



ACTEC Mid-Atlantic Fellows Institute

Minimizing or Eliminating State Income Taxes on Nongrantor Trusts

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Scope

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

Introduction (p. 1)

➤ Background

➤ Opportunity

- Introduction
- Stakes Are High—in 2014, 59,685 resident fiduciaries paid \$342 million of NY income tax, much of which could have been eliminated
- Opportunities Are Great—by structuring trust to escape state income tax, the following could have been saved on \$1 million long-term capital gain:
 - CA—\$108,220
 - NYC—\$107,102

Introduction

Continued

- Federal vs. State Tax Savings—In 2018, including \$1 million long-term capital gain in DNI to CA beneficiary rather than taxing the gain to trust would have cost—not saved— \$74,511
- People Are Doing It—From 1987–2003, Sitkoff & Schanzenbach found that \$100 billion of federally reported trust assets (about 10% of total) moved to states that:
 - Had lengthened or abolished RAP for trusts
 - Did not tax income of trust created by nonresident
- Risks of Inaction Are Real
- Implications of 2017 Tax Act—Grantor trusts might no longer make sense

➤ Caveats

- Resident vs. Domiciliary
- Section 645 Election

How Do States Tax Trust Income? (p. 7)

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

Is Imposition of Tax Valid? (p. 11)

➤ Pertinent United States Supreme Court Cases

- Brooke v. City of Norfolk (1928)
- Safe Deposit and Trust Co. v. Virginia (1929)
- Guaranty Trust Co. v. Virginia (1938)
- Greenough v. Tax Assessors of Newport (1947)
- Hanson v. Denckla (1958)
- Quill Corporation v. North Dakota (1992)
- South Dakota v. Wayfair, Inc. (2018)
- North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (2019)

Is Imposition of Tax Valid?

Continued

➤ State Court Cases Before Quill

- Mercantile-Safe Deposit & Trust Co. v. Murphy (NY 1964)
- Taylor v. State Tax Commissioner (NY 1981)
- Pennoyer v. Taxation Div. Dir. (NJ 1983)
- Potter v. Taxation Div. Dir. (NJ 1983)
- In re Swift (MO 1987)
- Blue v. Dep't of Treasury (MI 1990)
- Westfall v. Dir. of Revenue (MO 1991)

➤ 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 Valid?

Continued

➤ Recent State Court Cases

- Residuary Trust A v. Director (NJ 2015)
- Linn v. Dep't of Revenue (IL 2013)
- Fielding for MacDonald v. Commissioner of Revenue (MN 2018)
- McNeil v. Commonwealth (PA 2013)

➤ Constitutional Analysis

➤ Taxation of Trust Administered in State

- North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (US 2019)
- Wisconsin Dep't of Taxation v. Pabst (WI 1961)
- Pabst v. Wisconsin Dep't of Taxation (WI 1963)

Is Imposition of Tax Valid?

Continued

➤ Taxation of Resident Trustee

- North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (US 2019)
- McCulloch v. Franchise Tax Board (CA 1964)

➤ 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)
- North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (US 2019)

How Do Specific States Tax Trust Income?

➤ **New York State** (p. 45)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates—Up to 8.82% over \$1,077,550
- Resident Trust
 - Trust created by NYS testator (domiciliary)
 - Trust created by NYS trustor (domiciliary)

How Do Specific States Tax Trust Income?

Continued

➤ **New York State** (continued)

- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust
 - No NYS trustee
 - No NYS asset
 - No NYS source income
 - Trustee must file informational return

How Do Specific States Tax Trust Income?

Continued

➤ **New York State** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all NYS taxable income
 - Nonresident Trust – Taxed on NYS source income
 - Estimated Payments – Required
 - CRT– Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Not available

How Do Specific States Tax Trust Income?

Continued

➤ **New York State** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$68,479
 - Including in DNI for NYS beneficiary costs \$34,783

How Do Specific States Tax Trust Income?

Continued

➤ **New York City** (p. 53)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 12.696% over \$1,077,550
- Resident Trust
 - Trust created by NYC testator (domiciliary)
 - Trust created by NYC trustor (domiciliary)

How Do Specific States Tax Trust Income?

Continued

➤ **New York City** (continued)

- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust
 - No NYC trustee
 - No NYC asset
 - No NYC source income
 - Trustee must file informational return

How Do Specific States Tax Trust Income?

Continued

➤ **New York City** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all NYC taxable income
 - Nonresident Trust – Not taxed
 - Estimated Payments – Required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Not available

How Do Specific States Tax Trust Income?

Continued

➤ **New York City** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$107,102
 - Including in DNI for NYC beneficiary costs \$73,108

How Do Specific States Tax Trust Income?

Continued

➤ Connecticut (p. 63)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rate – 6.99%
- Resident Trust
 - Trust created by CT testator (resident)
 - Trust created by CT trustor (resident)

How Do Specific States Tax Trust Income?

Continued

➤ Connecticut (continued)

- Nonresident Trust – Trust Not Resident Trust
- Chase Manhattan Bank v. Gavin (CT 1999)
 - CT may tax trust created by CT testator
 - CT may tax inter vivos trust created by CT trustor if sole beneficiary
 - Is entitled to current income
 - Has testamentary power of appointment
 - Will receive all trust assets upon attaining specified age

How Do Specific States Tax Trust Income?

Continued

➤ Connecticut (continued)

- Taxation of Trust
 - Resident Trust
 - Taxed on all CT taxable income
 - For inter vivos trust, tax apportioned based on number of resident and nonresident noncontingent beneficiaries
 - Nonresident Trust – Taxed on CT source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level

How Do Specific States Tax Trust Income?

Continued

➤ Connecticut (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available (subject to Gavin)
- Planning
 - Resident testator/trustor
 - Nonresident testator/trustor

How Do Specific States Tax Trust Income?

Continued

➤ **Connecticut** (continued)

- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$69,879
 - Including in DNI for CT beneficiary costs \$36,681

How Do Specific States Tax Trust Income?

Continued

➤ Delaware (p. 67)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 6.60% over \$60,000
- Resident Trust
 - Trust created by DE testator (domiciliary)
 - Trust created by DE trustor (domiciliary)
 - Trust having DE trustee (resident)

How Do Specific States Tax Trust Income?

Continued

➤ Delaware (continued)

- Nonresident Trust – Trust Not Resident Trust
- Taxation of Trust
 - Resident Trust
 - Taxed on all DE taxable income
 - Nonresident beneficiary deduction – future beneficiary usually treated as nonresident
 - Nonresident Trust – Taxed on DE source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level

How Do Specific States Tax Trust Income?

Continued

➤ **Delaware** (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available
- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor

How Do Specific States Tax Trust Income?

Continued

➤ Delaware (continued)

- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$64,964
 - Including in DNI for DE beneficiary costs \$31,490

How Do Specific States Tax Trust Income?

Continued

➤ **District of Columbia** (p. 69)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 8.95% over \$1 million
- Resident Trust
 - Trust created by DC testator (domiciliary)
 - Trust created by DC trustor (domiciliary)

How Do Specific States Tax Trust Income?

Continued

➤ **District of Columbia** (continued)

- Nonresident Trust – Trust Not Resident Trust
- District of Columbia v. Chase Manhattan Bank (DC 1997)
 - DC may tax trust created by DC testator
 - Whether DC may tax inter vivos trust created by DC trustor not addressed
- Taxation of Trust
 - Resident Trust – Taxed on all DC taxable income
 - Nonresident Trust – not taxed
 - Estimated Payments – Not required
 - CRT – No specific guidance

How Do Specific States Tax Trust Income?

Continued

➤ **District of Columbia** (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available
- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor

How Do Specific States Tax Trust Income?

Continued

➤ **District of Columbia** (continued)

- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$85,016
 - Including in DNI for DC beneficiary costs \$50,806

How Do Specific States Tax Trust Income?

Continued

➤ **Maryland** (p. 71)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates
 - State – Up to 5.75% over \$250,000
 - County – Between 1.75%–3.20%
 - State/County – Up to 8.95% over \$250,000

How Do Specific States Tax Trust Income?

Continued

➤ **Maryland** (continued)

- Resident Trust
 - Trust created by MD testator (domiciliary)
 - Trust created by MD trustor (domiciliary)
 - Trust principally administered in MD
- Nonresident Trust – Trust Not Resident Trust
- Taxation of Trust
 - Resident Trust
 - Taxed on all MD taxable income
 - Nonresident beneficiary deduction – applicability to future beneficiaries unclear

How Do Specific States Tax Trust Income?

Continued

➤ **Maryland** (continued)

- Taxation of Trust (continued)
 - Nonresident Trust – Taxed on MD source income
 - Estimated Payments – Required
 - CRT – No specific guidance
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Maryland** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$87,868
 - Including in DNI for MD beneficiary costs \$54,695 (Baltimore)

How Do Specific States Tax Trust Income?

Continued

➤ **New Jersey** (p. 73)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 10.75% over \$5 million
- Resident Trust
 - Trust created by NJ testator (domiciliary)
 - Trust created by NJ trustor (domiciliary)

How Do Specific States Tax Trust Income?

Continued

➤ **New Jersey** (continued)

- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust
 - No NJ asset
 - No NJ source income
 - No NJ trustee
 - Trustee must file informational return

How Do Specific States Tax Trust Income?

Continued

➤ **New Jersey** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all NJ gross income
 - Nonresident Trust – Taxed on NJ source income
 - Estimated Payments – Required
 - CRT – taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **New Jersey** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$74,484
 - Including in DNI for NJ beneficiary costs \$41,585

How Do Specific States Tax Trust Income?

Continued

➤ **Pennsylvania** (p. 76)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules – Not available for irrevocable trust
- Distribution Deduction
- Tax Rate – 3.07%
- Resident Trust
 - Trust created by PA testator (resident)
 - Trust created by PA trustor (resident)

How Do Specific States Tax Trust Income?

Continued

➤ Pennsylvania (continued)

- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust – McNeil v. Commonwealth (PA 2013)
 - No PA trustee
 - No PA asset
 - No PA source income
 - Even if discretionary beneficiaries are PA residents
 - McNeil followed by In re John S. Coates 2009 Trust (Pa. Bd. Fin. & Rev. 2017)

How Do Specific States Tax Trust Income?

Continued

➤ **Pennsylvania** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all PA taxable income
 - Nonresident Trust – Taxed on PA source income
 - Estimated Payments – Required
 - CRT – Taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Pennsylvania** (continued)

- Planning
 - Resident testator/trustor
 - Nonresident testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$30,700
 - Including in DNI for PA beneficiary saves \$2,469

How Do Specific States Tax Trust Income?

Continued

➤ Georgia (p. 81)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 6.0% over \$7,000
- Resident Trust – Trustee managing funds or property for benefit of GA resident
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ Georgia (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all GA taxable net income
 - Nonresident Trust – Taxed on GA source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ Georgia (continued)

- Planning
 - Post-Kaestner — Nonresident trustee not taxable in certain circumstances (Ga. Policy Bln. IT-2019-02)
 - Resident/Nonresident trustee might not be taxable in other situations
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$59,729
 - Including in DNI for GA beneficiary costs \$26,365

How Do Specific States Tax Trust Income?

Continued

➤ North Carolina (p. 85)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rate – 5.499%
- Resident Trust – Trustee managing funds or property for benefit of NC resident
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ North Carolina (continued)

- Exempt Resident Trust – North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (US 2019)
 - Nonresident trustee not taxed even though discretionary beneficiaries were NC residents
- Taxation of Trust
 - Resident Trust – Taxed on all NC taxable income
 - Nonresident Trust – Taxed on NC source income
 - Estimated Payments – Not required
 - CRT – No specific guidance

How Do Specific States Tax Trust Income?

Continued

➤ North Carolina (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available
- Planning
 - Post-Kaestner—Nonresident trustee not taxable in certain circumstances (N.C. Important Notice)
 - Resident/Nonresident trustee might not be taxable in other situations
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$54,974
 - Including in DNI for NC beneficiary cost \$21,340

How Do Specific States Tax Trust Income?

Continued

➤ **South Carolina** (p. 87)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 7.0% over \$14,860
- 44% Net Capital Gain Deduction Available
- Resident Trust – Trust Administered in SC
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ **South Carolina** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all SC taxable income
 - Nonresident Trust – Taxed on SC source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **South Carolina** (continued)

- Planning
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$38,674
 - Including in DNI for SC beneficiary costs \$4,398

How Do Specific States Tax Trust Income?

Continued

- **Tennessee** (Hall Income Tax); Interest and Dividends Only (p. 88)
 - Filing Requirement
 - Resident Trust
 - Nonresident Trust
 - Grantor-Trust Rules
 - Distribution Deduction
 - Tax Rate – 3.0% (Repealed in 2021)
 - Resident Trust – Resident Trustee Receiving Taxable Interest and Dividend Income for Resident Beneficiary
 - Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ **Tennessee** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all TN taxable interest and dividend income
 - Nonresident Trust – Taxed on all taxable interest and dividend income from TN sources
 - Estimated Payments – Not required
 - CRT – Trustee
 - Not required to file return or pay tax
 - Must report taxable income to resident beneficiary

How Do Specific States Tax Trust Income?

Continued

➤ **Tennessee** (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available
- Planning
- Trustee Duty to Minimize Tax

How Do Specific States Tax Trust Income?

Continued

➤ Virginia (p. 90)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 5.75% over \$17,000
- Resident Trust
 - Trust created by VA testator (domiciliary)
 - Trust created by VA trustor (domiciliary)
 - Trust administered in VA (until 7/1/19)

How Do Specific States Tax Trust Income?

Continued

➤ **Virginia** (continued)

- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust – Numerous rulings determine resident trust to be taxed as nonresident trust where minimal VA contacts exists
- Taxation of Trust
 - Resident Trust – Taxed on all VA taxable income
 - Nonresident Trust – Taxed on VA source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level

How Do Specific States Tax Trust Income?

Continued

➤ **Virginia** (continued)

- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available
- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor

How Do Specific States Tax Trust Income?

Continued

➤ **Virginia** (continued)

- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$57,225
 - Including in DNI for VA beneficiary costs \$23,848

How Do Specific States Tax Trust Income?

Continued

➤ Illinois (p. 96)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rate
 - Net income tax – 4.95%
 - Personal Property Tax Replacement Income Tax – 1.50%
 - Net income tax/Personal Property Tax Replacement Income Tax – 6.45%

How Do Specific States Tax Trust Income?

Continued

➤ Illinois (continued)

- Resident Trust
 - Trust created by IL testator (domiciliary)
 - Trust created by IL trustor (domiciliary)
- Nonresident Trust – Trust Not Resident Trust
- Exempt Resident Trust – Linn v. Dep't of Revenue (IL 2013)
 - No IL trustee
 - No IL asset
 - No IL source income
 - No IL beneficiary

How Do Specific States Tax Trust Income?

Continued

➤ **Illinois** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all IL net income
 - Nonresident Trust – Taxed on IL source income
 - Estimated Payments – Not required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Illinois** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$64,500
 - Including in DNI for IL beneficiary costs \$16,331

How Do Specific States Tax Trust Income?

Continued

➤ **Ohio** (p. 99)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 4.997% over \$217,400
- Resident Trust
 - Trust created by OH testator (domiciliary)
 - Trust created by OH trustor (domiciliary) if current discretionary beneficiary (domiciliary)

How Do Specific States Tax Trust Income?

Continued

➤ **Ohio** (continued)

- Nonresident Trust – Trust not Resident Trust
- Taxation of Trust
 - Resident Trust – Taxed on all modified OH taxable income
 - Nonresident Trust – Taxed on OH source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Ohio** (continued)

- Planning
 - Domiciliary testator/trustor
 - Nondomiciliary testator/trustor
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$47,425
 - Including in DNI for OH beneficiary costs \$14,228

How Do Specific States Tax Trust Income?

Continued

➤ **Arizona** (p. 102)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 4.54% over \$158,996
- Resident Trust – Trust With Resident Fiduciary
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ **Arizona** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all AZ taxable income
 - Nonresident Trust – Taxed on AZ source income
 - Estimated Payments – Not required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Arizona** (continued)

- Planning
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$32,961
 - Including in DNI for AZ beneficiary costs \$10,187

How Do Specific States Tax Trust Income?

Continued

➤ **Colorado** (p. 104)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rate
 - Regular Tax – 4.63%
 - AMT – 3.47% of Colorado AMTI over regular tax
- Resident Trust – Trust Administered in CO
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ **Colorado** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all CO taxable income
 - Nonresident Trust – Taxed on CO source income
 - Estimated Payments – Not required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **Colorado** (continued)

- Planning
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$46,286
 - Including in DNI for CO beneficiary costs \$12,575

How Do Specific States Tax Trust Income?

Continued

➤ **California** (p. 106)

- Filing Requirement
 - Resident Trust
 - Nonresident Trust
- Grantor-Trust Rules
- Distribution Deduction
- Tax Rates – Up to 13.30% over \$1 million
- Resident Trust
 - Trust with resident fiduciary
 - Trust with resident noncontingent beneficiary
- Nonresident Trust – Trust Not Resident Trust

How Do Specific States Tax Trust Income?

Continued

➤ **California** (continued)

- Taxation of Trust
 - Resident Trust – Taxed on all CA taxable income (apportioned if resident and nonresident fiduciaries and/or beneficiaries)
 - Nonresident Trust – Taxed on CA source income
 - Estimated Payments – Required
 - CRT – Not taxed at trust level
- DING Trust Option
 - Incomplete gift, nongrantor trust
 - Available

How Do Specific States Tax Trust Income?

Continued

➤ **California** (continued)

- Planning
- Trustee Duty to Minimize Tax
- Examples – \$1 million long-term capital gain
 - Structuring trust to eliminate tax saves \$108,220
 - Including in DNI for CA beneficiary costs \$74,511

What Are Planning Considerations for New Trusts? (p. 111)

- How to Approach Issue
 - Determine Which State Statutes Apply
 - Determine Whether Imposition of Tax Violates US Constitution
 - Due Process Clause
 - Dormant Commerce Clause
- Trust Created by Will of Resident
- Inter Vivos Trust Created by Resident
- Trust Administered in State
- Trust Having Resident Trustee
- Trust Having Resident Beneficiary

What Are Planning Considerations for Existing Trusts? (p. 116)

- Introduction
- Trust Created by Will of Resident
- Inter Vivos Trust Created by Resident
- Trust Administered in State
- Trust Having Resident Trustee
- Trust Having Resident Beneficiary
- Effecting Move
- Trustee Duty to Minimize Tax

What Are Planning Considerations for Existing Trusts?

Continued

- Federal Transfer-Tax Consequences
- Limitations on Personal Jurisdiction
 - General Principles
 - Perils for Taxing State of Litigating in Foreign Court
 - Taxpayers' Options in Tax Controversies

Why Is Reliance on Availability of Home State Courts Misplaced? (p. 130)

- Exercise of Jurisdiction
- Full Faith and Credit

What Are Other Relevant Issues? (p. 136)

- Simply Paying Tax is Risky
- Filing Position
- Establishing Residence of Future Beneficiary
- Establishing Place of Administration
- Choosing Jurisdiction for Long-Term Trust
- Source Income
- Combining Nonresident Trust With Resident Adviser, Protector, or Committee

What Are Other Relevant Issues?

Continued

- Changing Testator or Trustor by Exercise of Power
- State Income Taxation of CRT
- Self-Settled Trust Option – The “DING Trust”
- Ethical Concerns
- Practical Concerns
- What Can States Do?

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Minimizing or Eliminating State Income Taxes on Nongrantor Trusts

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