Should you set up trusts in a more "trust-friendly" state?

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While it's natural to set up trusts in the state where you live, you may be losing out on significant benefits available in more "trust-friendly" states. For example, some states:

- Don't tax trust income;
- Authorize domestic asset protection trusts, which provide added protection against creditors' claims;
- Permit silent trusts, under which beneficiaries need not be notified of their interests;
- Allow perpetual trusts, enabling grantors to establish "dynasty" trusts that benefit many generations to come;
- Have directed trust statutes, which make it possible to appoint an advisor or committee to direct the trustee with regard to certain matters; or
- Offer greater flexibility to draft trust provisions that delineate the trustee's powers and duties.

To take advantage of these and other benefits, review your state's trust laws and trust-related tax laws and consider whether another state's laws would be more favorable.

In addition, it's important to review both states' rules for determining a trust's "residence" for tax and other purposes. Typically, states make this determination based on factors such as:

- The grantor's home state;
- The location of the trust's assets;
- The state where the trust is administered (i.e., where the trustees reside or the trust's records are kept); or
- The states where the trust's beneficiaries reside.

Some states tax income derived from in-state sources even if earned by an out-of-state trust.

To enjoy the advantages of a trust-friendly state, establish the trust in that state and take steps to ensure that your choice of residence is respected (e.g., naming a trustee in the state and keeping the trust's assets and records there). It may also be possible to move an existing trust from one state to another. We can help determine if setting up trusts in another state would help you achieve your estate planning goals.

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