Benefits of a South Dakota Trust

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INTRODUCTION

A South Dakota trust can provide you with valuable benefits today and for years to come. Trust & Estates Magazine (January 2007) ranked South Dakota as the #1 perpetual trust jurisdiction in the United States. South Dakota offers a unique opportunity for protecting and passing on wealth, as the state has some of the most advantageous, flexible and innovative trust and tax laws in the country.

Benefits of a South Dakota trust:

- South Dakota law provides for trusts with an unlimited duration
- Self-settled asset protection trusts
- Third-party discretionary trust laws for asset protection
- No state tax on income, capital gains, dividends, interest, intangibles or any other income
- Trust laws allow for directed and delegated trusts
- Lowest state insurance premium tax in the nation – 8 basis points
- Privacy statutes are the country's best

UNLIMITED TRUST DURATION

Most states use a rule which requires that all interests must vest no later than 21 years after the end of a life of the last identifiable individual living at the time the interest was created. This is referred to as the common law Rule Against Perpetuities. This rule can result in the termination of a trust before the grantor had originally intended. In 1983, South Dakota abolished the Rule Against Perpetuities and now provides that most South Dakota trusts may be continued for an unlimited duration. South Dakota's offering of unlimited trust duration allows clients to pass on their values and priorities to future generations without the rules and guesswork imposed by other trust jurisdictions.

ASSET PROTECTION

Asset protection is extremely important to wealth holders and their advisors. Asset protection trusts help shield assets placed in a trust from creditors, divorce or bankruptcy, allowing clients to maintain their wealth and pass on their assets to future generations as originally intended.

South Dakota is one of a few states in the country that provides creditor protection for self-settled trusts. A self-settled trust is a trust formed for the benefit of the person or entity that created the trust.

The South Dakota self-settled trust statutes require that:

- The trust must be revocable and utilize South Dakota law
- All of the trust administration must be performed in South Dakota
- At least one trustee must be a resident or institution in South Dakota
- At least part of the trust property should be located in South Dakota

The settlor may be named as a discretionary beneficiary and retain significant benefits and control, including the receipt of trust income and control over investment decisions if warranted. The independent trustee retains full authority to over trust distributions. This allows the trustee to prevent a creditor from invading trust assets or demanding a distribution to the beneficiary that a creditor would then seize, since the funds are not under the control of the beneficiaries.

TAX SAVINGS

South Dakota is a no income tax state for trusts and offers such tax advantages and savings on the state level, including:

- No state income tax
- No capital gains tax
- No intangibles tax
- No corporate income tax
- No dividends and interest tax
- No city or local tax
- No state personal property tax
- No state ad valorem tax
- No gift or inheritance tax
- No GST
- No state coupon tax

South Dakota also has the lowest state insurance premium tax in the nation, only 8 basis points compared to an average of 200 basis points in other states. This low premium applies whether a trust is irrevocable, revocable or a LLC is utilized.

PRIVACY AND SECURITY

South Dakota takes privacy very seriously. Compared to other states, South Dakota goes to great lengths to protect the confidentiality of a trust. Trust documents in South Dakota are not required to be publicly filed. When information regarding the trust is filed with the court, such as to reform, modify or decant a trust, those filings can be sealed forever. Certain aspects of a trust, such as size, assets and terms of the trust, can be kept from becoming public record due to the privacy statutes in South Dakota.

ABOUT THE AUTHOR



Antony Joffe is the Chairman of Sterling Trustees LLC and oversees Sterling's vision and mission. He has over 20 years of trust industry operating experience and has led the growth of Sterling to over $13 billion of assets under administration. He earned his MBA in finance from Temple University and his bachelor's degree in accounting from Emory University.

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This white paper is provided for educational purposes and does not constitute legal, tax, or investment advice. Trust siting decisions depend on the residency of the grantor and beneficiaries, the location and character of trust assets, and the specific terms of the trust instrument, among other factors. Readers should consult with qualified legal and tax advisors regarding situs selection and trust structure decisions specific to their circumstances.

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