

Internal Revenue Code and Legal Compliance: Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts

Introduction and Definitional Framework

This Fiduciary Operating Brief establishes the legal and tax compliance frameworks for the Benson Financial Non-Grantor Irrevocable Complex Discretionary Spendthrift Trust structures. This document proves that these private structures fully comply with the Internal Revenue Code, Treasury Regulations, and established judicial precedent. Passive investors and business owners utilize these structures to manage assets and defer tax liabilities legally. Black's Law Dictionary defines a *trust* as a fiduciary relationship in which one person holds legal title to property, subject to an equitable obligation to keep or use the property for the benefit of another, who holds equitable title. These private trust structures *do not* possess the corporate attributes necessary to be classified as an *association*, which Black's Law Dictionary defines as a group of persons gathered together for a particular purpose. Pursuant to **Treasury Regulation Section 301.7701-4(a)**, an ordinary trust is created to protect and conserve property for beneficiaries under the traditional rules of chancery or probate courts, distinguishing it from business entities or associations governed under **Treasury Regulation Section 301.7701-4(b)**.

Constitutional Foundations and Contractual Establishment

The Non-Grantor Irrevocable Complex Discretionary Spendthrift Trust is established entirely through fundamental *common law* contract rights rather than state legislative statutes. A clear legal distinction between private common law trusts and statutory entities must remain fundamental to every structural analysis. Statutory entities owe their existence to legislative privilege and state franchises.

Conversely, these private trusts originate from the strict constitutional protections afforded to private contracts under **Article 1, Section 10, Clause 1 of the United States Constitution**. This constitutional mandate guarantees that private indentures created under common law are shielded from retroactive state legislative interference. The United States Supreme Court affirmed this foundational protection in *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810), establishing that a state legislature cannot enact statutes that impair valid contractual rights. The Supreme Court further reinforced this principle in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819), holding that private contractual charters are immune from state legislative interference.

Contractual Escrow Corpus Mechanics

The phrase *escrow corpus* represents a precise contractual definition and legal classification rather than a bank account type. Black's Law Dictionary defines an *escrow* as a legal document or property delivered to a third party to be held until the performance of a condition. Black's Law Dictionary defines the *corpus* as the principal sum or capital of an estate or trust. The trust operates contractually as an escrow by analogy because assets are deposited into the care of the trustee to be held strictly subject to the covenants, conditions, and restrictions of the governing contract. The trust does not establish an escrow account at a financial institution, nor does it appoint an external escrow agent. The trustee administers standard trust checking and savings accounts under sole legal title and unilateral fiduciary authority.

A fundamental requirement of trust law is the strict separation of legal and equitable title. Black's Law Dictionary defines a *fiduciary* as a person who is required to act for the benefit of another person on all matters within the scope of their relationship. Black's Law Dictionary defines *legal title* as a title that evidences apparent ownership and right of possession, but does not carry the full beneficial interest. Black's Law Dictionary defines *equitable title* as a title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title. The trustee holds sole legal title to the escrow corpus and possesses absolute administrative authority to manage the trust.

The beneficiaries hold a *beneficial interest*, which Black's Law Dictionary defines as a right or expectancy in something, such as a trust or an estate. The beneficiaries hold equitable title and possess a beneficial interest without exercising managerial control or possessing legal ownership of the trust assets.

Internal Revenue Code Section 643(b) establishes that the definition of income is governed by the terms of the governing trust instrument and applicable local law. The governing instrument mandates the allocation of capital gains and extraordinary dividends directly to the escrow corpus. The good faith allocation by the trustee legally *excludes these items from Distributable Net Income*. This exclusion operates pursuant to **Internal Revenue Code Section 643(a)(3)** for capital gains and **Internal Revenue Code Section 643(a)(4)** for extraordinary dividends.

Because the allocated capital receipts never enter the Distributable Net Income pool, no pass-through tax liability is carried out to beneficiaries on Schedule K-1. This structure creates an internal compound tax deferral mechanism. This strategy functions analogously to statutory non-recognition frameworks, such as an **Internal Revenue Code Section 1031** like-kind exchange or an **Internal Revenue Code Section 351** corporate exchange. One hundred percent of sales proceeds and capital growth remain intact within the escrow corpus, ensuring that the entirety of gross capital is preserved for growth. This retention permits immediate reinvestment and compounding without current tax attrition.

Spendthrift Protections and Creditor Shielding

The governing instrument establishes a spendthrift provision that prevents the legal assignment of the beneficial interest. Black's Law Dictionary defines a *spendthrift trust* as a trust that restrains both voluntary and involuntary alienation of the interest of a beneficiary. This provision contractually insulates the trust corpus from creditor attachment. The United States Supreme Court validated spendthrift provisions in *Nichols v. Eaton*, 91 U.S. 716 (1875). The Court ruled that a property owner possesses the right to bestow property upon a trust with conditions that prevent the beneficiary from alienating the asset or creditors from attaching it.

State common law and statutory rules further validate these protections. The Massachusetts Supreme Judicial Court affirmed this foundational property principle in *Hussey v. Arnold*, 185 Mass. 202 (1904), holding that trust property cannot be attached or seized upon execution for the personal obligations of the trustee; this precedent is cited exclusively for the strict common law doctrine that a complete severance of legal title from equitable title insulates the underlying corpus from third-party creditor claims. The court affirmed in *Mayo v. Moritz*, 151 Mass. 481 (1890), that beneficiaries are shielded from trust liabilities provided they do not exercise operational control. *California Code of Civil Procedure Section 695.030(a)* reinforces these protections by confirming that non-assignable beneficial interests cannot be seized by judgment creditors.

Taxation Mechanics and Statutory Deferral (Internal Revenue Code Section 643)

The taxation of these trust assets is governed strictly by the Internal Revenue Code and Treasury Regulations. By structuring the entity as a non-grantor trust, it operates as a distinct separate taxable entity that files its own Form 1041 return. The governing instrument expressly eliminates all grantor trust triggers enumerated in Internal Revenue Code Sections 671 through 679, ensuring that neither the grantor nor any non-adverse party retains administrative powers, reversionary interests, or revocation rights. When evaluating the taxation of trust assets, one must strictly apply **Internal Revenue Code Section 643(b)**. The statutory text dictates that the term income is defined by the governing instrument and the applicable local law. The United States Supreme Court conclusively validated this principle in *Freuler v. Helvering*, 291 U.S. 35 (1934), ruling that the terms of the trust instrument determine respective property rights and income allocations. In *Blair v. Commissioner*, 300 U.S. 5 (1937), the Supreme Court affirmed that federal tax liability follows the ownership of beneficial interests as determined by the terms of the governing trust instrument and applicable local law. The governing instrument grants the trustee explicit authority to allocate receipts directly to the trust escrow corpus. The fiduciary makes these determinations in good faith.

The trustee exercises this discretionary allocation authority under a strict fiduciary standard defined by the contract, establishing that the allocation of capital receipts to the escrow corpus represents an uncompromised contractual obligation rather than an arbitrary tax avoidance maneuver. This specific allocation formally excludes such amounts from Distributable Net Income. Because these amounts are excluded from Distributable Net Income, the tax liability is deferred entirely until a future distribution is formally made to a beneficiary.

This deferral mechanism is codified within specific subsections. **Internal Revenue Code Section 643(a)(3)** governs the taxation of capital gains. This section mandates that gains from the sale or exchange of capital assets are excluded from Distributable Net Income to the extent that such gains are allocated to the corpus and are not paid, credited, or required to be distributed to any beneficiary during the taxable year. This statutory exclusion is corroborated by **Treasury Regulation Section 1.643(a)-3**, which confirms that capital gains allocated to corpus pursuant to the governing instrument and local law are excluded from Distributable Net Income when they are not regularly distributed or utilized to determine distribution amounts. Furthermore, **Internal Revenue Code Section 643(a)(4)** addresses extraordinary dividends and taxable stock dividends. This section explicitly excludes these items from Distributable Net Income when the fiduciary, acting in good faith, determines that such dividends are allocable to the corpus under the terms of the governing instrument.

Compliance with Treasury Regulations and Authorized Deductions

The administration of the trust fully complies with formal Treasury Regulations. **Treasury Regulation Section 1.643(b)-1** confirms the validity of the fiduciary discretion outlined in the trust contract. This regulation stipulates that trust provisions departing reasonably from local law definitions of income will be respected when the governing instrument grants the trustee prudent and good faith discretion over principal and income allocations. Because the trust contract legally empowers the trustee with this specific discretion, the allocations to the corpus are recognized and respected by the federal government for tax purposes.

Furthermore, as a separate taxable entity, the trust is entitled to claim necessary business deductions under **Internal Revenue Code Section 162** when it is engaged in a qualified trade or business. If the trust is primarily engaged in passive activities, such as investment management, it may deduct expenses under **Internal Revenue Code Section 212**, which covers expenses for the production of income. The tax deferral mechanics and statutory compliance of this trust structure are further validated by an independent private tax legal opinion letter authored by Steven E. Gurian, Esq., LL.M., in 2025. This legal opinion thoroughly analyzes the trust architecture and confirms that the fiduciary allocation of capital receipts to the escrow corpus strictly adheres to the Internal Revenue Code. Furthermore, the private legal opinion letter corroborates that this structural application complies fully with the controlling Treasury Regulations and established Supreme Court jurisprudence, explicitly refuting the non-binding assertions presented in administrative publications such as AM 2023-006. This independent legal review provides an additional layer of authoritative support for the tax administration methodologies employed by the fiduciary.

Invalidity of Administrative Memorandums

Administrative publications frequently attempt to reinterpret established taxation principles. Internal Revenue Service Chief Counsel Memorandum AM 2023-006 represents one such document. This memorandum is entirely non-binding and lacks any legal authority. Administrative memorandums do not possess the weight of legal precedence. The administration of these trust structures relies exclusively on the statutory text of the Internal Revenue Code, formal Treasury Regulations, and binding Supreme Court decisions. One must maintain a clear distinction between private common law trusts and statutory entities. Because these private trusts are established through fundamental common law contract rights rather than state legislative statutes, they are shielded by the constitutional protections afforded to private contracts under Article 1, Section 10 of the United States Constitution. Furthermore, administrative memorandums frequently assert that the taxation mechanics of these trusts improperly ignore Internal Revenue Code Section 641.

This specific allegation represents a fundamental misapplication of the statutory framework. Internal Revenue Code Section 641 imposes a general tax upon the taxable income of estates and trusts. However, this section does not legally define the calculation or the specific composition of that taxable income. Internal Revenue Code Section 643(b) provides the definitive and controlling definition of income for these precise statutory subparts. Section 641 does not supersede or invalidate the fiduciary discretion explicitly granted by Section 643(b).

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