

"The trust was created in State X and has been administered under the laws of that State from the date of the transfer. The terms of the trust include, however, a provision allowing the trustee, in its absolute discretion, to move the situs of the trust to any other State.

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Under the law of State X, the trust is a "discretionary trust" and the entire property of the trust may be subject to the claims of the grantor's creditors, whenever such claims may arise."

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"In *Alice Spaulding Paolozzi*, 23 T.C. 182 (1954), acq. 1962-1 C.B.4, a grantor empowered the trustees to determine how much of trust income should be distributed, in their absolute discretion, in the best interest of the grantor. Any unpaid income was to be added to principal. The Tax Court agreed with the petitioner's interpretation of Massachusetts law as allowing both prior and subsequent creditors of the grantor to reach the maximum amount of income that the trustees could in their discretion pay out to the grantor. The grantor could thus effectively enjoy all the trust income by relegating the creditors to the trust for settlement of their claims. Therefore, the court held that no taxable gift of trust income had been made."

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"If and when the grantor's dominion and control of the trust assets cease, such as by the trustee's decision to move the situs of the trust

to a State where the grantor's creditor's cannot reach the trust assets, then the gift is complete for Federal gift tax purposes under the rules set forth in section 25.2511-2 of the regulations."