Steve Leimberg's Income Tax Planning
Email Newsletter Archive Message #147

Date:10-Jul-18

Subject: Steve Oshins Releases 4th Annual Non-Grantor Trust State Income Tax Chart…in Our New $10,000 SALT Deduction Era

"The Non-Grantor Trust State Income Tax Chart is an easy-to-use summary that should open up opportunities for practitioners to save state income tax for their clients both with newly-created non-grantor trusts and by moving and fixing any existing non-grantor trusts that are needlessly paying state income tax and therefore dragging down the trust's asset base. The new $10,000 state and local tax deduction limitation magnifies this problem, thereby bringing state income tax planning into the spotlight."

Frequent **LISI** contributor **Steve Oshins, Esq., AEP (Distinguished)** authors three different annual state rankings charts and one state income tax chart:

- The Annual Domestic Asset Protection Trust State Rankings Chart
- The Annual Dynasty Trust State Rankings Chart
- The Annual Trust Decanting State Rankings Chart
- The Annual Non-Grantor Trust State Income Tax Chart

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LISI would like to congratulate Steve for recently being named "Top Estate Planning Attorney of 2018" by *The Wealth Advisor.*

Now, here is Steve's commentary:

EXECUTIVE SUMMARY:

I. "Resident Trust" Definition

Different states have different rules as to what creates a "resident trust" that is subject to taxation in that state. States may tax a trust based on the residency of the settlor or testator, based on whether there is a resident trustee or beneficiary or whether there is administration in that state, or for a combination of these factors and/or other similar factors.

So it isn't as easy as simply situsing a trust in a state with no state income tax. You have to look at the state taxing statutes that may apply.

II. The Chart as a Resource for Advisors

The Non-Grantor Trust State Income Tax Chart simplifies this analysis by summarizing each state's taxing rules and providing a hyperlink to the applicable taxing statutes. The Chart was created not only to be a resource to practitioners and clients, but also to create opportunities for them.

One focus of this Chart is to determine whether a trust can be moved to another state in order to save state income tax. Another focus is to determine who to avoid using as trustees, in which states to avoid trust administration, as well as other variables that may unnecessarily cause a state income tax.

No trust should ever be created without the advisor knowing the residency of the settlor, the proposed trustees and the beneficiaries. This information is invaluable in the planning process since it can have a substantial influence on certain decision points.

Thus, each advisor should have a handy resource to use to quickly access the different state rules in order to be able to properly plan for their clients.

COMMENT:

I. The 4th Annual Non-Grantor Trust State Income Tax Chart

The Non-Grantor Trust State Income Tax Chart is a two-page summary of the non-grantor trust state income tax rules in all states and Washington, D.C. The states are listed in alphabetical order.

- Column 1 lists the name of the state.

- Column 2 lists the statute or other taxing authority showing what it takes to be treated as a resident trust. For those who access the online version, the statute or taxing authority is linked so that the end-user can easily access that authority in order to read the rules carefully. This feature will help those who were unsure how to spot the opportunity to very easily go directly to the source.

- Column 3 lists the highest tax rate for 2018 in that jurisdiction.

- Column 4 answers the question, "Under What Condition does the State Tax a Non-Grantor Trust?" It answers it in a very short summary fashion so the reader can quickly understand the gist of the statute or other taxing authority. There is a warning towards the bottom of each of the two pages not to rely on the short summary and to always read the statute.

II. The Tax Drag

The "tax drag" is the amount by which investment returns are reduced due to taxes. The opportunity to move a non-grantor trust to a jurisdiction where state income tax can be avoided often makes a substantial impact on the value of the trust's underlying assets. By avoiding the tax drag inherent in a trust that is subject to state income tax, the trust grows in value much faster.

This planning opportunity is very well-known to many advisors, but yet it appears to be underused by most and should be considered whenever any trust is being planned and created and whenever an advisor is reviewing an existing trust to look for opportunities to help the client.

III. $10,000 State and Local Tax Deduction ("SALT Deduction")

The 2017 Tax Cuts and Jobs Act created a new $10,000 limitation on the federal income tax deduction for state and local taxes paid. This hits residents of states with a high state income tax especially hard, thereby making it that much more important for estate planners to understand how and why a non-grantor trust is subjected to a state income tax and how to design new trusts and modify old trusts to avoid or reduce the state income tax hit.

IV. Conclusion

The Non-Grantor Trust State Income Tax Chart is an easy-to-use summary that should open up opportunities for practitioners to save state income tax for their clients both with newly-created non-grantor trusts and by moving and fixing any existing non-grantor trusts that are needlessly paying state income tax and therefore dragging down the trust's asset base. The new $10,000 state and local tax deduction limitation magnifies this problem, thereby bringing state income tax planning into the spotlight.

Advisors should be taking advantage of the opportunity to avoid the tax drag inherent in many trusts that accumulate income that is subject to state income tax even if not sourced to that state. In fact, it is somewhat shocking that this concept isn't the most talked about concept among the financial planners whose assets under management are ratably affected by this tax drag.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Oshins

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