

No other state matches Delaware's advantages in trust law



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Guest columnist

Delaware is the premier jurisdiction for personal trusts. The state is at the forefront of trust law innovations and the infrastructure supporting Delaware's

trust industry is unmatched, with distinguished courts, a proactive legislature, a deep pool of professional advisers and the presence of almost every major financial institution. Delaware's status as the best trust jurisdiction has attracted a considerable amount of non-Delaware trust business to the First State, resulting in a positive impact on Delaware's economy through fiduciary fees, job creation, tax revenues and additional economic activity in support of the trust industry.

Dispelling the myths

However, because the personal trust business is a lucrative one, the competition among the states for this business is fierce and sometimes filled with misinformation. Other states claim to have the same favorable laws and similar advantages to lure prospective clients, often at lower fees. Consequently, it is important for participants in Delaware's trust industry to be able to answer the question "Why Delaware?" when clients are deciding where to have their personal trusts administered.

INNOVATION SHOWCASING DELAWARE'S INNOVATORS DELAWARE

While promoting their own trust services, other states at times present subjective information as fact. There are even cases where an attorney from a competing state creates charts purporting to rank the trust-friendly states on key features of trust law, such as the duration of a trust (dynasty trusts), domestic asset protection trusts, and the ability to modify a trust through a so-called "decanting" process. By self-selecting the criteria and assigning arbitrary weights to these factors, these rankings elevate competing states to the top of the list and correspondingly move Delaware down in the ranks.

The Delaware advantage

We believe the objective facts tell a different story. The facts show that Delaware is the premier trust jurisdiction. In a 2011 empirical study, Northwestern University law professor Max Schanzbach determined that a conservative estimate of the impact of the out-of-state trust business on Delaware's economy was between \$600 million and \$1.1 billion. With the trust industry growing at a rapid pace and Delaware capturing a disproportionate share of this business, these amounts have likely risen substantially since 2011. Moreover, Delaware's state income tax revenue attributable to its excess trust

business was estimated in this study to be between \$19 million and \$33 million per year.

Delaware is called the First State because it was the first to ratify the U.S. Constitution. But did you also know that it was the first state to develop many innovative trust laws that sanctioned directed trusts, perpetual trusts and asset protection trusts, as well as laws permitting modern and flexible investment standards for trustees? The First State also pioneered a trust structure that allows residents of some high-tax states to minimize or eliminate state income taxes on income generated by assets held inside a properly structured trust administered in Delaware, a so-called Delaware Incomplete Gift Non-Grantor (DING) trust.

There are no objective rankings of state trust laws generated by an unbiased source because every client's needs are unique, thereby making a ranking of the states' laws misleading for a given client. However, Delaware has all the flexible tools permitting perpetual trusts, directed trustees, modern trust investment rules, flexible income distribution standards, along with rigorous asset protection laws, which make it a top choice for practitioners looking to find the right home for their client's personal trusts.

Selecting Delaware to take advantage of these favorable laws has the backing of the state's courts, which routinely enforce these laws as written. When advising clients on where to administer trust structures used to carry out a family's wealth management goals over multiple

generations, practitioners want certainty that the trust will function as intended. Delaware's long history of court cases, and the state's sophisticated judiciary willing to enforce the laws as written, helps to provide this comfort.

Delaware's geographic proximity to D.C., Baltimore, Philadelphia and the financial hub of New York City provides access to leading professionals in the legal, tax, accounting, and investment industries. The size and complexity of the trust business in Delaware draws many talented professionals there to provide administrative services for these trusts. The synergy created among these experts promotes the innovation that helps Delaware remain the First State for trust business.

Clearly, attracting non-Delaware residents to establish trusts in Delaware is an important and growing component of the state's economy, which requires that we continue to promote the Delaware advantages and retain our position as a premier jurisdiction for personal trusts. In many cases, this requires explaining the virtues of Delaware's laws, its robust trust infrastructure and the depth of talented professionals who serve this industry. The First State has the tools and talent to remain on top. However, it is important for participants in Delaware's trust industry to be armed with the facts to counter the more subjective information from states competing for trust business. ■

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