interest either absolutely or in part to Trusts.	A___ D___
	Patents or copyrights for inventions or literary works may transfer.	**Disagree**
188	An actual business assert is its good will and when the business is in Trust the good will is subject to the Trust and Trustees are accountable for it.	A___ D___
		Agree
189	Trademarks are also assets of the business and cannot be held in Trust.	A___ D___
	Trademarks may be held in Trust.	**Disagree**
190	It is held that trade secrets are not part of Trust property therefore a secret process employed in a business may not be held in Trust in connection with a Trust of the Business.	A___ D___
	Trade Secrets are a part of Trust property.	**Disagree**
191	The owner of land is treated as having a present interest in the future crops to be raised on the land, and that the owner of the land or animals has future interest in the young which may be born to these animals and his interest can be assigned to a Trust.	A___ D___
		Agree
192	Rights under a contract or employment in existence at the time of an assignment cannot be effectively assigned to a Trust.	A___ D___
	Rights under a contract or employment may be effectively assigned.	**Disagree**

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Section V - Trustees and Administration

Capacity of a Natural Person to Be Trustee
An Individual must meet legal standards to serve as a Trustee of a Trust. These standards or capacities are:

1. The capacity to take title to property for his own benefit.
2. The capacity to continue to hold property for his own benefit.
3. The capacity to deal with property if owned by him beneficially.

Capacity to Administer
Any natural person who has capacity to administer a Trust should be able to perform the duties imposed upon him in the administration of a Trust.

Duty of a Trustee
When a person accepts the position of Trustee of a Trust he is under a duty to administer the Trust for as long as he holds the position of Trustee. Once he has accepted the position as Trustee of the Trust he can never disclaim. The only way a Trustee can resign is by the terms provided in the Trust document. Since the duty to administer the Trust is not contractual, the fact that the Trustee receives no consideration is not material to his duty of administration of the Trust. The duty of the Trustee to administer the Trust continues until the Trust ends, the Trustee dies, is removed or resigns according to the terms of the Trust.

Trustee as Fiduciary
The duty of a Trustee of loyalty to a Trust is one of the most serious fiduciary relationships in existence. While other fiduciaries like partners, directors, officers, guardians, executors or administrators are all serious positions the fiduciary relation of a Trustee is above them. The Trustee owes complete loyalty to the Beneficiaries of the Trust, and the Trustee may not place himself in a position where he benefits from the Trust and violates his duty to the Beneficiaries of the Trust. The Trustee has a fiduciary duty to disclose all material facts of transactions and actions of the Trust to the Beneficiaries in all cases including information that would be detrimental to the Trustee and advantageous to the Beneficiaries.

Duty of Trustee to Act
When Trustees of Trusts fail to act to enforce claims for the benefit of a Trust, where the steps are

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reasonable, the Trustee can be subject to surcharges by the courts. The Trustee is under a duty to enforce claims on behalf of the Beneficiaries of the Trust and to take reasonable steps to enforce claims. When a debtor of the Trust fails to pay the Trust what is legally due And payable to the Trust the Trustee is obligated to bring an action to enforce payment of the debt. The Trustee must make decisions as to what are reasonable methods of protecting the Trust estate. Sometimes a security would be a proper situation instead of a legal action, giving the Trust an investment and protecting the Trust estate. When a claim is not collectable or cannot be collected in full and it appears reasonable to the Trustee that the claim cannot be collected in full or it is doubtful that the claim is enforceable then the Trustee is justified in compromising the claim or resorting to arbitration to resolve the claim.

Trustee to Defend
The Trustee must defend actions of third parties against the Trust estate. The duty of the Trustee to defend actions against the Trust is a fiduciary obligation to the Beneficiaries to prevent the impairment of the Trust. When Beneficiaries sue for the enforcement of a Trust the Trustee is not permitted to set up defects in the Settlor's title even if he could.

Trust Property to Be Separate
The property of the Trust must be kept separate from the property of the Trustee and other properties and must be properly designated as property of the Trust. The duty of the Trustee is to keep the Trust property separate from the property of other Trusts, to keep the Trust property separate and isolated as property of the Trust, and to designate Trust property as Trust property. Trustees in violation of these principles and duties are held accountable and are subject to liability by the courts. A Trustee must not commingle Trust funds with his own funds, or Trust property with his own property but must keep Trust property and funds separate to maintain the identity as that of Trust estate. Funds of separate Trusts must not be mingled for the same reason that it could lose its identity. Trustees may not mingle the property of several Trusts even if the Beneficiaries are benefited from the mingling of the properties and are fairly compensated. The Trustee must hold property separate in the separate Trusts and not commingle.

Title Must Be Held by Trusts
Trustees may not take title to trust property in his individual name, even though he does not mingle the property with his own. If a Trustee deposits monies of the Trust in a bank in his name or personal account or cashes a check payable to the Trust, the Trustee commits a breach of Trust. Whenever the terms of the trust permit the Trustee to hold title and property in his name for the Trust no breach

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of Trust occurs. The manifestation of intention of the Trust and what is in the terms and condition of the Trust is the governing power of the Trustee in relation to this circumstance.

Trust Property Clearly Defined
A breach of Trust occurs when a Trustee takes title to Trust property in his own name or the name of a third party whether or not the character of the property is disclosed to the Beneficiaries. The exception to this is if the manifestation of intention of the Trust permits such an act and what is in the terms and conditions of the Trust. In such a case the Trustee must show in the Trust records clearly the ownership of the property by the Trustee and the facts regarding holding it in the name of the Trustee. If the property is held by a nominee (third party) a signed statement shall be deposited with the Trustee showing the Trust ownership of the property and the Trustee shall be personally liable for any loss to the Trust resulting from any act of such nominee in connection with the property held. These principals and regulations are applicable to all Trustees, and Trust institutions.

Loans Must Be for Security or Interest
Trust funds may not be loaned without adequate security. A deposit in a bank is a loan to a bank of the amount of the money deposited. It is permitted for a Trustee to preserve the Trust funds in a bank deposit account which has a small amount of security on the account (FDIC Insurance) rather than keeping the funds in cash and employing the proper measure of security required to protect the funds. A deposit is not an investment but is safekeeping. If the Trustee assures the account insurance and/or bailee agreement and the bank fails the Trustee incurs no liable for his actions. Trustees commit a breach of trust when they fail to use reasonable care in selection of a bank, fails to earmark the deposit as made by him as a Trustee, leaves the funds on deposit for an unreasonably long period of time, or the Trustee makes an arrangement with the bank which precludes him from withdrawing the funds at anytime. Even where time deposits are made the Trust funds must be liquid and the time deposit liquidated if the business of the Trust demands it.

Trust Funds Must Be Invested
The Trustee must invest trust funds so that they will be productive. To take an undo time to invest Trust funds for investment is a breach of Trust. Where other types of property and land are to be used or let to be productive it should be in compliance with the Settlor who created the Trust. If rental property or land is leased by a Trustee and the Trustee allows a tenant to fail to pay the rent due the Trust for a considerable period the Trustee is subject to surcharge by the courts.

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Duty of the Trustee to Pay
It is the duty of the Trustee to disburse to the Beneficiary of the Trust on a regular basis, all net incomes of the Trust, after deducting from the gross income the expenses properly incurred in administration of the Trust. All income of a Trust may be taxable income when earned through the investment of the corpus of the Trust and may be subject to additional taxation if not distributed in the year in which it was earned. When the Beneficiary is legally incapacitated and is entitled to a benefit of the Trust the Trustee is under duty to pay the income of the Beneficiary to the guardian or to a court. When the Trustee applies the income to the support of the Beneficiary the account is credited and shown as a disbursement to the Beneficiary. Trustees are under a duty to deal impartially with the Beneficiaries of a Trust. Only when the terms and condition of the Trust allow the Trustee to deal with favor to another Beneficiary is the Trustee allowed to show any partiality between Beneficiaries.

Trustees Must Participate
All Trustees of a Trust must participate in the administration of the Trust. Trustees may not delegate to a third party the duties or acts, which he is reasonably required to perform, and may not delegate his acts or duties to his fellow co-Trustees. Inactive Trustees are guilty of breach of Trust. It is the duty of all of the Trustees to prevent the others from committing a breach of Trust.

Terms and Conditions Provide Control
According to the terms and conditions of a Trust it can be provided that the actions of the Trustees in certain respects will be subject to the control of another entity. A co-Trustee, co-Beneficiary or the Settlor or a third party unconnected with the Trust can hold this power, which is conferred upon this entity by the provisions of the Trust instrument. This power may compel certain actions by the Trustees, may be applies to remove Trustees and appoint others. If the power is reserved to the Settlor of the Trust by the Settlor may or may not hold the power of control of the administration of the Trust or solely for his own benefit. The holder of the power cannot be controlled in the exercise of this power unless he is guilty of an abuse of discretion or threatens to abuse the power conferred upon him.

Married Women
Under English common law, a married woman at common law not being sui juris was incapable of administering a Trust. Married women at common law could not individually and apart from her husband make conveyances or contracts or maintain an action at law or suit in equity. Since law thus restricted her she could not serve as a Trustee of a Trust. Since the prior restrictions of married

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women have been removed by statute married women can now serve as a Trustee of a Trust.

Infants
Infants have the capacity to take and hold property either beneficially or in Trust, however that may not serve as a Trustee of a Trust since their contracts and conveyances are voidable.

Insane Persons
Insane parties have the capacity to take title to property when conveyed to them beneficially in Trust, however they have no capacity to administer the Trust and may not serve as a Trustee.

Aliens
In common law aliens could not take title to land by descent. This has been changed and if the alien meets the capacity tests of the Trustee they may serve as a Trustee of a Trust.

Non-Residents
Non-residents of a state in which a Trust is created and where it will be administered may serve as a Trustee of a Trust. However in some States when a resident Trustee moves to another State, this may be grounds for removal as a Trustee. A non-resident Trustee in some States in a testamentary Trust is required to appoint a resident as his agent for the service of process in proceedings brought against him as Trustee.

United States or a State
The United States can hold property in Trust. An example would be Indian land held in Trust by the government. States also can hold property in Trust.

Corporations
Corporations may serve as a Trustee of a Trust in certain kind of Trusts. Corporate Trustees are subject to many regulations that are inapplicable to individual Trustees.

Trust Companies and Banks
Federal and State banks are under certain administrative details in regulations of federal banks, which are different from those governing state institutions. These regulation are complex and do not concern private Trusts.

Notes:

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Foreign Corporations
A corporation can administer a Trust in one State where the corporation is organized under the laws of another State or a foreign country.

Unincorporated Associations
When the members of an association are sufficiently definite the title of property may be vested in them as Trustees, they by the same manner can administer the Trust as individual co-Trustees.

Partnerships
Members of the partnership must hold the legal title to property and the members must serve as Trustees. Partnerships are not considered as an entity, which can have capacity to take or hold title to property.

Beneficiary as Trustee
Since the creation of a Trust involves the separation of legal and equitable interests in property, where one person, the Beneficiary serves as Trustee he holds the entire beneficial interest and there is no Trust.

Where the Sole Beneficiary is Not the Sole Trustee
When the unusual circumstance arises of several Trustees or several Beneficiaries the Trust is valid even though one or more of the Trustees are also Beneficiaries of the Trust. Difficulties arise in this circumstance and are considered in matters of law and enforcement. These are very unusual circumstances not encountered commonly.

The Settlor as Trustee
When a person gratuitously declares that they hold property in Trust for certain Beneficiaries he is the Settlor of the Trust and also the Trustee of the Trust. Trusts that are created by a Settlor who declares himself Trustee for his own sole benefit are not legal Trusts. The Trust is not a legal Trust not because the Settlor is Trustee but because the Trustee is the sole Beneficiary. Trusts where the Settlor and Trustee are one of two or more Beneficiaries are valid Trusts.

Failure of Trustee
When a Trustee dies, becomes insane or subject to some legal incapacity or resigns or is removed the Trustee fails but not the Trust as a new Trustee is appointed.

Notes:

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Powers of Trustees

(Powers of the Trustee as Outlined in a Trust)

A. General Powers

To do all such acts, take all such proceedings and exercise all such rights and privileges in the management of the trust estate as if he were the absolute owner thereof, including, without limiting the generality of the terms, the following:

(1) Power of Sale. To hold, manage, operate, control, repair, preserve, improve, partition, divide, subdivide, sell (at public or private sale and for cash or on credit), convey, exchange, convert, grant options on, or otherwise deal with trust property:

(2) Power To Lease. To lease for terms either within or beyond duration of this trust, properties, including oil, gas and other mineral interests, on such terms as Trustee may deem proper; and to enter into pooling, unitization, repressurization, community and other types of agreements relating to the development, operation and conservation of mineral properties;

(3) Power To Loan and Invest. To loan, reloan, invest and reinvest the trust estate or any part thereof;

(4) Power To Manage Securities. To vote stock, give proxies, pay calls for assessments, sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts, assent to corporate sales and other acts and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as Trustee may deem advisable;

(5) Power To Hold Securities in Name of Nominee. To hold securities or other property in Trustee's own name or in the name of Trustee's nominee, without disclosing any fiduciary relation;

(6) Power to Insure. To procure and carry, at the expense of the trust, estate insurance of such kind and in such form and amount as Trustee deems advisable to protect Trustee and the trust estate against any hazard;

(7) Power To Borrow Money and Hypothecate Trust Assets. To borrow money for any trust purpose, hypothecate the trust estate or any part thereof and replace, renew and extend any encumbrance thereon, on such terms, conditions and security as may be determined by the Trustee and to pay loans or other obligations of the trust estate, as Trustee, in Trustee's discretion, deems advisable.

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B. Power to Retain Trust Property. Trustee, in Trustee's discretion, is expressly authorized to hold and retain any securities, properties, or other investments for such length of time, as Trustee deems advisable.

C. Investment Powers. In investing, reinvesting, purchasing, acquiring, exchanging and selling property for the benefit of this trust, Trustee shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, Trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account.

D. Power To Determine Principal and Income. Unless otherwise specifically provided herein, Trustee, in Trustee's discretion, may determine what is principal or income and what shall be charged or credited to either. Trustee's judgment shall bind everyone beneficially interested hereunder. Trustee may rely on the statement of the paying corporation as to whether dividends are paid from profits or earnings or are a return of capital or a distribution of assets, and as to any other fact relevant hereunder concerning the source or character of dividends or distributions of corporate assets.

E. Power To Compromise Claims. Trustee may, at Trustee's option, at any time, in connection with Trustee's management of the trust estate or the collection of any moneys due or payable to Trustee as Trustee hereunder, compromise or abandon any claims existing in favor of or against the trust estate.

F. Distribution or Division in Kind. On any division of the trust estate into separate shares or trusts and upon any distribution, Trustee may apportion and allocate the assets of the trust estate in cash, or in kind, or partly in cash and partly in kind, or in undivided interests, in such manner as Trustee, in Trustee's discretion, deems advisable. Trustee may sell such property, as Trustee deems necessary to make any such division or distribution. After any division of the trust estate, the Trustee may make joint investment with funds from some or all of the several shares or trusts.

G. Termination in Trustee's Discretion. If the trust, in the absolute discretion of Trustee, becomes sufficiently small in value that the administration thereof is no longer economically desirable, the cost thereof is disproportionate to the value of the assets, or the continuation thereof is no longer in the best interest of the Beneficiary or Beneficiaries, Trustee may terminate such trust. On termination as herein provided, Trustee shall distribute the property of such trust to the person or persons, then entitled to receive the

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income therefrom, in such shares as the Trustee, in his sole discretion, shall determine to be in the best interests of the Beneficiaries.

H. Trustee's Discretion. All discretions granted to or vested in Trustee by any provision of this instrument are to be exercised in the sole and absolute discretion of Trustee. However, no such discretion shall be exercised other than in a fiduciary capacity, primarily in the interests of the Beneficiaries.

I. Limitations on Trustee's Powers. Notwithstanding any other provision of this trust instrument, no power exercisable by Trustee shall be construed so as to enable Trustee, Settlor, or any other person to purchase, exchange, or otherwise deal with or dispose of the corpus or income therefrom for less than an adequate consideration in money or money's worth or to enable Settlor to borrow the corpus or income, directly or indirectly, without adequate interest or security. No person other than Trustee acting in a fiduciary capacity shall have the power to vote or direct the voting of stock or other securities, to control the investment of trust funds either by directing investments or reinvestments, or to permit any person to reacquire the trust corpus by substituting other property of an equivalent value.

Notes:

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Section V - Fill in the Blank

The statements that follow have words missing in the statement, fill in the correct word or words that make the sentence complete and correct.

A Trustee must meet the _____[31] standards to serve as a Trustee of a Trust. These standards or capacities are:

1. The capacity to take title to property for his own benefit can take the title to property in Trust.

2. The capacity to continue to hold property for his own benefit has capacity to hold property in _____[32].

3. The capacity to deal with _____[33] if owned by him beneficially has capacity to administer property in Trust.

Any _____[34] person who has capacity to administer a Trust depends on whether he has capacity to exercise powers conferred upon him and to perform the duties imposed upon him in the _____[35] of a Trust.

When a Trustee accepts the position of Trustee of a Trust he is under a _____[36] to administer the Trust for as long as he holds the position of Trustee. Once they have accepted the position as Trustee of the Trust they can never disclaim. The only way a Trustee can resign is by the _____[37] provided in the Trust document. Since the duty to administer the Trust is not contractual, the fact that the Trustee receives no consideration it that is the case is not material to his duty of _____[38] of the Trust. The duty of the Trustee to administer the Trust continues until the Trust ends, the Trustee dies, are removed or they _____[39] according to the terms of the Trust.

_____

[31] legal

[32] trust

[33] property

[34] natural

[35] administration

[36] duty

[37] terms

[38] administration

[39] resign

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The duty of a Trustee of _____[40] to a Trust is one of the most serious fiduciary relationships in existence. While other fiduciaries like partners, directors, officers, guardians, executors or administrators are all serious positions the _____[41] relation of a Trustee is above them. The Trustee woes complete loyalty to the Beneficiaries of the Trust, and the Trustee may not place himself in a position where he _____[42] from the Trust and violates hid duty to the Beneficiaries of the Trust. The Trustee has a fiduciary duty to disclose all material facts of _____[43] and actions of the Trust to the Beneficiaries in all cases up to and including information that would be detrimental to the Trustee and advantageous to the Beneficiaries.

A Trustee of a Trust must of take _____[44] of trust property and take all actions and steps necessary to secure control of and keep _____[45] the property of the Trust. The Trustee must take physical control of the property and designate the property as _____[46]. The Trustee should record deeds and mortgages of Trusts. The Trustee must also keep control of the Trust property at all times. Possession may be entrusted by the Trustee to banks and security firms in a _____[47], where securities are concerned but he should keep possession of property and not entrust the possession to others. The Trustee must take care to _____[48] the property of the Trust from damage, theft or unlawful acts of third parties. This is a very serious duty of the Trustee to protect Trust property, for in the past Trustees have been held liable for inaction of _____[49] to Trust property and held subject to surcharges by courts.

When Trustees of Trusts fail to act to _____[50] for the benefit of a Trust, where the steps are reasonable, the Trustee can be subject to _____[51] by the courts. The Trustee is under duty to enforce claims on behalf of the Beneficiaries of the Trust and to take _____[52] steps to enforce claims, which the Trustee holds in Trust. When a debtor of the Trust fails to pay the Trust that is legally due And payable to the Trust the Trustee is obligated to bring

_____

[40] loyalty
[41] fiduciary
[42] benefits
[43] transactions
[44] control
[45] secure
[46] Trust property
[47] Trust account
[48] protect
[49] security
[50] enforce claims
[51] surcharges
[52] reasonable

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an _____[53] to enforce payment of the debt. The Trustee must make decisions as to what are reasonable methods of protecting the Trust estate. Sometimes a security would be a proper situation instead of a legal action, giving the Trust an investment and protecting the Trust estate. When a claim is not collectable or cannot be collected in full and it appears _____[54] to the Trustee that the claim cannot be collected in full or it is doubtful that the claim is enforceable then the Trustee is _____[55] in compromising the claim or resorting to arbitration to resolve the claim.

The Trustee must first _____[56] of third parties against the Trust estate. The duty of the Trustee to _____[57] actions against the Trust is a _____[58] to the Beneficiaries to prevent the destruction of the Trust. When Beneficiaries sue for the _____[59] of a Trust the Trustee is not permitted to set up defects in the Settlor's title even if he could.

The _____[60] of the Trust must be kept separate from the _____[61] of the Trustee and other properties and must be properly designated as property of the Trust. The duty of the Trustee is to keep the Trust property _____[62] from the property of other Trusts, to keep the Trust property separate and isolated as property of the Trust, and to _____[63] Trust property as Trust property. Trustees in violation of these principles and duties are held accountable and are subject to _____[64] by the courts. A Trustee must not commingle Trust funds with his own funds, or Trust property with his own property but must keep Trust property and funds _____[65] to maintain the identity as that of Trust estate. Funds of separate Trust must not be mingled for the same reason that it could lose its identity. Trusts may not commingle the property of several Trusts even if the _____[66] are benefited from the mingling of the properties and are fairly compensated. The Trustee must hold property separate in the separate Trusts and not commingle.

_____

[53] action

[54] reasonable

[55] justified

[56] defend actions

[57] defend

[58] fiduciary obligation

[59] enforcement

[60] property

[61] property

[62] separate

[63] designate

[64] liability

[65] separate

[66] Beneficiaries

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Trustees may _____[67] take title to trust property in his individual name, even though he does not mingle the property with his own. If a Trustee deposits monies of the Trust in a bank in his name or personal account or cashes a check payable to the Trust, the Trustee commits a _____[68] of Trust. Whenever the terms of the trust permit the Trustee to hold title and property in his name for the Trust no breach of Trust occurs. The manifestation of intention of the Trust and what is in the terms and condition of the Trust is the _____[69] power of the Trustee in relation to this circumstance.

A _____[70] of Trust occurs wherein a Trustee takes title to Trust property in his own name or the name of a third party whether the character of the property is disclosed to the Beneficiaries. The _____[71] to this is if the manifestation of intention of the Trust permit such act and what is in the terms and conditions of the Trust. In such a case the Trustee must show in the Trust records _____[72] the _____[73] of the property by the Trustee and the facts regarding holding it in the name of the Trustee. If the property is held by a _____[74] (third party) a signed statement shall be deposited with the Trustee showing the Trust ownership of the property and the Trustee shall be personally liable for any _____[75] to the Trust resulting from any act of such nominee in connection with the property held. These principals and regulations are held to all Trustees, applicable to individual Trustees as well as Trust _____[76].

When Trust funds are _____[77] they may not be loaned without _____[78] security. A _____[79] in a bank is a loan to a bank of the amount of the money _____[80]. It is permitted for a Trustee to preserve the Trust funds in a bank deposit

_____

[67] not
[68] breach
[69] governing
[70] breach
[71] exception
[72] clearly
[73] ownership
[74] nominee
[75] loss
[76] institutions
[77] loaned
[78] adequate
[79] deposit
[80] deposited

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account which has a small amount of security on the account (FDIC Insurance) rather than keeping the funds in cash and employing the proper _____[81] required to protect the funds.

All income of a Trust may be taxable income when earned through the investment of the Corpus of the Trust and may be subject to additional taxation if not distributed in the year in which it was earned. When the Beneficiary is legally _____[82] and is entitled to a benefit of the Trust the Trustee is under duty to pay the income of the Beneficiary to their guardians or to a court. When the Trustee applies the income to the support of the Beneficiary the account is credited and shown as a _____[83] to the Beneficiary. Trustees are under a duty to deal impartially with the Beneficiaries of a Trust. Only when the terms and condition of the Trust allow the Trustee to deal with favor to another _____[84] is the Trustee allowed to show any partiality between Beneficiaries.

All Trustees of a Trust must _____[85] in the _____[86] of the Trust. Trustees may not _____[87] to a third party the duties or acts, which he is reasonably required to perform, and may not delegate his acts or duties to his fellow co-Trustees. _____[88] Trustees are guilty of breach of Trust. It is the duty of all of the Trustees to prevent the others from committing a breach of Trust.

According to the terms and conditions of a Trust it can be provided that the _____[89] of the Trustees in certain respects will be subject to the _____[90] of another entity. A co-Trustee, co-Beneficiary or the _____[91] or a third party unconnected with the Trust can hold this power, which is conferred upon this entity by the _____[92] of the Trust instrument. This power may compel certain actions by the Trustees, can remove Trustees and appoint others in their stead. If the _____[93] is reserved to the _____[94] of the _____

[81] security
[82] incapacitated
[83] disbursement
[84] Beneficiary
[85] participate
[86] administration
[87] delegate
[88] Inactive
[89] actions
[90] control
[91] Settlor
[92] provisions
[93] power
[94] Settlor

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Trust the _____[95] may or may not hold the power of control of the administration of the Trust or solely for his own benefit. The holder of the _____[96] cannot be controlled in the exercise of this power unless he is guilty of an abuse of discretion or threatens to abuse the power conferred upon him.

Under _____[97] common law a married woman at common law not being *sui juris* was incapable of _____[98] a Trust. Married women at common law could not apart from her _____[99] make conveyances or contracts or maintain an action at law or suit in equity. Since law thus restricted her she could not serve as a _____[100] of a Trust. Since the circumstances of married women have been removed by statute married women can now serve as a _____[101] of a Trust.

_____[102] have the capacity to take and hold property either beneficially or in Trust, however that may not serve as a Trustee of a Trust since their contracts and conveyances are voidable.

_____[103] parties have the capacity to take title to property when conveyed to them beneficially in Trust, however they have no capacity to administer the Trust and may not serve as a Trustee.

In common law _____[104] could not take title to land by descent. This has been changed and it the alien meets the capacity tests of the Trustee they may serve as a Trustee of a Trust.

_____[105] of a state in which a Trust is created and where it will be administered may serve as a Trustee of a Trust. However in some States when a resident Trustee moves to another State may be grounds for _____[106] as a Trustee. A nonresident Trustee in some States a

_____

[95] Settlor
[96] power
[97] English
[98] administering
[99] husband
[100] Trustee
[101] Trustee
[102] Infants
[103] Insane
[104] aliens
[105] Non-Residents
[106] removal

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in a testamentary Trust is required to appoint a _____[107] as his agent for the service of process in proceedings brought against him as Trustee.

The _____[108] can hold property in Trust. An example would be Indian land held in Trust by the government. _____[109] also can hold property in Trust.

_____[110] may serve as a Trustee of a Trust in certain kind of Trusts. _____[111] Trustees are subject to many regulations that are inapplicable to individual Trustees.

_____[112] and State banks are under certain administrative details in regulations of federal banks, which are different from those governing state institutions. These _____[113] are complex and do not concern private Trusts.

A _____[114] can administer a Trust in one State where the _____[115] is organized under the laws of another State or a foreign country.

When the members of an _____[116] are sufficiently definite the title of property may be vested in them as Trustees, they by the same manner can _____[117] the Trust as individual Co-Trustees.

Members of the _____[118] must hold the legal title to property and the members must serve as Trustees. _____[119] are not considered as an entity, which can have capacity to take or hold title to property.

_____

[107] resident
[108] United States
[109] States
[110] Corporations
[111] Corporate
[112] Federal
[113] regulations
[114] corporation
[115] corporation
[116] association
[117] administer
[118] partnership
[119] Partnerships

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Since the creation of a Trust involves the separation of legal and equitable interests in property, where one person, if the _____[120] serves as Trustee they hold the whole beneficial interest and there is no Trust.

When the unusual circumstance arises of several Trustees or several _____[121] the Trust is valid even though one or more of the Trustees are also _____[122] of the Trust. Difficulties arise in this circumstance and are considered in matters of law and enforcement. These are very unusual circumstances not encountered commonly.

When a person _____[123] declares that they hold property in Trust for certain Beneficiaries they are the _____[124] of the Trust and are the Trustee of the Trust. Trusts that are created by a _____[125] that declares himself Trustee for his own sole benefit are not legal Trusts. The Trust is not a legal Trust not because the _____[126] is Trustee but because the Trustee is the sole Beneficiary. Trusts where the _____[127] and Trustee are one of two or more Beneficiaries are valid Trusts.

When a Trustee dies, becomes _____[128] or subject to some _____[129] incapacity or resigns or is removed the Trustee fails but not the Trust as a new Trustee is appointed.

Notes:

[120] Beneficiary
[121] Trustees
[122] Beneficiaries
[123] gratuitously
[124] Settlor
[125] Settlor
[126] Settlor
[127] Settlor
[128] insane
[129] legal

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Section VI - Beneficiary Trustor/Creator

Definite Beneficiary Necessary
A Trust cannot be created in favor of a person who is not sufficiently identified as a Beneficiary of the Trust. Trusts can be created for Beneficiaries that are not specifically named by the Trust at the time of creation but who can be determined from existing facts at the time the Trust is created. An example would be a person leaving his estate to a Trust that stipulates the Beneficiaries to be the caretakers of his/her property, the caretakers being ascertained as the Beneficiaries at the time of the creation of the Trust. Trusts can therefore be created where the Beneficiaries are referred to as partners of the creator, servants, caretakers, or persons in employ of the creator or others designated in whatever manner the creator of the Trust elects to name the Beneficiaries. Unborn children can be named, for it is not necessary that Beneficiaries of a Trust should be in existence at the time of the formation of the Trust. As the unborn children can become Beneficiaries of a Trust, it can be created in favor of a corporation or company not yet organized. These non-existent entities may be named as Beneficiaries as long as they are formed or come into existence within the period of the rule against perpetuities. Trusts cannot be formed for deceased persons or entities that do not come into existence.

The Settlor as Beneficiary
A Settlor of a Trust may be the sole Beneficiary or one of many Beneficiaries. The owner of a properly will transfer it to a Trustee in Trust and the owner will receive the income off of the property for his lifetime and on his death the property is conveyed to other Beneficiaries. This type of Trust is usually called a Living Trust. A major disadvantage of this type of Trust construction is that a beneficial interest created and reserved to the Settlor of the Trust can be alienated or reached by his creditors even if the Trust construction stipulates otherwise in the terms.

Trustee as Beneficiary
It is possible in a Trust creation for the Settlor to appoint one of the Beneficiaries as Trustee of the Trust. A sole Trustee may never be the sole Beneficiary of a Trust. This type of a Trust construction is not recommended.

Capacity to Be Beneficiary
Even though a person has no capacity to enter into contracts they still being a natural person have capacity to accept and hold the legal title to property. Therefore, someone that is insane or an infant

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has capacity to be a Beneficiary of a Trust. Any entity, which has the capacity to take and hold legal title to property, can be a Beneficiary of a Trust. Examples are the United States, States, Countries, corporations, etc.

Lack of Capacity to Be Beneficiary
The question of capacity is determined on whether or not a person has capacity to hold the legal title to property. An example would be that a dead person could not hold legal title to property because he is not alive and this shows lack of capacity to be a Beneficiary. However under common law a woman could not own property apart from her husband but could be a Beneficiary of a Trust. Unincorporated Associations may not hold title to property but have capacity to be a Beneficiary of a Trust.

Married Women
Under common law, the wife could not own property apart from her husband. However Trusts were the only means that allowed women to enjoy the beneficial interest of property and tangible and intangible property apart from their husbands. The Trust also prevented the husband from assigning her interests to others. Now women enjoy unrestricted ownership of property and the legal and equitable interest in all types of property free from the claims or restrictions of her husband.

Unincorporated Associations
Under common law, an unincorporated association was not a legal entity and therefore could not hold legal title to property. A Trust for the benefit of unincorporated associations must be a beneficial interest in favor of the individual members of the unincorporated association at the time of the creation of the Trust. It can also be for the beneficial interest of those future members as long as the rule against perpetuities is not violated. In the United States a Trust for the benefit of an unincorporated non-charitable association is invalid on the grounds that the unincorporated association is not a legal entity and cannot be the Beneficiary of a Trust; only the individual members, current and future can hold beneficial interests as Beneficiaries of a Trust, as long as the rule of perpetuities is not violated in the expanse of the time of future members. There have been cases where the United States Courts have allowed these type of Trusts for unincorporated associations, however it could be a costly move to have a Trust revoked by the court and the property suddenly be subject to creditors and taxation.

Members of a Definite Class
So long as members of a definite class are named Beneficiaries of a Trust and they are ascertained

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to determine their membership of the class to be designated and their identity is determined by the description of the class the Trust is valid. The rule against perpetuities must not be violated in this process of identification. The Beneficiaries are usually relatives like children, grandchildren, nephews, nieces or heirs of next of kin of designated persons. They could also be members of a class of fraternal orders, business partners of the Settlor or the like.

Indefinite or General Purposes
Indefinite Trusts are where there are no definite Beneficiaries to hold beneficial interest in the Trust, where no Beneficiary benefits from the purpose and accomplishment of the Trust, and where the purpose of the Trust is general and not specific, usually fail and become a resulting Trust for the residuary legatee or next of kin of the Settlor.

Specific Non-Charitable Purposes
These are rare today and an example of a non-charitable purpose Trust would be a Trust for the benefit of the maintenance of a Gravestone or cemetery lot or for the benefit of a dog or a cat. Trusts of this nature are valid Trusts but not ordinary.

The Rule Against Perpetuities
Trusts that are created without duration and attempt to tie up property for an indefinite period are not valid Trusts. The period of the rule against perpetuities is 21 years. Therefore a Trust may not be created that will survive beyond a 21 years after the demise of the last identified Beneficiary. However a Trust may not last perpetually; it must end in conformity with the rule against perpetuities.

Who are Beneficiaries
The statement of intention of the Settlor determines who will enjoy beneficial interests of the Trust as Beneficiaries. Only one exception to this rule exists, where a legal or equitable interest is limited to a person for their lifetime and a similar interest is limited to his/her heirs the person acquires a legal or equitable interest in fee simple and the heirs receive no interest even though the Settlor intended for the heirs to benefit. Some States and Countries have held this rule invalid and that it has no application to personal property. A pitfall in the Living Trust scenario is the result of a Settlor conveying property in Trust to pay the income to himself for life and on his death to pay the principal to his heirs or next of kin, and where the Settlor is the sole Beneficiary of the Trust it is held that since the Settlor had an equitable life estate and an equitable remainder that was limited to his heirs or next of kin, that Shelley's Case was applicable and the heirs or next of kin could not benefit from the Trust.

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Extent of the Beneficiary's Interest
The manifestation of the intention of the Settlor determines the beneficial interest of the Beneficiary. A certificate of beneficial interest must evidence the Beneficiary's beneficial interest.

Disposition of Income and Principal
The Trustee, when so empowered by the Sett1or, determines the disposition of income and principal. On the other hand the Settlor may determine in the terms and conditions of the Trust what the dispositions of income and principal are to be and which Beneficiaries will receive a specified percent of the corpus of the Trust.

Discretionary and Non-Discretionary
When the Settlor creates the Trust he determines whether or not the Trust will be discretionary or non-discretionary in the empowerment of the Trustee. If discretionary, the Trustee may disburse whatever amount of the corpus of the Trust as he shall in his absolute discretion determine to any or all of the Beneficiaries of the Trust that are entitled to beneficial interest. In a non-discretionary Trust the Trustee must apply the corpus of the Trust in accordance with the extent of the interest of the Beneficiaries according to the manifestation of intention of the Settlor. The Trustee has no discretion in this type of Trust. When family Trusts are created by a Settlor whether the members of the person's family have a beneficial interest in the Trust depends on the statement of intention of the Settlor. Whether or not the Trust is discretionary or non-discretionary is determined by the declarations of intention of the Settlor. In personal Trusts where a Beneficiary is entitled to receive a part of the income or principal or to have any part applied to their use and my be entitled only to certain types of enjoyment under the Trust could be a discretionary Trust depending on the manifestation of intention of the Settlor.

Notes:

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Section VI - True or False?

193	A Trust can be created in favor of a person who is not sufficiently identified as a Beneficiary of the Trust.	T___ F___
	A Trust cannot be created for a person not sufficiently identified.	**False**
194	Trusts can be created for Beneficiaries that are not specifically named by the Trust at the time of creation but who can be determined from existing facts at the time the Trust is created.	T___ F___
		True
195	Trusts can be created where the Beneficiaries are referred to as partners of the creator, servants, caretakers, or persons in employ of the creator or others designated in whatever manner the creator of the Trust elects to name the Beneficiaries. Unborn children can be named, for it is not necessary that Beneficiaries of a Trust should be in existence at the time of the formation of the Trust. As the unborn children can become Beneficiaries of a Trust, it can be created in favor of a corporation or company not yet organized.	T___ F___
		True
196	Non-existent entities may be named as Beneficiaries as long as they are formed or come into existence within the period of rule of perpetuities.	T___ F___
		True
197	Trusts can be formed for deceased persons or entities that do not come into existence.	T___ F___
	Trusts cannot be formed for deceased persons.	**False**
198	Trusts may be created for one or more Beneficiaries at the discretion of the Trustee of the Trust.	T___ F___
	At the discretion of the Settlor of the Trust.	**False**
199	Interests of several Beneficiaries can be enjoyed simultaneously and successively.	T___ F___
		True

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200	Beneficiaries cannot enjoy the beneficial interest of a Trust for life and the beneficial interest could not then pass to the other Beneficiaries at his/her death, nor their interest could not pass to a child of the deceased Beneficiary or other designated entity.	T___ F___
	Beneficiary can enjoy the beneficial interest of a Trust.	**False**
201	Trusts can be created for the benefit of a single Beneficiary. These type of Trusts are usually used to convey property to a relative, usually a wife or child.	T___ F___
		True
202	Sometimes a Settlor will transfer property into Trust and become the sole Beneficiary of the Trust, usually to pay them income for a period of time until a trigger event like their death conveys the property and income to another Beneficiary.	T___ F___
		True
203	A Settlor of a Trust may not be the sole Beneficiary or one of many Beneficiaries.	T___ F___
	A Settlor of a Trust may be the sole Beneficiary.	**False**
204	A sole Trustee may never be the sole Beneficiary of a Trust.	T___ F___
		True
205	A major disadvantage of a Living Trust construction is that when a beneficial interest created and reserved to the Settlor of the Trust can be alienated or reached by his creditors even if the Trust construction stipulates otherwise in the terms.	T___ F___
		True
206	It is possible in a Trust creation for the Settlor to appoint one of the Beneficiaries as Trustee of the Trust.	T___ F___
		True
207	A sole Trustee may be the sole Beneficiary of a Trust.	T___ F___
	A sole Trustee may never be the sole Beneficiary of a Trust.	**False**
208	Even though a person has no capacity to transfer property or enter into contracts they still being a natural person have capacity to accept and hold the legal title to property.	T___ F___

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		True
209	Someone that is insane or an infant has capacity to be a Beneficiary of a Trust.	T___ F___
		True
210	Any entity who has the capacity to take and hold legal title to property can be a Beneficiary of a Trust.	T___ F___
		True
211	The question of capacity is determined on whether or not a person has capacity to hold the legal title to property.	T___ F___
		True
212	Under common law a woman could not own property apart from her husband but could be a Beneficiary of a Trust.	T___ F___
		True
213	Unincorporated Associations may hold title to property and have capacity to be a Beneficiary to a Trust.	T___ F___
	Unincorporated Associations may not hold title to property.	**False**
214	In ancient times Trusts were the only means that allowed women to enjoy the beneficial interest of property and tangible and intangible property apart from their husbands. The Trust also prevented the husband from assigning her interests to others.	T___ F___
		True
215	A Trust for the benefit of unincorporated associations must be a beneficial interest in favor of the individual members of the unincorporated association at the time of the creation of the Trust. It can also be for the beneficial interest of those future members as long as the rule against perpetuities is not violated.	T___ F___
		True
216	In the United States a Trust for the benefit of an unincorporated non-charitable association is invalid on the grounds that the unincorporated association is not a legal entity and cannot be the Beneficiary of a Trust, only the individual members, current and future can hold beneficial interest as Beneficiaries of a Trust, as long as the rule of perpetuities is not violated in the expanse of the time of future members.	T___ F___

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		True
217	So long as members of a definite class are named a Beneficiaries of a Trust and they are ascertained to determine their membership of the class to be designated and their identity is determined by the description of the class the Trust is valid.	T___ F___
		True
218	The rule against perpetuities must not be violated in the process of identification of Beneficiaries.	T___ F___
		True
219	Indefinite Trusts where there are no definite Beneficiaries to hold beneficial interest in the Trust, where no Beneficiary benefits from the purpose and accomplishment of the Trust, and where the purpose of the Trust is general and not specific, usually fail and become a resulting Trusts for the residuary legatee or next of kin of the Settlor.	T___ F___
		True
220	An example of a non-charitable purpose Trust would be a Trust for the benefit of the maintenance of a gravestone or cemetery lot or for the benefit or a dog or a cat. Trusts of this nature are valid Trusts but not ordinary.	T___ F___
		True
221	Trusts that are created without duration and attempt to tie up property for an indefinite period are not valid Trusts. The period of the rule against perpetuities is 21 years. Therefore a Trust may not be created that will survive beyond a 21 year period initially with certain renewal periods. However a Trust may not last perpetual, it must end in conformity with the rule against perpetuities.	T___ F___
		True
222	Where a testator intends to make a beneficial gift and does not impose upon a legatee any binding restrictions as to his disposition of the property in any manner or form. In such a case the question of compelling the legatee to form a Trust to administer the disposition of the property is entirely optional and often a Trust is the result of the matter.	T___ F___
	The text does not support this scenario regarding a Legatee.	**False**

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223	Those who hold incidental beneficial interest with a Trust are Beneficiaries of a Trust but are those who profit as a result of an action of the Trust or Trustees of the Trust.	T___ F___
	Those who hold incidental beneficial interest with a Trust are <u>not</u> Beneficiaries of a Trust.	**False**
224	A Trust purchases some bonds from A who in turn acts as an agent for the Trust and sells the bonds to B and makes profit from the sale of the bonds as well as a profit on the original sale of the bonds to the Trust. This is profit by incidental Beneficiary.	T___ F___
	This is profit by incidental <u>benefit</u>.	**False**
225	The manifestation of intention of the Settlor determines who will enjoy beneficial interest of the Trust as Beneficiaries.	T___ F___
		True
226	A pitfall in the Living Trust scenario is the result of a Settlor conveying property in Trust to pay the income to himself for life and on his death to pay the principal to his heirs or next of kin, and where the Settlor is the sole Beneficiary of the Trust it is held that since the Settlor had an equitable life estate and an equitable remainder that was limited to his heirs or next of kin, that Shelley's Case was applicable and the heirs or next of kin could not benefit from the Trust.	T___ F___
		True
227	The manifestation of the intention of the Settlor does not determine the beneficial interest of the Beneficiary. A certificate of beneficial interest must evidence the Beneficiary's beneficial interest.	T___ F___
	The manifestation of the intention of the Settlor <u>does</u> determine.	**False**
228	The Trustee when so empowered by the Settlor determines the disposition of income and principal.	T___ F___
		True
229	The Settlor may not determine in the terms and conditions of the Trust what the disposition of income and principal are to be and to which Beneficiaries will receive the percent of the corpus of the Trust.	T___ F___
	The Settlor <u>may</u> determine in the terms and conditions of the Trust.	**False**

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230	When the Settlor creates the Trust it is determined whether or not the Trust will be discretionary or non-discretionary in the empowerment of the Trustee by the Settlor in the terms and conditions of the Trust.	T___ F___
		True
231	If discretionary, the Trustee may not disperse whatever amount of the corpus of the Trust as he shall in his absolute discretion to any or all of the Beneficiaries of the Trust that are entitled to beneficial interest.	T___ F___
	If discretionary, the Trustee may disperse whatever amount of the corpus.	**False**
232	In a non-discretionary Trust the Trustee must apply the corpus of the Trust in accordance with the extent of the interest of the Beneficiaries according to the manifestation of intention of the Settlor. The Trustee has complete discretion in this type of Trust. When family Trusts are created by a Settlor whether the members of the person's family have a beneficial interest in the Trust depends on the manifestation of intention of the Settlor.	T___ F___
	The Trustee has no discretion in a non-discretionary trust.	**False**

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