

## **Why Alaska Trusts?**

In certain ways, Alaska trusts offer unique benefits for estate and tax planning for all Americans, and certain foreigners as well. They can provide significant flexibility and opportunity to achieve estate and tax goals compared to trusts in other jurisdictions. Alaska trusts can be formed so they are not subject to any rule against perpetuities. (Certain trusts, such as charitable remainder trusts described in IRC § 664 may not, as a matter of Federal law, extend beyond a certain period.) In other words, an Alaska trust can be structured to last forever. Alaska has no state income tax or state sales tax. In certain cases, an Alaska trust can be used to eliminate state and local taxes, even on certain income distributed to beneficiaries who reside in jurisdictions which impose income tax. An Alaska trust can be formed so its assets may not be subject under Alaska law to the claims of creditors of the Grantor even if the Grantor remains eligible to receive distributions from the trust in the discretion of a trustee other than himself or herself. Alaska law provides specific rules as to what makes a trust Alaskan.

### **Ways to Use Alaska Trusts**

#### **Perpetual Alaska Trusts**

Many estate planners believe that it is often preferable for property to be held in trust for beneficiaries rather than be transferred outright to them. The reasons are manifold and include opportunities to reduce income and wealth transfer (gift, estate, and generation-skipping transfer) taxes, to protect assets from claims of creditors of the beneficiaries and to ensure the property benefits the appropriate individuals and institutions. In other words, trusts may be used not to deny benefits but to insure them.

Trusts also may be used to reward “good citizenship”, such as providing a child with financial support to start a business or to attend college when the child has manifested the maturity and interest to make such undertakings worthwhile. Similarly, trusts may be used to discourage “inappropriate” behavior by denying trust benefits when the beneficiary undertakes an unwise course of action.

Unfortunately, the law in most jurisdictions limits the time a trust can last to about 90 years or so by what is called the “rule against perpetuities”. Alaska is one of a small number of American states which permits trusts to be structured so they may last forever. A perpetual trust permits the benefits of trust ownership of property to last as long as appropriate. Almost always, the trust should be structured so that a non-beneficiary trustee can terminate it (such as by the payment of the trust corpus to beneficiaries). It may also be appropriate to grant the beneficiaries the power (either exercisable alone or only with consent of a trustee) to direct that the trust property pass outright to the successor beneficiaries upon the death of the current beneficiaries.

#### **Rainy Day Trust<sup>sm</sup>**

An Alaska trust may be used as part of an overall plan of asset protection where that is appropriate for a particular individual. Consideration should be given to adequate levels of insurance, implementation of sound business practices, the use of limited liability entities (such as corporations, limited partnerships, and limited liability companies) through which business and certain investment activities should be conducted. (See the article in this section entitled “Does the New Alaska Trust Act Provide an Alternative to the Foreign Trust?” for a discussion on the level of asset protection which an Alaska trust may provide where the Grantor is an eligible beneficiary of the trust.) As discussed later in this section, the new Alaska law on LLCs and limited partnership may enhance asset protection as well as certain estate planning, especially when used in conjunction with Alaska trusts.

A Rainy Day Trust<sup>sm</sup> can be used as part of an overall plan for protecting wealth. Under Alaska law, an individual may create a trust which is not subject to the claims of his or her creditors under Alaska law but from which the Grantor, either alone, or along with certain others, may receive distributions from the trust in the discretion of a trustee other than the Grantor, provided the transfer to the trust was not a fraudulent conveyance and certain other criteria are met. The transfer to the trust may be structured so it is not a completed transfer for Federal estate and gift tax purposes or it may be structured so as to be complete for Federal estate and gift tax purposes.

### **Estate Tax Planning Trusts**

In many cases, estate planning may be enhanced by using an Alaska trust as the appropriate vehicle through which to effect lifetime estate tax planning. The article in this section entitled “A New Direction in Estate Planning: North to Alaska” provides a summary of ways in which the Alaska Trust Act may be used for asset protection and estate planning in general. The article in this section entitled “Estate Planning with Alaska Trusts” explains in detail how Alaska trusts can be used to enhance estate planning for Americans and non-Americans.

### **Alaska Partnerships and LLCs**

Special note is made of a new Alaska law relating to limited partnerships and limited liability companies and which became effective on July 1, 1997. These changes to Alaska law were made in part in order to simplify the formation and operation of a limited partnership and limited liability company in response to the adoption by the U.S. Treasury Department of what are called “Check the Box” regulations and which became effective after 1996. Treasury Regulations § 301.7701-1, 2, and 3. Under these regulations, almost any enterprise, other than a United States domestic corporation (and selected other enterprises), may choose to be taxed as a partnership merely by so electing on its first tax return filed after 1997. Among notable changes made to Alaska law relating to limited partnerships and limited liability companies formed under its law are:

- (1) Partners of a limited liability company and members of a limited

liability company (LLC) are entitled to distributions only as provided in the governing agreement. Partners and members may not force the enterprise to purchase their interests at any time unless or except to the extent provided in the governing organizational documents or other contract.

- (2) Except as otherwise provided in the governing documents, Alaska limited partnerships and limited liability companies are perpetual as long as there is one remaining holder of equity. An Alaska limited partnership does not dissolve upon the death of a general partner if there is a surviving one; if there is no surviving one, it dissolves only if the limited partners fail to elect a new general partner. (It should be noted that despite the fact that the limited liability company or limited partnership may be perpetual, it may nonetheless be taxed as a partnership under the new U.S. Treasury Regulations.)
- (3) A court may direct the liquidation of an Alaska limited partnership or limited liability company only if it is impossible for the entity to continue to operate. This feature of Alaska law may enhance the asset protection aspects of using an Alaska partnership or limited liability company as it may thwart any attempt by a creditor of a former partner of the partnership or former member of the LLC to reach the underlying assets owned by the limited partnership or limited liability company except as otherwise provided in the governing documents.
- (4) Unless otherwise specified in the governing document, an Alaska limited partnership agreement or limited liability company articles may be amended only with the unanimous consent of all partners or members. Some planners believe that using an Alaska limited partnership or Alaska limited liability company in conjunction with an Alaska trust may substantially enhance estate planning in some cases. See, generally, August, "Planning for Lapsing Rights and Restrictions: The Impact of Section 2704 Valuation", 82 Journal of Taxation 342 (June 1995).