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MEMORANDUM

Subject: **Trust Contract, Demand Notes, Insurance, IRC Compliance, Intellectual Properties and Trust Rights with Relation to Spendthrift Trust Organizations**

A contract in the form of a Spendthrift Trust Organization does not owe its existence to any act of the legislature. The authority for its creation is the common law right of the parties to enter into a contract. In American Law, the government cannot impose a tax upon a right to contract. The "right to contract" is guaranteed under the United States Constitution Article §10. Courts can determine the enforceability of contracts, generally on public policy grounds. One example is a gambling contract, which is largely unenforceable depending on the jurisdiction. However, standard contracts emanating from spendthrift trusts are fully enforceable. Once the property is transferred into a Spendthrift Trust Organization, it is subject to its own indenture which governs and protects the property held by the Trust. The government can only regulate and tax entities it creates. Also, assets conveyed or purchased by Trusts are not gifts and may not be considered as such because there is no equitable title conveyed to any person or entity. All assets are held in the corpus of the Trust for the benefit of the beneficiaries who hold a beneficial interest, but do not hold title to said assets. Property held by a properly structured contract in the form of a Spendthrift Trust Organization is generally immune from tax liens, levies, seizures, and lawsuits, subject to certain limited exceptions in some jurisdiction. Example – in some jurisdictions, a beneficiary's interest could be subject to attachment upon distribution for child support. The Spendthrift Trust Organization is not liable for the debts of the trustee(s), personally, and the beneficiaries, and the assets held by the Trust cannot be seized to satisfy their debts. A spendthrift trust may enter into contracts the same as individuals or legal entities (e.g. corporations, partnerships, etc.)[1]. Further, the trustees and beneficiaries are not liable for the debts of the Trust Organization. Hussey v. Arnold, 182 U.S. 461, 21 S. Ct. 645.

A contract between an individual/entity and a Spendthrift Trust is an agreement creating obligations enforceable by law. The basic elements of this contract are mutual assent, consideration, capacity, and legality. In some states, the element of consideration can be satisfied by a valid substitute. Such contracts are enforceable and a trust may be sued for contractual obligations the trust specifically enters into by and through the trustee(s) in his/her official capacity.

[1] The right of contract clause is found in Article I of the United States Constitution. Generally speaking, the clause was added to the Constitution in order to prohibit states from interfering with private contracts. The clause states that "No State shall...pass any...Law impairing the Obligation of Contracts...".

Contracts of sale, and promissory notes emanating therefrom, are a legally binding obligation. Value of such transactions with a trust is generally determined by the same market value analysis, i.e. what a willing seller will sell for and what a willing buyer will pay.

Transactions entered into by the trust are subject to the common law, and often the uniform commercial code, the same as individuals and legal entities (e.g. corporations, partnerships, etc.). However, as stated above, trust assets can never be directly attached to satisfy separate obligations of the trustee(s) and/or the beneficiaries. Assets in the corpus of a Spendthrift Trust are managed at the sole and absolute discretion of the trustee(s) of the Trust. There are no limits set on the time a Trust holds property or assets in the corpus of the Trust before they may be resold.

Trusts are subject to usury laws with respect to paying or charging interest in connection with promissory notes or otherwise. The interest rates that a trust can charge or be charged without violating usury laws is unclear. In this regard, most states cap interest rates based on the promisee's capacity. For example, is the promisee an individual or a corporation for which permissible interest rates are different? Prudence dictates when charging interest in connection with a transaction. The trust utilizes the lowest permissible interest rate authorized by the particular jurisdiction, which is usually the rate an individual can charge.

The Trustee(s) of Spendthrift Trusts may purchase and hold insurance policies on the Trustee(s) or Beneficiaries. Proceeds of such policies that are tax exempt when passing to the Trustee or Beneficiary of the insurance policy to whom the policy is written hold the tax exempt status when distributed to the person named on the policy. Also, the benefits of the policies may be distributed to the heirs of said holders on the death of that person. Payments of the Demand Notes, being after tax dollars when conveyed to the heirs, are also pass through.

The foregoing analysis is intended as a response to the questions posed to me by Masters Copyrights LLC.

Sincerely,

Paul B. Rosen