South Dakota's Situs Advantages Over New Jersey

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THE POWER OF INDEPENDENT THINKING℠

INTRODUCTION

New Jersey is home to one of the largest concentrations of high-net-worth wealth in the United States, yet it remains one of the more challenging trust jurisdictions in the country. New Jersey imposes a top marginal income tax rate of 10.75% on trust income, has no Domestic Asset Protection Trust statute, caps dynasty trust duration at 90 years, and, uniquely among most states, still levies an inheritance tax on transfers to a broad class of beneficiaries.

South Dakota offers an alternative built over more than 40 years of deliberate, expert-driven legislative reform. This whitepaper provides a detailed comparison of South Dakota and New Jersey across twelve critical planning dimensions.

STATE INCOME TAX ON TRUST INCOME

South Dakota has had no state income or capital gains tax since 1942, so trust income can accumulate entirely free of state tax once a trust has no remaining New Jersey nexus. [SD Const. Art. XI, §14] The state constitution also prohibits any new income tax without a supermajority vote, giving families durable certainty about the tax environment over the life of a multi-generational trust.

New Jersey imposes state income tax on trust income at marginal rates up to 10.75% for income over $1 million, taxing resident trusts based on the residency of the grantor or trustee. For a trust generating $1 million annually in income, New Jersey siting can cost up to $107,500 per year in state income tax that South Dakota siting can help avoid once New Jersey nexus is eliminated. [N.J. Stat. Ann. §§ 54A:1-1 et seq.]

INHERITANCE TAX

South Dakota has no inheritance tax and no estate tax, regardless of beneficiary class. This makes South Dakota a clean siting jurisdiction for blended families or trusts with non-traditional beneficiary structures that would otherwise trigger higher inheritance tax brackets elsewhere.

New Jersey retains an inheritance tax even though its estate tax was repealed effective January 1, 2018. Class A beneficiaries — spouses, children, grandchildren, and parents — are exempt, while Class C beneficiaries, such as siblings and sons- or daughters-in-law, are taxed at 11% to 16%, and Class D beneficiaries, essentially everyone else, are taxed at 15% to 16%. [N.J. Stat. Ann. §§ 54:34-1 et seq.]

Because New Jersey's inheritance tax turns on the decedent's domicile and the situs of certain property, families with blended structures or significant non-family beneficiaries get the most value from pairing South Dakota trust siting with broader estate plan review. Combined with South Dakota's income tax, asset protection, and privacy advantages, a coordinated plan can meaningfully reduce a family's overall New Jersey tax exposure.

FLEXIBILITY & LEGISLATIVE MODERNIZATION

South Dakota's Governor's Task Force on Trust Administration Review and Reform meets annually. [SDCL § 55-17-5] It has continuously modernized the state's trust statutes for more than 40 years, producing tools such as Community Property Trusts and Purpose Trusts of unlimited duration.

New Jersey enacted the New Jersey Uniform Trust Code in 2016. The NJ UTC brought the state to a baseline uniform act, but New Jersey still has no annual trust law reform mechanism, no Community Property Trust statute, and no Family Advisor concept.

RULE AGAINST PERPETUITIES & DYNASTY TRUSTS

South Dakota was the first state to abolish the Rule Against Perpetuities, in 1983. [SDCL § 43-5-8] Over 40 years of case law now support true perpetual dynasty trust planning in the state.

New Jersey follows a modified Rule Against Perpetuities framework, and perpetual dynasty trusts are not available under the NJ UTC. A New Jersey trust intended to serve many generations will therefore eventually run into a statutory duration limit that a South Dakota trust does not face.

CREDITOR CLAIMS & ASSET PROTECTION (DAPT)

South Dakota's Domestic Asset Protection Trust statute has been in place since 1997, now approaching three decades of institutional practice and case law, and applies a two-year lookback period. [SDCL §§ 55-16-10; 55-1-44] The standard of proof for creditors is clear and convincing, which is meaningfully harder to meet than a preponderance standard.

New Jersey has no Domestic Asset Protection Trust statute, and self-settled trusts are generally available to the settlor's creditors under New Jersey common law and the NJ UTC. [N.J. Stat. Ann. § 3B:31-37] New Jersey residents seeking self-settled asset protection must therefore look outside the state entirely.

DIRECTED TRUSTEES

South Dakota's directed trust statute has been in place since 1997, and approximately 68% of South Dakota trust business is conducted on a directed basis. [South Dakota Division of Banking, Annual Trust Company Report] [SDCL § 55-1B-1] That level of adoption has produced a deep bench of specialist trust companies and advisors experienced in the directed model.

The NJ UTC provides a directed trust framework enacted in 2016. [N.J. Stat. Ann. § 3B:31-70 et seq.] The New Jersey directed trust market remains far less developed than South Dakota's, with fewer specialist trustees and a thinner body of supporting case law.

DECANTING

South Dakota's decanting statute is ranked #1 nationally for flexibility. [SDCL § 55-2-15] It permits full restructuring of an irrevocable trust, including changing current or future beneficiaries, without requiring the new trust to preserve the original beneficial interests.

New Jersey's decanting statute [N.J. Stat. Ann. § 3B:31-68 et seq.] is more restrictive, imposing stricter notice requirements and limitations on changes to beneficial interests. Advisors working with older New Jersey trusts will find meaningfully less flexibility to restructure them than they would under South Dakota law.

QUIET TRUSTS (BENEFICIARY NOTIFICATION RIGHTS)

South Dakota has the most comprehensive quiet trust statute in the nation. [SDCL § 55-2-13] A trust can be kept entirely quiet from a beneficiary until the settlor or trust protector chooses to disclose it.

The NJ UTC includes duty-to-inform provisions [N.J. Stat. Ann. § 3B:31-52 et seq.], and while some waiver is permitted, the framework is less explicit than South Dakota's. New Jersey settlors therefore have less certainty about how far they can go in restricting beneficiary disclosure.

PRIVACY

South Dakota provides a permanent, automatic seal on all trust judicial records. [SDCL § 21-22-28] The seal attaches without a court petition and lasts in perpetuity.

New Jersey court proceedings are presumptively public, and sealing requires a motion under N.J. Ct. R.1:38-11 demonstrating a legitimate need. Contested trust matters in New Jersey therefore tend to become part of the public record by default.

SPECIAL PURPOSE ENTITIES (SPE)

South Dakota is the only state with a statute permitting trust advisory roles through an LLC for liability protection. [SDCL § 51A-6A-66] Advisors can therefore serve in these roles through the entity rather than accepting personal liability.

New Jersey has no codified Special Purpose Entity framework in the trust context. New Jersey advisors who take on trust protector or investment advisory roles must do so in their individual capacity, without the statutory liability protection South Dakota offers.

PPLI PREMIUM TAX

South Dakota imposes a premium tax of just 0.8 basis points (0.008%) on Private Placement Life Insurance premiums over $100,000, among the lowest such rates in the country. This translates into material savings for UHNW families using PPLI as a trust-based tax deferral strategy, with the difference compounding over the life of the policy. [SDCL § 10-44-2]

New Jersey imposes a premium tax of 2.1% on life insurance premiums. On a $5 million PPLI policy, this differential represents approximately $102,800 in excess annual cost compared to a South Dakota-sited trust.

TRUST MODIFICATION & JUDICIAL ECONOMY

South Dakota's comprehensive nonjudicial modification statutes allow most trust changes without court involvement. [SDCL §§ 55-3-24 et seq.] South Dakota's courts have also built particular expertise in the modification matters that do require judicial input.

Trust modification in New Jersey is handled by the Superior Court, Chancery Division, and frequently requires court petitions under the NJ UTC with mandatory beneficiary, and sometimes Attorney General, notice. New Jersey's courts are often heavily docketed, which can make even routine modifications slow and expensive.

SOUTH DAKOTA VS. NEW JERSEY – AT A GLANCE

Dimension	South Dakota	New Jersey
State Income Tax on Trust Income	None (constitutional prohibition since 1942)	Up to 10.75%; capital gains taxed as ordinary income
Inheritance Tax	None; no estate or inheritance tax	Class C: 11–16%; Class D: 15–16%; attaches based on decedent domicile / property situs, not trust situs
Rule Against Perpetuities	Abolished 1983 – first in the nation. [SDCL § 43-5-8]	Modified RAP; perpetual dynasty trusts not available
DAPT Asset Protection	Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10]	No DAPT statute; self-settled trusts available to creditors
Directed Trustees	Statute since 1997; 68% of SD trust business is directed	NJ UTC (2016) provides framework; market less developed
Decanting	Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15]	NJ UTC decanting statute; more restrictive; notice requirements
Quiet Trusts	Most comprehensive in the nation. [SDCL § 55-2-13]	NJ UTC duty-to-inform; limited waiver; less explicit protections
Privacy	Permanent, automatic seal. No petition required. [SDCL § 21-22-28]	No automatic seal; must petition under NJ Ct. R.1:38-11
Special Purpose Entities	Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66]	No codified SPE framework; advisors act in individual capacity
PPLI Premium Tax	0.8 bps (0.008%) – among the lowest in country. [SDCL § 10-44-2]	2.1% – ~$102,800 excess on $5M policy/yr
Legislative Modernization	Annual updates via Governor's Task Force	NJ UTC enacted 2016; no annual reform mechanism
Trust Modification	Comprehensive nonjudicial modification; courts experienced in trust matters	Court petition often required; overburdened Chancery Division

CONCLUSION

New Jersey presents a compelling case for trust siting migration: a 10.75% state income tax on trust income, no domestic asset protection trust statute, a modified Rule Against Perpetuities that caps dynasty trust duration, no automatic court privacy protection, and a PPLI premium tax well above South Dakota's. Each of these gaps compounds over the life of a multi-generational trust.

The inheritance tax deserves a careful distinction, however, since it generally attaches based on the decedent's domicile and the situs of certain property, not the situs of the administering trust. For clients with siblings, non-traditional family structures, or significant non-family beneficiaries, the exposure is real and should be addressed directly as part of the overall estate plan, rather than assumed away by a trust situs change alone.

South Dakota trust siting through Sterling Trustees addresses the income tax, asset protection, dynasty trust, and privacy gaps described above. Sterling Trustees administers over $13 billion across more than 500 trusts as an independent trustee, serving families in both directed and fully discretionary trust structures, and is ready to help New Jersey families put these advantages to work.

ABOUT THE AUTHORS



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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