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Does Everyone Need a South Dakota Trust?

by Matthew K. Donovan

South Dakota trusts have been around for years, but recently they have been brought to the attention of individuals outside of the estate planning community. Bloomberg recently ran an article, *Little Tax Haven on the Prairie* by Zachary R. Mider (January 9, 2014), which discusses the creation of South Dakota trusts by some of the richest families in the world. In the last four years the money administered by South Dakota trust companies has tripled to $121 billion, almost of all it from outside the state.

The initial attraction for creating trusts in South Dakota was the ability to create trusts that can continue indefinitely – for as long as the money will last – free of estate tax. But now, with the lower estate tax rates and higher state income tax rates, much of the buzz relates to the fact that South Dakota does not tax trust income. If you are in a state like New York or California, the income tax savings can be a huge advantage.

So does everyone need a South Dakota trust? Of course, the answer is no. Not everyone has millions of dollars to lock up in a trust. Not only that, the trust laws in your state might not compare too badly to the laws of South Dakota. Take Arizona, for example.

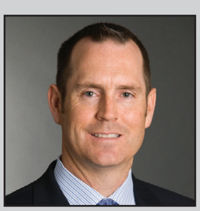
- **Length of Trust**. South Dakota has no rule against perpetuities, which means that state law will not force the termination of a trust at any point. Arizona, on the other hand, has a 500 year rule against perpetuities, which means that an Arizona trust must terminate within 500 years. For most families, there is no practical difference between a trust that can continue forever and one that can only continue for 500 years.
- **State Estate Tax**. In addition to the federal government, states have the right to impose an estate tax. South Dakota does not impose an estate tax, but neither does Arizona.
- **Income Taxes**. As for the income tax savings, whether you have a South Dakota trust or an Arizona trust, Arizona will still have the right to tax distributions made to an Arizona beneficiary.

So when does a South Dakota trust work best?

- When families can put money in trust and allow it to grow without making distributions for a long time.
- When the beneficiaries live in states that will not tax trust distributions.
- When families live in states, like California, which limit the duration of trusts to about 120 years.
- When families live in states like Massachusetts that have a state estate tax on estates over one million dollars.

In addition to South Dakota, states such as Nevada, Delaware and Alaska are in the business of attracting trust business through favorable trust laws. Establishing a trust in a jurisdiction like South Dakota can make sense in special circumstances, but they are not for everyone.

To read more, please see full article at: http://www.businessweek.com/printer/articles/176959-south-dakota-little-tax-haven-on-the-prairie.



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Matthew Donovan joined the firm in 2008 and is a partner in the firm's Private Client Services group. Matt has advised clients in a number of capacities during his career, which allows him to evaluate client needs in a practical and holistic manner. His practice is concentrated in matters relating to family wealth, with an emphasis in estate planning and administration, estate and gift taxation, business transition, life insurance and charitable planning. In addition to lifetime planning, Matt advises his clients and their families in connection with post-death estate administration, will and trust contests, and estate and gift tax return preparation.