Let My Trustees Go! Planning to Minimize or Eliminate Virginia and Other State Income Taxes on Trusts (PowerPoint)

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LET MY TRUSTEES GO!
PLANNING TO MINIMIZE OR ELIMINATE VIRGINIA
AND OTHER STATE INCOME TAXES ON TRUSTS

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SCOPE

- Introduction
- How Do States Tax Trust Income?
- Is Imposition of Tax Constitutional?
- How Do Specific States Tax Trust Income?
- What Are the Planning Considerations for New Trusts?
- What Are the Planning Considerations for Existing Trusts?
- Why is Reliance on Availability of Home State Courts Misplaced?
- What Are Some Other Relevant Issues?
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➤ Background

➤ The Opportunity
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  • The Opportunities Are Great
  • Federal vs. State Tax Savings
  • People Are Doing It
  • The Risks of Inaction Are Real
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- Determine Which State Statutes Apply
- Determine If State Courts Have Jurisdiction
- Determine Whether Imposition of Tax Violates US Constitution
  - Due Process Clause
  - Commerce Clause
HOW DO STATES TAX TRUST INCOME?

- Introduction
- Bases of Taxation
- Trust Created by Will of Resident
- Inter Vivos Trust Created by Resident
- Trust Administered in State
- Resident Trustee
- Resident Beneficiary

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➢ Introduction

➢ Early United States Supreme Court Cases
  • Safe Deposit and Trust Co. v. Virginia (1929)
  • Guaranty Trust Co. v. Virginia (1938)
  • Greenough v. Tax Assessors of Newport (1947)

➢ State Court Cases Before Quill
  • Mercantile-Safe Deposit & Trust Co. v. Murphy (NY 1964)
  • McCulloch v. Franchise Tax Board (CA 1964)
  • Taylor v. State Tax Commissioner (NY 1981)
  • Pennoyer v. Taxation Div. Dir. (NJ 1983)
  • Potter v. Taxation Div. Dir. (NJ 1983)
IS IMPOSITION OF TAX CONSTITUTIONAL? (Cont’d)

➢ State Court Cases Before Quill (Cont’d)
  • In re Swift (MO 1987)
  • Blue v. Dep’t of Treasury (MI 1990)
  • Westfall v. Dir. of Revenue (MO 1991)

➢ Quill Corporation v. North Dakota (US 1992)

➢ Post-Quill State Court Cases
  • District of Columbia v. Chase Manhattan Bank (DC 1997)
  • Chase Manhattan Bank v. Gavin (CT 1999)
IS IMPOSITION OF TAX CONSTITUTIONAL? (Cont’d)

➢ Recent State Court Cases
  • Residuary Trust A v. Director (NJ 2015)
  • McNeil v. Commonwealth (PA 2013)
  • Linn v. Dep’t of Revenue (IL 2013)

➢ Constitutional Analysis

➢ Limitations on Personal Jurisdiction
  • Walden v. Fiore (US 2014)
  • Bernstein v. Stiller (E.D. PA 2013)
IS IMPOSITION OF TAX CONSTITUTIONAL? (Cont’d)

➢ Taxation of Trust Administered in State

- Wisconsin Dep’t of Taxation v. Pabst (WI 1961)
- Pabst v. Wisconsin Dep’t of Taxation (WI 1963)

➢ Taxation of Resident Trustee

➢ Taxation of Trustee of Trust Having Resident Beneficiary

- McCulloch v. Franchise Tax Board (CA 1964)
- In the Matter of the Appeal of the First National Bank of Chicago (CA 1964)
- In the Matter of the Appeal of C. Pardee Erdman (CA 1970)
- Kimberly Rice Kaestner 1992 Family Trust v. N.C. Dep’t of Revenue (NC 2016)
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➢ Filing Requirement
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➢ Grantor-Trust Rules

➢ Distribution Deduction

➢ Tax Rates

➢ Resident Trust
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➢ Nonresident Trust – Trust Not Resident Trust
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➤ DING Trust Option
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➤ Planning

➤ Trustee Duty to Minimize Tax
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- Northeast (Other Than New York)
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  - Maryland

- South
  - Florida
  - North Carolina
  - Virginia

- California
WHAT ARE THE PLANNING CONSIDERATIONS FOR NEW TRUSTS?

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- Trust Created by Will of Resident
- Inter Vivos Trust Created by Resident
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WHAT ARE THE PLANNING CONSIDERATIONS FOR EXISTING TRUSTS?

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- Inter Vivos Trust Created by Resident
- Trust Administered in State
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- Effecting the Move
- Trustee Duty to Minimize Tax
- Federal Transfer-Tax Consequences
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- Ethical Concerns
- Practical Concerns
- What Can States Do?
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