

Heading across state lines with your trust requires planning

Published on July 8, 2021

In some cases, it may be desirable to move a trust to a more favorable jurisdiction. But moving a trust from one state to another can present significant risks, so don't attempt to do so without considering all the benefits, limitations and risks, and obtaining professional advice.

Reasons to move a trust

There are many reasons for moving a trust to another jurisdiction, such as:

- Avoiding or reducing state income taxes on the trust's accumulated ordinary income and capital gains;
- Taking advantage of trust laws that allow the trustee to improve investment performance;
- Extending the trust's duration;
- Obtaining stronger creditor protection for beneficiaries; and
- Reducing fees and administrative expenses.

Many people retire to states with more favorable tax laws. But just because you move to a state with lower income or estate taxes doesn't mean your trusts move with you.

For individual income tax purposes, you're generally taxed by your state of domicile. The state to which a trust pays taxes, however, depends on its situs.

Can your trust be moved?

Moving a trust means changing its situs from one state to another. Generally, this isn't a problem for revocable trusts. In fact, it's possible to change situs for a revocable trust by simply modifying it. Or, if that's not an option, you can revoke the trust and establish a new one in the desired jurisdiction.

If a trust is irrevocable, whether it can be moved depends, in part, on the language of the trust document. Many trusts specify that the laws of a particular state govern them, in which case those laws would likely continue to apply even if the trust were moved. Some trusts expressly authorize the trustee or beneficiaries to move the trust from one jurisdiction to another.

If the trust document doesn't designate a situs or establish procedures for changing situs, then the trust's situs depends on several factors. These include applicable state law, where the trust is administered, the trustee's state of residence, the domicile of the person who created the trust, the location of the beneficiaries and the location of real property held by the trust.

The actual process of moving the trust may entail creating a new trust to which the existing trust's assets are transferred, merging the existing trust into a new trust or modifying the existing trust to designate the new state as its situs.

Depending on the trust's terms and applicable state law, the move may require court approval or the unanimous consent of the trust's beneficiaries.

Understanding the risks

Depending on your circumstances, moving a trust can offer tax savings and other benefits. However, the laws governing trusts are complex and vary considerably from state to state. We can help you determine whether the benefits outweigh the risks.

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