NEXXESS
BUSINESS ADVISORS

EXECUTIVE SUMMARY AND TRUST OVERVIEW

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COMPLEX SPECIALIZED SPENDTHRIFT TRUST

*****OVERVIEW AND EXECUTIVE SUMMARY*****

Nexxess Trust Overview

There are many kinds of trusts, such as: irrevocable, revocable, living, and testamentary, etc. Trusts can be very simple or very complex. In the United States ninety-nine percent (99%) of all trusts are created as living or revocable trusts, which offer zero asset privacy, zero tax advantages, zero asset protection and zero living benefits. Living trusts only help someone bypass probate, and that is it. They call it a "living trust," but it gives zero "living benefits." Therefore, while bypassing probate is a great thing, it's not what clients ultimately want. They not only want benefits at death; they want benefits now. The Nexxess Trust gives our clients what they really want: **a)** ultimate privacy, **b)** ultimate tax advantages, **c)** ultimate asset protection, **d)** ultimate asset control and **e)** ultimate peace of mind. Not only do these benefits start on day one of the trust, but they also continue from the grave. It's what we call **control from the grave**.

The Nexxess Trust is irrevocable and complex in structure, and it comes with three main benefits. Our clients enjoy 1) complete invisibility of all assets, 2) total asset protection, allowing no creditors to ever seek to take assets, including the IRS, and 3) unbelievable tax advantages, fully using the current tax codes. Trusts are legal entities that can be used to transfer, control, and manage property and/or assets for the benefit of another person or beneficiaries.

The original spendthrift trust is derived from the laws of antiquity. It was first established in the early 1500's by King Henry, VIII of England, and it was a creature of the common-law legal system that was brought to American and eventually adopted by the founding fathers of the United States. However, this legal system was largely abolished in 1952 when the courts adopted the UCC (Uniform Commercial Code) which governs the "law of sales" and commercial transactions. Today, common law and "pure trusts" are not recognized by the IRS, and they now consider them something other than legal trusts. The courts today operate under Equity/Admiralty authority, not common law, unfortunately.

Regardless of the current laws or codes, the terms and conditions of the Nexxess Spendthrift Trust strictly define its unique structure and design, which insures all the benefits for which it was created. It is thought today by trust experts that thousands of spendthrift trusts still remain today from hundreds of years ago. Even the Windsor Castle in England is said to be part of a spendthrift trust created in the early 1500s, A.D. With the right structural planning, anyone can create a secure trust structure that can last for centuries and protect their family for generations to come.

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Nexxess Trust Executive Summary

The Nexxess Trust is an extremely powerful instrument for those who use it correctly. It provides the ultimate asset protection, tax advantages, and invisibility of assets. To have complete asset protection, the Nexxess Trust must be **irrevocable** and **non-grantor**. We separate the settlor, or creator, from the corpus of the trust for specific reasons. When assets are irrevocably transferred to the trust, they may never revert to the one who is making the endowment or transfer. Once the very first asset is placed in the trust by the "settlor," or "grantor," the trust is said to be "funded" and becomes valid at that time. Under these terms and conditions, legal separation has occurred upon creation, and the corpus may not be breached by claimants of the settlor, the trustee, or anyone else.

The **non-grantor** designation exempts the trust from any alter ego status that brings into action the management or beneficial enjoyment by the settlor. If the creator of a trust has management of the corpus, or is a beneficiary of the same trust, the trust is characterized as a "revocable living trust." Living trusts have limited benefits and lose most tax advantages and asset protections enjoyed by a spendthrift trust. Because the settlor of a Nexxess Trust "resigns" after the funding, there can be no ambiguity concerning alter ego claims or accusations of it becoming a grantor, revocable or living trust. Furthermore, any assets that go into our Trusts must go in through a contract or "bill of sale." This ensures that the trustee isn't then creating a "grantor trust" by giving or gifting assets into the trust, subsequently after creating the trust. All assets that go into this trust MUST enter through a contract or bill of sale, to ensure the legal structure of a "non-grantor" trust.

The Nexxess Trust is written to comply with 8 different trust-law categories and governing laws or codes. They are:

1	**Scott on Trust Law.**
2	**The Restatement of Trusts.**
3	**The Internal Revenue Code.**
4	**UTC-The Uniform Trust Code.**
5	**UPIA- The Uniform Prudent Investor Act.**
6	**UCC-Uniform Commercial Code**
7	**Statute of Frauds. And**
8	**The Rule Against Perpetuities.**

Compliance to these 8 categories was done so, that the trust corpus would be protected from turnover orders by any court or judge and be separate from legislative control or actions. To serve the beneficiaries of the trust and protect the corpus, the trust must be **complex** in structure, with terms and conditions that plainly and fully state the powers and limitations of the trustee(s). **Complex trusts** are governed by terms and conditions that may not be altered or changed by the trustee(s); however, this is a good thing. Being **complex**, **irrevocable**, and **non-grantor** keeps the Nexxess Trust from any "alter-ego" claims by a possible creditor or potential "abusive trust scheme" claims by the IRS.

Any grantor who creates a Nexxess Trust will also resign very soon after its creation and he or she has nothing further to do with the trust ever again. This is a legal resignation, notarized, to ensure the validity of the non-grantor status.

The **Spendthrift** Provision of the Nexxess Trust is the primary critical element of the document. No spendthrift trust corpus may be penetrated to reach the assets of the corpus. Case law has upheld this for hundreds of years. No judge or court may issue a turnover order against any asset in a properly constructed spendthrift trust. There have been only two known exceptions to this rule:

1) Trustees must avoid fraudulent conveyance to avoid a judgment**,** but this only applies to a trust created after litigation has been filed**,** not before.

2) One judge has been able to reach the corpus assets to force someone to pay unpaid child support. Other than those two exceptions, Nexxess attorneys know of no other case law where a turn-over order was successful over a spendthrift trust from any judge or court in the United States.

The **Discretionary** terms and conditions of the Nexxess Trust are established to ensure the absolute and sole discretionary power of the trustee(s) in determining the distribution of the corpus assets to the beneficiaries of the Trust. If a trust agreement were to require the distribution of income and assets, as with a living trust, it would not affect the asset protection but would adversely affect the taxable structure of the trust for any taxable year such a distribution occurred. The Nexxess Trust does not require distribution of passive income; therefore, the trustee(s) may use their discretionary powers to allocate all passive income to the corpus of the Trust if the trust agreement has the correct language and the trustee correctly declares the income to principal, or corpus. The trustee may also distribute some assets to beneficiaries from corpus when the trustee wishes to do so or avoid asset distribution for as long as he or she wishes. This power is completely discretionary, and it must remain this way.

The Internal Revenue Code is explicit and clear regarding discretionary trusts, plainly stating that a fiduciary has the sole and absolute authority, under the terms of the governing instrument, to designate certain forms of income to remain in corpus (deferred). That is, if the trust document allows this and the trustee so declares that any or all passive income as extraordinary dividends or taxable stock dividends, and that designation is paid to the corpus of the trust and is not subject to distribution, then this is not income to the trust according to §643b. It's extremely important to understand that the income must NOT be active, ordinary, or earned income to comply to the IRC text, and the income must be non-anticipated, so the nature or character of the income does not change as it is declared "extraordinary." This is the most confusing part for most CPAs, for them to accept income to be "declared" to be extraordinary, when in most cases it wouldn't normally be. However, this is why §643b explicitly states 3 separate times, **"…under the terms of the governing instrument and applicable local law…."** because trustees can be given authority to do this by the trust document. Unfortunately, the CPAs literally refuse to read the document.

This is where we lose many CPAs, because for some reason they have a hard time believing that the trust document can have this much authority to simply declare certain types of income to be "extraordinary," but this authority is given in the code itself in §643b. If the unanticipated nature of the income doesn't change, and it remains non-guaranteed income, and the trust document says that the trustee has the authority to allocate to corpus this type of income, then that is exactly how it works.

After more than 100,000 tax returns filed and accepted and several audits now with "no-change" letters, it's being calmly considered by many open-minded CPAs, as it should be, that this trust structure is 100% legitimate and it works as intended. Let's take a look at the code itself, and examine the exact wording:

TRUST INCOME AND TAX CODES FOR THE EXECUTIVE SUMMARY

The section below is the main part of the tax code that we use to explain how the IRS applies capital gains and passive income within our unique specialized spendthrift trust. In short, there are no capital gains tax on investment gains if the gains stay in the trust corpus and are not distributed to beneficiaries.

Internal Revenue TITLE 26, Subtitle A, CHAPTER 1, Subchapter J, PART I, Subpart A, Sec 643 (a)(3),(4),(7) and (b) states: "(3) Capital gains and losses. **Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year**, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account. (4) Extraordinary dividends and taxable stock dividends for purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law. (7) Abusive transactions The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes. If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes. (b) Income for purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. **Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income."**

FOUNDATIONS AND PROVISIONS OF OUR TRUST

The **non-grantor provision** in the Nexxess Trust separates the creator/settlor/grantor from the corpus of the trust and exempts the trust from any "*Alter Ego*" status. In a grantor Trust, the client asks an attorney to originate a trust for the client, and the attorney honors the request and originates a trust. This makes the client also the grantor. Although a grantor Trust does avoid probate, it does not have any Tax Benefits or Asset Protections while the client is alive. The grantor status can give an attorney or judge just cause to investigate and overturn that trust as an alter ego. Grantor trusts essentially allow access to all assets by the court. The IRS also labels all "abusive tax schemes" as either "grantor trusts or foreign trusts." This alone should be enough to only consider utilizing non-grantor trusts.

The **irrevocable provision** offers tax advantages and legal protections from liability if properly constructed and executed. Irrevocable trusts do not pay taxes on capitalization, and endowments are generally beyond the reach of creditors and judgments. To have asset protection, the trust must be irrevocable and non-grantor.

The **complex provision** allows the trust to be exempt from the requirement to distribute any of its income to beneficiaries. A simple trust must pay all income to the named beneficiary or beneficiaries annually. However, the complex provision gives our trust the best of both worlds. While it can distribute the income to the beneficiaries if the trustee wants, it is not required to do so. The trustee has the discretion to hold the income and not pay or credit a beneficiary.

The **discretionary provision** insures the absolute and sole discretionary power of the trustee(s) in determining the distribution of the corpus assets to the beneficiaries. If any single percent of the corpus is designated to be held or distributed to any one or more beneficiaries, the discretionary designation of the trust becomes invalid. This in no way affects the asset protection; however, distribution could adversely affect the taxable structure of the Trust.

The **spendthrift provision** of the Trust is the critical element of the document, in that, no spendthrift trust corpus may be penetrated to reach the assets of that corpus. Case law upholds this, has upheld this for hundreds of years, and will continue to uphold this. No judge or court may issue a turnover order against any asset in a properly constructed spendthrift trust. This one provision is likely to be the most powerful of all provisions of the Trust.

FINAL THOUGHTS ABOUT THE NEXXESS TRUST

It's very common for many professionals to want to invalidate our trust, or even claim that it is an illegal trust scheme. Some attorneys even show a letter from an IRS attorney who says this structure is not valid for certain reasons, however when you read that letter one quickly can tell they are clearly speaking of "**statutory trusts and grantor trusts**." In fact, the IRS has an entire page on their website talking about illegal trust schemes, but you will always find them to be **statutory trusts, grantor trusts and foreign trusts**. They are not speaking of our structure. These illegal trusts are very similar and fool many people, but this is why there is a saying, "Amateurs think strategy, but experts think details." At the end of the day, it's the details that matter, because the devil is always in the details.

The accountants with whom we work have been filing the taxes on these trusts for more than 35 years and they've collectively filed more than 100,000 tax returns, successfully, without any successful challenges to date from the IRS. They even have "no-change" letters which prove the validity of the trust in real-time. While it is true that there are illegal trust schemes out there, and some of those are like ours, there are major differences, which make ours legal. Either their wording is incorrect, or someone operated the trust incorrectly. It's one of those two things.

The illegal trust schemes ALWAYS prove to be grantor trusts and foreign trusts, not a non-grantor, domestic trust as is ours. Our Nexxess attorneys have not found even one abusive tax scheme on the IRS site or in case law that was an irrevocable, **non-grantor**, domestic, complex spendthrift trust. It simply doesn't exist. In fact, it's almost certain that 97% of the abusive trust schemes are "grantor trusts."

We know there are bad actors out there, as with all things that are good. These bad actors try to force active income, or earned income, into the trust and declare it to be "extraordinary" and you cannot do that. Again, bad actors do what is not authorized in the tax code and then the IRS is known to blur the lines and mix the bad actors with the good ones. They did this same thing with Captive Insurance Companies and even put Captives on the "dirty dozen" list. Well, we know that just because some people do it wrong, doesn't mean everyone does it wrong. It's like a gun. You can misuse the gun or use it correctly. The "user" is the one who is responsible for following the law, not the gun. Anyone can take a good thing and simply make a wrong turn and get into trouble. However, you don't throw out the baby with the bathwater. It's unbecoming of professionals out there, even the IRS, who try to highlight the bad actors and dump everyone in the same bucket. There should be more accountability to those professionals that make their living doing this.

A much more reasonable conclusion is that during the last 35 years of irrevocable spendthrift trusts being widely sold in the U.S. (since 1986), numerous attorneys, accountants, and financial planners have reviewed and utilized completely legal spendthrift trust

structures, following the letter of the law while helping thousands of business owners and investors safely defer taxes. Spendthrift trusts are gaining in popularity as more business owners and investors discover the asset-protection potential and the tax deferral advantages. Not only are spendthrift trusts successful in maximizing protections and profits, but they are also supported by case-law. We have dozens of case-law examples to prove our points. We will identify many of them in this Executive Summary.

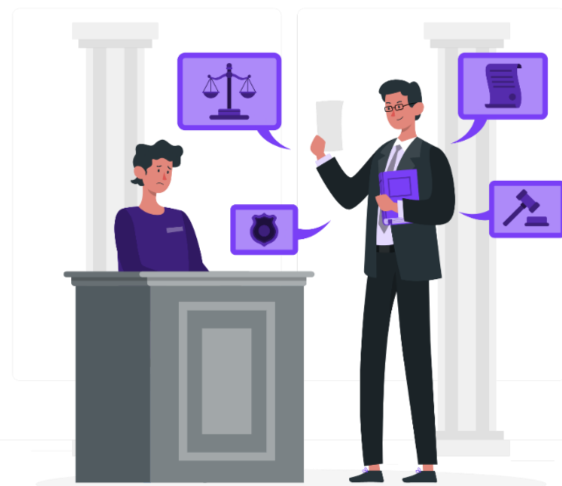
People are opening their eyes to the power within U.S. tax codes to defer asset taxation in Trusts. Just like 401Ks and IRAs, assets can be taxed before the allocation or during distribution, but they are not taxed during both. When savvy people begin thinking for themselves and stop listening to conjectures, great financial planning can happen.

The Nexxess Trust can be used in all 50 states and at least 125 Countries for business. Nexxess trusts follow banking regulations and work in conjunction with IRS Code, supporting the reduction of tax fraud schemes. It's designed for clients who have the most to protect either now or in the future and is a proven method for enhancing your wealth and securing your legacy for generations to come.

LEGAL POWERS OF THE SPENDTHRIFT TRUST ORGANIZATION

A **Spendthrift Trust Organization** provides the safest road to freedom permitted by law. It provides ironclad asset protection, ultimate tax advantages, and the best way to acquire asset invisibility or privacy. When a person correctly transfers assets into a properly structured Spendthrift Trust Organization, he or she can maintain 100% control of Trust assets and have all the benefits of ownership without any inherent liabilities. Spendthrift trusts are immune to liabilities such as bankruptcy, divorce, lawsuits, liens, levies, death, etc.

The word "trust" is defined by Black's Law Dictionary as a "right of property, real or personal, held by one party for the benefit of another." Trustee(s) control the legal and equitable title to the property for "the benefit of" the beneficiaries. Neither the trustee(s) nor the Trust itself owns the properties. They merely hold title to the assets, but they do not hold "equitable title" to anything. Technically, the Beneficiaries own everything in the trust "eventually," but not until the trustee(s) want them to. This is exactly the secret sauce to the trust. On paper, the assets appear to be held "in-trust" for the beneficiaries, so we say the beneficiaries technically own everything. It's easier to say the assets are "RESERVED" for the beneficiaries, indefinitely, **income tax deferred**.



Effectively, the Trust works like an "escrow account." However, none of our clients are required to give any assets to the Beneficiaries; so, even though the Trust holds title, the "equitable title" is merely "RESERVED" for the beneficiaries. Furthermore, the

Trust assets are only physically given to the Beneficiaries when and if the trustee(s) desires to do so. The beneficiaries cannot demand assets because of the spendthrift provision.

Some have a hard time understanding this. To help explain, Nexxess compares trust assets to a mortgage title company escrow account. When the lender sends the money to the title company, the title company doesn't OWN the money. The money is simply held in the bank account of the title company until the lender "approves" the funds to be dispersed, pending everything was correct and signed for. In a similar way, the Trust is like an "escrow account" of a title company. All assets are held in escrow (the trust) until the trustee decides in his own discretion to approve the assets to go to a beneficiary. Any time an income or asset is given to a beneficiary, a taxable event is triggered.

The beneficiaries only own the assets in the trust if they are transferred to them by title or deed by a trustee. <u>Until this happens, beneficiaries own nothing in the trust</u>. Beneficiaries have rights to the benefits, proceeds or profits of the assets or properties, but only if and when the trustee allows it. One thing to remember is that the trustee is responsible for all trust assets, and because this is a spendthrift trust, the beneficiaries are only allowed what is "given to them," and this is at the complete discretion of the trustee(s). When the trustee allows access, this is called a "beneficial interest." This beneficial interest is contractually a non-assignable interest. Because of this, any creditor of the beneficiary may never legally attach any trust asset to a debt obligation of the beneficiary. In addition, assets conveyed into the trust are never a "gift" to the trust because the assets in the trust hold no "equitable title."

Beneficiaries do not have any management or control of any trust assets EVER in this Spendthrift Trust Organization. A Spendthrift Trust Organization is "created" or given life through a contract in the form of a manifestation of intention in the terms and conditions of the trust, often referred to as the "instrument" or "trust instrument." In addition to this, these "contracts" or "instruments" do not owe their existence to any acts of a legislature. The authority for trust creation is the common law right to contract by each party, now under the UCC and UTC codes for trusts.

According to American law, **the government <u>cannot regulate or impose a tax upon a "right."</u>" Our "Obligation of Contracts," according to the U.S. Constitution, Article 1, Section 10, may not be impaired by any state**. This means that it is beyond the rights or powers of any state government, even a judge or court, to change even one word of a contract of trust. Once the Trust is funded and active and the first property or asset is transferred into the Spendthrift Trust Organization, the trust is subject to its own indenture, governing and protecting all properties or assets held by it. Assets conveyed into 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 technically held in the trust corpus **<u>for the benefit of</u>** the beneficiaries. As mentioned before, beneficiaries may hold a beneficial interest but no title or equity of the trust assets.

It is very important to understand that any property held by a properly structured Spendthrift Trust Organization <u>is immune</u> from tax liens, levies, seizures, lawsuits, divorce claims or bankruptcy. The Spendthrift Trust Organization is not liable for the debts of any trustee(s), or the beneficiaries, and assets in the trust corpus can NEVER be reached by a court to satisfy debts of trustees or beneficiaries. Likewise,

the trustee(s) and beneficiaries are never personally liable for any debts of a Spendthrift Trust Organization. **See [Hussey v. Arnold 182 U.S. 461,21 S. Ct.645 (1904)]**.

In **[Weeks v. Sibley DC 269 F. 155 (1920)]**, **[Edwards V. Commissioner. 41512 F. 532, 10th Cir. (1969)]**, and with **[Philips v. Blanchard 37 Mass 510]**, the courts ruled that a Spendthrift Trust Organization is not illegal even if formed for the express purpose of reducing or deferring taxes.

[Edison California Stores, Inc. v McColgan. 30 Cal 26472.183 P2d 16] ruled that persons may adopt any lawful means for the lessening of the burden of income taxes. The Department of the Treasury, IRS Handbook for Special Agents § 412, Tax Avoidance Distinguished from Evasion states, **"Avoidance of Taxes is not a criminal offence. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible."**

Pursuant to **[Narragansett Mut. F. Ins. Co. vs. Burnhamun 51 r1371, 154 a 909]**, it is not an evasion of legal responsibility to take what advantage may accrue from the choice of any form of organization permitted by law. Also, a Spendthrift Trust Organization is not considered a taxable "Association" pursuant to tax law. Black's Law Dictionary defines Association as follows: What is designated as a trust or partnership may be classified as an association [only] if it clearly possesses [all] corporate attributes. Corporate attributes include: [1] centralized management, [2] continuity of existence, [3] free transferability of interest, [4] limited liability.

Another major advantage to operating a **Spendthrift Trust Organization** as a business is that because it is not a creature of a legislature, it is not subject to the myriad of strangling legislative controls, rules and regulations that are applicable to corporations and other legislative entities.

The Supreme Court case **[Eliot v. Freeman 220 US 178]** ruled that a **Spendthrift Trust Organization** is not subject to legislative control. The Supreme Court holds that the trust relationship comes under the realm of equity, based on common law, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority.

Therefore, a Spendthrift Trust Organization is not an "association" or an "unincorporated association," because it does not possess the same attributes of a corporation. Furthermore, unlike a corporation, a Spendthrift Trust Organization is not an "artificial entity," nor does it owe its existence to the charter power of the state. It is formed by contract law, and not a state legislature or any governing body. It's not an "alter ego" or a "nominee" for any trustee or beneficiary because no one person holds both legal and equitable title to assets inside the Trust.

With no equitable title and beneficial interest held by no one person or individual, there can be no gift to the trust and therefore no gift tax consideration to any asset conveyed to the trust applies.

All assets conveyed into the trust are either purchased assets or products of "capitalization," which has no tax consequences, because the taxes have already been paid by the one capitalizing the assets. One could, however, sell assets to the trust at a capital gain, if they so desired, and pay a capital gain tax personally, but the tax is only due upon the distribution of the debt through the note payable account in the trust, not at the time of the sale. Money must change hands for the capital gain tax to become due, which is why many of our clients simply defer receiving the funds until they either need the money or they're ready to pay the capital gain tax. However, most clients simply sell their assets at "cost" using the cost approach to value, so no capital gain tax is ever owed personally.

The final concept to cover concerning the assets and income in the trust is the assets will always remain "**deferred**" for tax purposes unless they are distributed. **The assets and income go into the trust deferred and they are distributed taxable**. The taxes on the income or assets in the trust do not "disappear." They do not fade away in the sunset. No, they are always there and will always become due once the money or assets are distributed.

From time to time, we hear people on YouTube talking about there is no tax in these trusts. That is not true at all. There is always a tax on the gains or income earned, but one thing to understand is that **tax is assessed to the owner, once received**. In these trusts, there is no "owner," and furthermore, the income is usually never "distributed." Therefore, in theory, the taxes are there, and the corpus of the trust remains taxable, but in practice, nothing is ever taxed because the trustee usually never distributes from current income or from corpus. This means the taxes simply are deferred until such a time when a trustee decides to distribute from corpus to a beneficiary, which may never be in his or her lifetime.

It can sound complicated when you begin to look at the details of how it works, but this is why we invite our clients to come to our training calls and watch our training videos, so they can learn the rules, the variables, and the details. Without taking a fair look at ALL the details, you cannot conclude that this trust is invalid or somehow illegal. The Nexxess Trust follows the code in the IRC to fullest extent and it sets the rules of the trust under the terms of the governing instrument. This is why without reading the text of the document (the governing instrument) there is no possible way that any tax professional can conclude these trusts are illegal or invalid. The trust document has and reserves this authority under the common law right to contract, under Article 1, Section 10 of the Constitution.

OTHER LEGALITIES ABOUT THE SPENDTHRIFT TRUST ORGANIZATION

- Only licensed Attorneys are permitted to give legal advice, create, and sell legal documents (wills and trusts) and practice law. Never buy a trust from an individual, but only through a competent law firm with years of experience.
- Nexxess Trusts are distributed by Rodric Brock and Jeff Wagner, local attorneys in the Dallas/Fort Worth Area, and/or their contracted affiliates.
- Purchasing Trusts from representatives outside the legal profession can result in clients buying potentially invalid trust documents. In addition, purchasing a copyrighted trust from persons not authorized to distribute them is also illegal.
- Nexxess accountants have already been through several audits with this trust and the IRS made NO CHANGES to the reported tax or tax return.
- Purchasing a Nexxess Trust includes access to nearly 50 legal documents potentially required to perform necessary trust business.
- **Nexxess Trusts were written to comply with at least 8 different trust-law categories and governing laws or codes.** They are: 1. Scott on Trust Law, 2. The Restatement of Trusts, 3. The Internal Revenue Code, 4. Uniform Trust Code (UTC), 5. Uniform Prudent Investor Act (UPIA), 6. Statute of Frauds, 7. The Rule Against Perpetuities, 8. The Uniform Commercial Code (UCC). This was done so the Trust Corpus would be protected from turnover orders by any court or judge.
- Our unique integration of the non-grantor designation exempts the Trust from any alter ego status that brings into action the management or beneficial enjoyment by the grantor. If the creator of a trust has management of the corpus or is a beneficiary of the trust, such a trust becomes a "living trust" with only probate avoidance benefits. Without the application of the non-grantor designation, a trust would lose the five main living benefits of a Nexxess Trust: **Ultimate Asset Protection**, **Ultimate Asset Control**, **Ultimate Asset Privacy**, **Ultimate Tax Advantages**, and **Ultimate Peace of Mind**.
- Assets transferred into a Nexxess Trust are NOT subject to a "5-Year Lookback" for nursing home and Medicaid benefits. The IRS imposes a 5-Year lookback when people transfer assets to a "Living Trust" because living trusts can revert the assets back into the name of the grantor. The Nexxess Trust is an Irrevocable, non-grantor trust, meaning when you sell assets into this Trust, they can NEVER revert back to the person who sold them into the Trust. As a result, an individual can sell assets to a Nexxess Trust, and the very next day qualify for

Medicaid and nursing home benefits because they didn't sell the assets to themselves or to a grantor trust. They basically sold them on the open market for all practical purposes.

- **<u>EVEN WHEN DISBURSED TO A BENEFICIARY, TRUST ASSETS ARE UNTOUCHABLE</u>: In a Spendthrift Trust Organization, once any assets are distributed to beneficiaries, they remain as "exempt assets." Exempt Assets** of the Trust are beyond the turnover order of any court or any operation of law when used legally. No creditor of any beneficiary can ever reach the corpus of the trust (assets) nor can they ever reach the personal assets of the beneficiary(ies) once they receive it because they are assets from an **"exempt source**" and are still protected after the beneficiary receives them.

TEXAS CASE LAW UPDATE

Burns v. Miller, Hiersche, Martens & Hayward, P.C.
948 S.W.2d317 (Tex. App—Dallas 1997 writ denied)

(TRIAL COURT DECISION WAS <u>OVERTURNED</u> BECAUSE OF SPENDTHRIFT PROVISIONS)

The Trial Court ordered to turn over property to a receiver for use in paying a creditor of the beneficiary. The Trial Court INCORRECTLY included all disbursements from spendthrift trusts within the scope of the turnover order.

However, <u>the Appellate Court reversed holding that beneficiary's interest in Spendthrift trust assets are exempt property under the turnover statute</u> (**Civ. Prac. & Rem. Code §31.002**). The creditor pointed out that once the trustee pays or delivers the trust assets to the beneficiary, they are no longer exempt. **Trust Code § 112.035 (a).** However, the turnover statute provides that a court may not enter or enforce an order that requires the turnover of "the proceeds of, or the disbursement of, **property exempt** under any statute." **Civ. Prac. & Rem. Code §31.002(f).** "Thus, even when property is no longer exempt under any other statute, if it represents proceeds or disbursements of exempt property, it is **not subject** to a turnover order." ***Burns* at 323**.

Moral of the story: Even distributions from Spendthrift trusts are protected from turnover orders because the property was received from an "exempt source."

6 TYPES OF PASSIVE INCOME

...NOT CONSIDERED "INCOME" TO THE TRUST[1]

One thing to understand is that the trust document should outline the nature of passive income, to define what types of income can be declared to be extraordinary by the trustee. This is important because when the IRC says if the fiduciary who acts in good faith, determines the income to be allocated to corpus, they are talking specifically about "**taxable stock dividends or extraordinary dividends**," **which is not active income, ordinary income, guaranteed income, or otherwise anticipated income**. Therefore, the terms of the governing instrument should be clear to define "extraordinary dividends" as **non-anticipated income**, in order to keep the nature of the income compliant to the IRC. **There are six types of non-anticipated income: rents, royalties, interest, dividends, K1 passive, and capital gain income**, which is the nature of passive income, or ordinary or active income.

If the trust is written correctly and allows for passive income to be allocated to corpus, then according to the "governing instrument" and local law, the trustee may declare this to corpus, and it will not be considered income **(currently)**. **It's still taxable though, just not currently!** It's essentially DEFERRED income at this point. If the trustee does not pay, credit, or require a distribution to a beneficiary at any time during the taxable year, declares the income to corpus, and does so in good faith to the trust document, then it's not income (currently). We show a small portion of the code on this page (below), but the full code is found on page 4 of this document.

According to IRC (Internal Revenue Code) TITLE 26, Subtitle A, CHAPTER 1, Subchapter J, PART I, Subpart A, Sec 643, STATUTE (3) and (4) and (7)(b)...

(b) Income for purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or Trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law **shall not be considered income**.

- 01 RENTAL INCOME (RENTS)
- 02 ROYALTY INCOME (ROYALTIES)
- 03 INTEREST INCOME (INTEREST)
- 04 DIVIDEND INCOME (DIVIDENDS)
- 05 K1 - PASSIVE INCOME (K1s)
- 06 CAPITAL GAIN INCOME

[1] **THIS TYPE OF TRUST MUST BE AN IRREVOCABLE AND COMPLEX TRUST, AND THE INCOME MUST BE ALLOCATED TO CORPUS BY THE TRUSTEE (not distributed), AND THE TRUSTEE BE ALLOWED TO DO SO UNDER THE TERMS OF THE "GOVERNING INSTRUMENT," to NOT be considered income by the IRS. The trustee must correctly follow the terms of the governing instrument and local law.**

NEXXESS
BUSINESS ADVISORS

NEXXESS TRUST KEY POINTS AND FEATURES

- ✓ The Nexxess Trust is guaranteed to be compliant and consistent with the U.S. Constitution, U.S. Supreme Court, and other case law court decisions.
- ✓ The Nexxess Trust is lawful in every state. A spendthrift trust properly established in one state can operate in any other state or country.
- ✓ The Nexxess Trust is used in a legal manner and under Spendthrift provisions. It is impenetrable to creditors and significantly protected from governments. It is even immune from transfer by operation of law (eminent domain).
- ✓ The Nexxess Trust has significantly less liability than a C-Corp, S-Corp, or LLC. The advantages include no annual fees and a much smaller tax burden.
- ✓ The Nexxess Trust requires no periodic reporting or accounting made to any state. It is a federally chartered entity and not a creature of a legislature like LLCs or Corporations.
- ✓ The Nexxess Trust is made irrevocable to avoid any questions concerning ownership of the assets. The grantor resigns, but the trustee(s) and Beneficiaries can change.
- ✓ The Nexxess Trust does not require periodic distribution of assets to beneficiaries, allowing trustee(s) to retain complete control of Trust assets and tax benefits.
- ✓ The Nexxess Trust trustee(s) retain asset control during divorce or personal bankruptcy.
- ✓ The Nexxess Trust protects assets, liabilities, and Beneficiaries from becoming public.
- ✓ The Nexxess Trust is easy to establish, can be maintained by trustee(s), and involves minimal paperwork. It greatly reduces or eliminates fees and taxes.
- ✓ The Nexxess Trust defers taxes for any assets, including cash, that are moved into the corpus of the Trust.
- ✓ The Nexxess Trust can be used to defer taxes inter-generationally.
- ✓ The Nexxess Trust has the same constitutional rights as any individual, including the right to privacy, freedom from unwarranted search and seizure, right to refrain from self-incrimination, and all other rights.

HOW TO CONTACT US:

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