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Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2833

Date: 26-Oct-20
From: Steve Leimberg's Estate Planning Newsletter
Subject: [Steve Oshins Releases 9th Annual Dynasty Trust State Rankings Chart](#)

□ *The [9th Annual Dynasty Trust State Rankings Chart](#) factors in the new era of Dynasty Trusts. This Chart is an easy-to-use summary of leading Dynasty Trust states that shows the material differences among the states and ranks them according to usability and flexibility. Planners often focus on the multi-generational estate tax benefits of a Dynasty Trust.*

This newsletter describes a number of additional benefits that can be obtained with a Dynasty Trust, some of which often go unnoticed and are therefore undervalued by planners. This includes creditor and divorce protection, federal and state income tax shifting, state income tax avoidance, income tax basis planning and avoidance of the widow's election. □

Frequent LISI contributor **Steve Oshins, Esq., AEP (Distinguished)** authors three different annual state rankings charts and one state income tax chart:

- [The Annual Domestic Asset Protection Trust State Rankings Chart](#)
- [The Annual Dynasty Trust State Rankings Chart](#)
- [The Annual Trust Decanting State Rankings Chart](#)
- [The Annual Non-Grantor Trust State Income Tax Chart](#)

Steve recently updated and released his [9th Annual Dynasty Trust State Rankings Chart](#).

Steven J. Oshins, Esq., AEP (Distinguished) is a member of the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He was inducted into the NAEP Estate Planning Hall of Fame® in 2011. He was named one of the 24 □ Elite Estate Planning Attorneys □ and the □ Top Estate Planning Attorney of 2018 □ by *The Wealth Advisor*. Steve was also named one of the Top 100 Attorneys in *Worth* and is listed in *The Best Lawyers in America*® which also named him the Las Vegas Trusts and Estates/Tax Law Lawyer of the Year in 2012, 2015, 2016, 2018 and 2020. He can be reached at 702-341-6000, ext. 2 or soshins@oshins.com. His law firm's website is www.oshins.com.

Now, here is Steve's commentary:

EXECUTIVE SUMMARY:

The Tax Cuts and Jobs Act of 2017 essentially doubled the federal estate and gift tax exemption which, after inflationary increases, is now \$11.58 million per person, or \$23.16 million per married couple. Therefore, very few people are subject to a federal estate tax. This exemption is increasing each year by an inflationary factor, but is scheduled to be cut back in half in 2026.

COMMENT:

I. Planning Opportunities

Historically, the avoidance of estate taxes was generally considered the most important reason to use Dynasty Trusts. However, with the federal estate tax exemption currently at \$11.58 million, so many families are no longer subject to the tax that there are other features that are more important for many of our clients.

Creditor and Divorce Protection. Creditor protection and divorce protection might be the most compelling reason to use Dynasty Trusts. Very simply, outright transfers are subject to the claims of the creditors and divorcing spouses of the recipients of the transferred assets. That is generally not true of transfers in Dynasty Trusts, provided said trusts are properly drafted and/or situated in a protective jurisdiction.

Federal and State Income Tax Shifting. Income shifting is also very important. This is true both for federal income tax purposes and for state income tax purposes. An outright transfer to an individual causes all income earned by the transferred assets and capital gains incurred as a result of sales of those assets to be taxed at the individual's federal and state income tax rates, whereas a well-drafted trust will allow the trustee to sprinkle the income to taxpayers in lower tax brackets.

State Income Tax Avoidance. Also, depending upon any state income tax long-arm statutes that may apply, there is often an opportunity to avoid incurring state income taxes by simply accumulating the income in a trust rather than distributing unwanted income to a beneficiary who resides in a state with a state income tax who doesn't need or want the income. This opportunity was highlighted in the recent Kaestner decision which drew national attention. Suddenly, possibly as a result of that decision, state income tax avoidance using non-grantor trusts became one of the hottest areas of practice. This planning is further magnified by the \$10,000 State & Local Tax Deduction limitations added via the 2017 Tax Act. The new inability to deduct state income taxes against federal income tax has substantially increased the tax savings for those who choose to do this planning.

Income Tax Basis Planning. Passing assets in trust rather than outright allows an independent trustee or trust protector to give a beneficiary a formula general power of appointment at death over assets with an income tax basis lower than fair market value, but not over assets with an income tax basis higher than fair market value. Compare this with the common situation where a Dynasty Trust isn't used and instead the transfers are made outright so that all assets get a new income tax basis at the beneficiary's death, including assets that will receive a step-down in income tax basis.

Avoidance of the Widow's Election. If inherited assets are distributed outright to the beneficiary, then at the beneficiary's death those assets are included in the Widow's Election calculation for a decedent living in a common law jurisdiction, as opposed to a community property jurisdiction. For those beneficiaries who were trying to minimize their spouse's inheritance, this can result in a very big difference in that the widow can take a percentage of these assets by electing to take against the will of the decedent.

II. The Chart

The [9th Annual Dynasty Trust State Rankings Chart](#) ranks the top 12 Dynasty Trust states. Although there are a handful of states that would be ranked relatively close to the 12th state, it is so unlikely that an estate planner would select a state that ranks outside of the first tiers of Dynasty Trust states that the Chart ends at 12.

The top four Dynasty Trust states, based on the factors in the Chart, are: 1. South Dakota (99.5 points), 2. Nevada (98.5 points), 3. Tennessee (95 points) and 4. Alaska (93.5 points). There is a drop-off after these four states. There appears to be a Tier One made up of the first four states, followed by a Tier Two made up of the next seven states which have nearly identical points ranging from 83.5 to 88. This essentially means that slightly different weights could completely change the order of the Tier Two states, so the reader should take this to mean that they are all nearly in a seven-way tie.

III. Conclusion

Dynasty Trusts are no longer primarily focused on estate tax savings. The Tax Cuts and Jobs Act of 2017 has changed much of the emphasis on federal estate tax planning.

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HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Oshins

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9th Annual Dynasty Trust State Rankings Chart

Rank	State	Perpetuities Statute	Rule Against Perpetuities (40% weight)	State Income Tax (25% weight)	Third-Party Spendthrift Trust Provision Effective Against Divorcing Spouse/Child Support (Divorcing Spouse – 7.5% weight/Child Support – 2.5% weight)	Discretionary Trust Protected from Divorcing Spouse/Child Support (2.5% weight)	Domestic Asset Protection Trust State Ranking (10% weight)	Trust Decanting State Ranking (10% weight)	Non-Judicial Settlement Agreement Statute (2.5% weight)	Total Score
1	SD	SD Codified L § 43-5-8	Perpetual	No	Protected	Protected	Ranked #2	Ranked #1	Yes	99.5
2	NV	NV Rev Stat § 111.1031	365 years	No	Protected	Protected	Ranked #1	Ranked #2	Yes	98.5
3	TN	TN Code § 66-1-202(f)	360 years	No (except dividends/ interest on residents)	Protected	Protected	Ranked #6 (tie)	Ranked #4	Yes	95
4	AK	AK Stat § 34.27.051	Perpetual/ 1,000 years if exercise power of appointment	No	Protected	Protected	Ranked #8	Ranked #8 (tie)	No	93.5
5 (tie)	RI	RI Gen L § 34-11-38	Perpetual	No (except residents)	Protected	Protected	Ranked #9	Ranked #14	No	88
5 (tie)	WY	WY Stat § 34-1-139	1,000 years	No	Divorcing spouse = Protected Child support = Not Protected (WY Stat § 4-10-503(b))	Protected	Ranked #12	Ranked #13	Yes	88
7 (tie)	DE	25 DE Code § 503	Perpetual for personal property/ 110 years for real estate	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Garretson v. Garretson (1973))	Protected	Ranked #6 (tie)	Ranked #3	Yes	86
7 (tie)	OH	Ohio Rev Code § 2131.09(B) and (C)	Perpetual/ 1,000 years if exercise power of appointment	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Ohio Rev Code § 5805.02(B)(1))	Protected	Ranked #3	Ranked #6	Yes	86
9	MO	MO Rev Stat § 456.025	Perpetual	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Mo. Rev. Stat. § 456.5-503(2))	Protected	Ranked #4	Ranked #7	Yes	85
10	NH	NH Rev Stat § 564:24	Perpetual	No (except dividends, interest on residents)	Divorcing spouse = Not Protected Child support = Not Protected (NH Rev Stat § 564-B:5-502)	Protected	Ranked #11	Ranked #5	Yes	84
11	IL	765 ILCS 305/3	Perpetual	No (except residents)	Divorcing spouse = Protected Child support = Not Protected (735 ILCS 5/2-1403 codifying In re Matt (1985))	Protected	None	Ranked #8 (tie)	Yes	83.5
12	FL	FL Stat § 689.225(2)(f)	360 years	No	Divorcing spouse = Not Protected Child support = Not Protected (FL Stat § 736.0503(2)(a) codifying Bacardi v. White (1985))	Writ of garnishment allowed for spouse, former spouse, child support (FL Stat § 736.0503(3); Berlinger v. Casselberry (2013))	None	Ranked #15	Yes	70

*The Domestic Asset Protection Trust State Ranking column is based on the 11th Annual Domestic Asset Protection Trust State Rankings Chart created in April 2020 at http://www.oshins.com/images/DAPT_Rankings.pdf.

*The Trust Decanting State Ranking column is based on the 7th Annual Trust Decanting State Rankings Chart created in January 2020 at http://www.oshins.com/images/Decanting_Rankings.pdf.

*This Dynasty Trust State Rankings Chart created in October 2020. Original Dynasty Trust State Rankings Chart created in October 2012.

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