

PURE TRUSTS (IN CONTRACT FORM)

The following cites will not only provide evidence for the legality of contractual pure trusts, but will also provide answers for the Trustees, relative to their positions and rights to administer the Trusts. SOME OF THE CITES deal with statutory trusts, which are different from pure trusts. Those cites are included, below, because they give insight as to the treatment of trusts, in general, under the law. A pure trust will not have the adverse downsides of statutory trusts, because the disadvantages are negated, and benefits added, through the "contract" form in which pure trusts are written. If written properly, the pure trusts retains all of the advantages of a statutory trust, with many enhanced benefits.

The organizations described herein are established under the inalienable and Common law right of free men to Contract (Article 1 Section 10,

US Constitution). We express our commitment to the United States of America, and our dedication to the UNITED STATES CONSTITUTION AS THE SUPREME LAW OF THE LAND and those laws made pursuant thereto and in complete harmony therewith.

CASE LAW SUPPORTING THE CREATION AND STRUCTURING OF TRUSTS

Cite 1 An equity Pure Trust is a lawful, irrevocable, separate legal entity. In the case of Baker vs. Stem, 58 A.L.R. 462, the Court said that, "IT IS ESTABLISHED BY LEGAL PRECEDENT THAT PURE TRUSTS ARE LAWFUL, VALID BUSINESS ORGANIZATIONS." In the case of Burnett vs. Smith, S.W. 1007 (1922), the Court ruled that "TRUST OR TRUST ESTATE IS A LEGAL ENTITY FOR MOST ALL PURPOSES AS ARE COMMON LAW TRUSTS." In Edwards vs. Commissioner, 415 F 2d 578, 582.1 Oth Cir. (1969) the Court said "DIGNITY OF CONTRACT CANNOT BE SET ASIDE .BECAUSE A TAX BENEFIT RESULTS EITHER BY DESIGN OR ACCIDENT". In Weeks vs. Sibley, (D.C.) 269 F, 135, the Court said "A PURE TRUST IS NOT ILLEGAL IF FORMED FOR THE EXPRESS PURPOSE OF AVOIDING TAXATION."

Cite 2 A pure Trust is established by contract, and any law or procedure in its operation, denying or obstructing contract rights impairs contract obligation and is, therefore, violative of the United States Constitution. (*Smith vs. Morse*, 2 CA 524.)

Cite 3 The Trustees of a Trust have all the power necessary to carry out their obligations which they assume and their books and records are not subject to review or subpoena, and so held in Boyd vs. U.S., 116 US 618; and also in Silver Thome Lumber Co. vs. U.S., 1251 US 385. (*See Article IV of the Constitution.*)

Cite 4 A Trust organization, consisting of a U.S. Constitutional right of contract which cannot be abridged. The agreement when executed becomes a Federal organization and not under the laws passed by any of the several legislatures. (*Crocker vs. Mac-Cloy*, 649 US SUP. 39 at 270.)

Cite 5 A Pure Trust is not subject to legislative control. The United States Supreme Court holds that Trust relationship comes under the realm of equity, based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations by legislative authority. (*Elliot vs. Freeman*, 220 US 178.)

Cite 6 The creator of a Pure Trust may mold and give it any shape he chooses, and he or the Trustees, upon such terms as he may choose to impose. (*Shaw vs. Paine*, 12 Allen (Mass) 293; also in *Harwood vs. Tracy* 118 Mo. 631, 24 SW 214.)

Cite 7 The court will support the Trustees in carrying out the terms of their Trust contract and agreement. (*Clews vs. Jamison*, 182 US 461, 21 S. Ct. 845.)

Article I, Section 10 of the U.S. Constitution states "in part" no State shall pass any law impairing the obligations of contracts. Accordingly, since the Trust "indenture" is a contract between the grantor and the Trustee and Beneficiaries, this indenture CONTROLS and no one has the legal authority to violate its provisions. Also, no one can change the Trust indenture except those so authorized by the indenture.

A Pure Equity Irrevocable Trust is not an abusive Trust because the Courts have said that it is a perfectly legal and

Constitutional entity. The Courts take a dim view of anyone or any bureaucracy that violates a Trusts' Constitutional and/or Civil Rights, no matter under what guise, including the attempt to abrogate its rights by passing and then attempting to enforce rules, statutes or so-called laws that violate the Constitution.

WE QUOTE THE FOLLOWING CASES TO CONFIRM THIS:

Cite 8 "WE FIND IT INTOLERABLE THAT ONE CONSTITUTIONAL RIGHT SHOULD HAVE TO BE SURRENDERED IN ORDER TO ASSERT ANOTHER." (*Simon vs. Us*, 390, 389, 1968.)

Cite 9 "THE CLAIM AND EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED INTO A CRIME." (*Miller vs. Us.*, 230 F 2d 486 at 489.)

Cite 10 In the case of *Miranda vs. Arizona*, 380 US 436 (1966) the Court said: "WHERE FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION ARE INVOLVED, THERE CAN BE NO RULEMAKING OR LEGISLATION WHICH CAN ABROGATE THEM."

Cite 11 Chief Justice, Marshall said in the case of *Marbury vs. Madison* 5 US (1 Cranch), 137, 174, 176, (1830) that: "ALL LAWS WHICH ARE REPUGNANT TO THE CONSTITUTION ARE NULL AND VOID." A Constitutionally valid Trust cannot be also "abusive", - nor can the Trust Creator or Trustees or Beneficiaries be penalized for doing what they have a

Constitutional right to do.

Cite 12 "THERE CAN BE NO SANCTION OR PENALTY IMPOSED UPON ONE BECAUSE OF HIS EXERCISE OF CONSTITUTIONAL RIGHTS" *Sherar vs. Cullen*, 481 F 2d 946 (1973).

Cite 13 Trust property cannot be held under attachment nor sold upon execution, for the Trustees' personal debts. *Mavo vs. Moritz*, 24 NE. 1083 (1890).

Cite 14 Personal liability of a Trustee cannot be enforced against the Trust property. If the Trustee owned personally any amounts of beneficial interest, these U.B.I.'s can be attached. *Hussey vs. Arnold* 70 NE. 87 (1904).

Cite 15 In the case of *United States National-Bank of Omaha vs. Andrew Kaminski*, civil action #77 cv. 1830, District Court of Jefferson County, Colorado, June 16, 1980, the Bank alleged that Kaminski owed them \$20,000. When he had no personal assets to seize after they obtained judgment, they tried to seize the assets of an Equity Pure Trust that Mr.-Kaminski

had set up a few years before. The Bank's action failed and they were unable to penetrate the Trust.

To further illustrate how creditors or the IRS cannot penetrate a Trust that has been established by the grantor at a time when he was personally solvent the case of Mr. John M. King is an example. In 1969 oil entrepreneur John M. King was worth 300 million dollars. In September, 1971, he became involved in bankruptcy proceedings. Despite personal bankruptcy which began in June, 1971, Mr. King testified thereafter that he and his wife and their four children still lived in an elegant, walled estate in a Denver suburb and had the use of vacation places in Palm Springs and La Jolla, California, as well as property in Vale, Colorado and Maui, Hawaii. He was able to do this because although his personal assets were currently tied up in bankruptcy court, Mr. King had, according to him, given 80% of his assets to various Trusts, which he had established several years prior, for the benefit of his children. Thus, when creditors with claims of 42 million dollars including 5.3 million dollars allegedly owed to the IRS, tried to collect, they discovered they could not penetrate the Trusts which held these former assets. This proves that a Trust, properly established, is a separate legal entity from the grantor and the assets that have been placed in this Trust are immune from seizure.

Cite 16 A Trust established in good faith by the Grantor for the benefit of his children cannot be penetrated and assets seized to pay the alleged tax debts of the Grantor on the grounds that the Trust was established to defraud the Grantor's creditors where the conveyance of the assets of the Grantor did not leave him insolvent and where it was done prior to him having knowledge that at some future date he may allegedly owe taxes or other debts. (*USA vs. Jack E. Cissner, et al.*, Civil Court, Wash. Civ. #C82-466T.)

COURT RULES WIFE CAN BE AN ADVERSE PARTY IN A FAMILY TRUST

The IRS and many of the State Revenue Departments have been claiming that Family Trusts are not valid, as a separate legal

taxable entity, and one of their arguments is that the wife cannot be a true "adverse party" on the Board of Trustees because she is married to the grantor of the Trust. The following Court Cases proves beyond a shadow of a doubt that the wife can stand on her own two feet as a true adverse Trustee, to the grantor if he is a Trustee on the Board or two other Trustees, whether her grantor husband is or is not a Trustee on the Board.

Cite 17 "It has been said that because of 'family solidarity' a wife's interest in income is not truly adverse to her husband's. *Almaier vs. Commissioner*, 6 Cir., 1940, 116 F 2d 162 (41-1 USTC 9141), cert. den., 312 US 706; *Fulham vs. Commissioner*, supra.

Cite 18 However, such a concept often counters reality. Is the Commissioner to investigate the existing rapport, or lack of it between a particular taxpayer and his wife before determining the incidence of the tax? We believe that a single rule must be adapted and that the preferable one is to assume that each wife stands on her own feet. *Commissioners. Katz* 7 Cir., 1943, 139 F 2d 107, 110 (43-2 USTC 9640); *Phipps vs. Commissioner*, 2 Cir., 1943, 137F 2d 141, 144 (43-2 USTC 9513).

Cite 19 A Trust can be a profit making, separate legal Business entity, and when Trust income is to be accumulated or distributed at the sole discretion of fiduciary (the Board of Trustees), net income held and accumulated is taxable to the fiduciary (the Trust), and only that which is distributed to the beneficiaries is taxable to them. The IRS claimed that the Trust was "an association" and taxed it as such. The then "Board of Tax Appeals" held that the estate was not an association. Also, income earned by the Trust in any given year, not distributed in same year to the beneficiaries is taxable to the Trust. If this tax paid income is ultimately distributed to the beneficiaries, it cannot be taxed a second time as is the case of incorporated businesses, with the exception of personal corporations (p.C.). *Guitar Family Trust Estate vs. Commissioner*, 72 F 2d 544 (1934).

THE FOLLOWING IS THE OFFICIAL, LEGAL DESCRIPTION OF WHAT THE IRS CALLS A "FAMILY TRUST".

"FAMILY TRUST" not an association taxable as a corporation, even though property vested in the Trustees includes a going business, where the Trust is created for the benefit of named members of a family other than the Grantor, and beneficiaries as such have no voice in the management of the Trust and no powers to dispose of or encumber their beneficial interests. Net income is not distributable on the basis of capital contributions of the beneficiaries. No stock certificates of beneficial interest are provided by the Trust agreement or issued to the beneficiaries, the usual corporate forms are not observed, and in the event of death of the Grantor, the manner and proportion of distribution are fixed by the Trust instrument. (*Standard Federal Tax Reports, Commerce Clg House, Section 7701.106*)

Now please note the difference between what is the officially recognized "family Trust" as defined above and the "Equity Pure Trusts", "Unincorporated Business Organizations", "Business Trusts" and "Massachusetts Trusts" which the IRS and many of the State revenue departments lump all together and claim that they are all "Family Trusts" as defined in "Standard Federal Tax Reports, Commerce Clearing House, Section 7701.106. For purposes of simplicity, we shall hereafter refer to the above different named Trusts as "XI" Trusts because they all have a great deal in common in their structure. Contrary to the Commerce Clearing House described Trust, the "XI" Trusts have Certificates of Beneficial interest, sometimes called "Trust Certificates". The "XI" Trusts have a Corporate form, although they are not Corporations. With "XI" Trusts, the death of the Grantor has no effect whatsoever on the Trust. It carries right on under the guidance and control of the duly constituted board of Trustees. The death of the Grantor does not cause the termination of the Trust, nor is there any distribution of the Trust corpus at that time. Termination of the Trust will only occur at a time that has been decided by the board of Trustees and will be done only in accordance with the provisions of the indenture and bylaws of said "XI" Trusts. The "XI" Trusts is irrevocable, and the Grantor never has any control over it and neither do the holders of the "Trust Certificates". Regardless of whether or not the Grantor lives until the date of the termination of the Trust, he never receives any of its corpus and neither does his estate. Obviously the Grantor nor his estate can ever be taxed personally for the income that accrues from year to year by the "XI" Trusts. They are a separate legal entity in every sense of the word. They file their own returns and pay their own taxes, completely without regard to the Grantors personal tax obligations. Conversely, the Grantors personal income tax obligations do not include the tax obligations of the "XI" type Trust.

Cite 20 The Courts condemn the demands of the Government defendants who demand that they be exempted from Constitutional mandate. In the case of *Sloan vs. Board of Examiners*, 274 N.Y. 367; N.E. 2d 12; 112 ALR 660, the Court said: "Disobedience or evasion of a Constitutional mandate may not be tolerated, even though such disobedience may, at least temporarily promote, in some respects, the best interests of the public. "

Cite 21 Justice Brandeis eloquently affirmed his condemnation of abuses practiced by Government officials, who were defendants, acting as Government officials. In the case of *Olmstead vs. U.S.* 277 US 438, 48 S.Ct. 564, 575; 72 L ED 944 (1928) he declared: "Decency, security, and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are commands to the Citizen. In a Government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself. It invites anarchy. To declare that, in the administration of the law, the end justifies the means would bring a terrible retribution. Against that pernicious doctrine, this Court should resolutely set its

face."

Cite 22 A Trust has a legal right to sue in its own name or be sued. In the case of *Waterman vs. MacKenzie*, 138 US 252 (1891), the Court ruled that the Trust had a right to sue in its own name. In the case of *U.S. vs. Carruthers* 219 F 2d 21 (1925), the Court ruled that the Business Trust has the right to own property and be sued.

Cite 23 "When any court violates the clear and unambiguous language of the Constitution, a fraud is perpetuated, and no one is bound to obey it. (*State vs. Sutton*, 63 Minn. 147: 65 NW 262: 30 ALR 630.)

THE VALIDITY OF IRREVOCABLE TRUSTS AS SEPARATE LEGAL AND BUSINESS ENTITIES

Cite 24 A Trust for wife's benefit was not "revocable" merely because under the Trust agreement the corpus might revert to grantor if he survived his wife. *CLK vs. branch, CCA. 1940, 114F 2d 985, 132 A L.K RS9*

Cite 25 A "Trust" is a separate and distinct entity from its beneficiaries for income tax purposes. *Brigham vs. Us., D.C Ma.s.s 194J, 38 F Supp. 625, appeal dismissed 122 F 2d 792.*

Cite 26 Trusts are taxable entities which compute basically as individuals. *Fabens vs. CLR., CA. 1, 1975, 519 F 2d 1310.*

Cite 27 The Purpose settlor had in establishing a Trust is irrelevant on the question of whether income from a Trust is taxable to settlor. *Halvering vs. Achelis, C CA. 1940, 112 F 2d 929.*

Title 26 para. 676. Power to revoke.

(a) General rule. - The grantor shall be treated as the owner of any portion of a Trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a "non adverse party", or both. *Source: Sec. 166, 1939 Code.*

Cite 27 Where taxpayer, prior to the taxable year, created separate Trusts for each of his five minor children which Trusts were to last for the life of the respective beneficiaries and no power to revoke the Trusts was reserved, by the grantor or vested in anyone else, the Trusts were irrevocable and the income of the Trusts is not-taxable to taxpayer. *Revenue Act 1934, para. 166. Ayer vs. CLK, 1941, 45 B.T.A. 146.*

Cite 28 Where taxpayer created an irrevocable Trust, making his wife sole beneficiary and co-trustee with him and reserving no rights to corpus or income and where no provision was made for payment of taxpayer's obligations or insurance premiums which were paid by the wife as absolute assignee of the policies, the Trust income was not taxable to the taxpayer. *Hexter vs.*

CLK. 1942, 47 B. TA. 1014.

Cite 29 Where taxpayer created a Trust in favor of his wife for his life, and two short-term Trusts naming his sister-in-law and uncle as respective beneficiaries, the Trusts were substantial and taxpayer was not taxable on the income from the Trusts.

Revenue Act 1934, para. 166. Milbank vs. CLK, 1940, 41 B.7CA. 1014

THE DEFINITION OF AN ADVERSE PARTY AND COURT CASES TO THE SAME.

Title 26 para. 672. Definitions and rules.

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(a) Adverse party. - For purposes of this subpart, the term "adverse party" means any person having a substantial beneficial interest in the Trust which would be adversely affected by the exercise or non-exercise of the power which he possesses respecting the Trust. A person having a general power of appointment over the Trust property shall be deemed to have a beneficial interest in the Trust.

(b) Non-adverse party.

- For purposes of this subpart, the term "non-adverse party" means any person who is not an "adverse party". Related or subordinate party. - For the purpose of this subpart, the term related or subordinate party" means any "non-adverse party" who is-

(1) The grantor's spouse if living with the grantor;

(2) Anyone of the following: The grantor is father, mother, issue brother or sister; and employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the Trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For the purpose of sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or non-exercise of the powers conferred on him unless such party is shown not to be subservient by a

preponderance of the evidence.

(d) Rule where power is subject to condition precedent.- A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration

of a certain period after the exercise of the power. August 16, 1954, c. 736, 68A Stat. 226.

Cite 30a Historical Note: No similar provisions were contained in the 1939 Internal Revenue Code.

Cite 30b Comment:- Section 672 (c) is misleading because it appears to rule out a wife of husband as an "adverse party". However, any person who is not a grantor, has a substantial interest in the Trust corpus, and possesses the power of appointment or control over the Trust property, can qualify as an "adverse party". Among hundreds of federal court decisions dealing with Trusts, there is not one that even implies that a wife or husband cannot serve in this capacity.

Cite 31 A person having a "substantial adverse interest", within Revenue Acts of 1934 and 1936, para. 166, is a person who has a vested right under the trust and insist upon its performance and cannot be compelled to surrender it. *CLR vs. Betts*

CCA. 1941, 123 F2d 534.

Cite 32 "Substantial adverse interest" means a direct legal or equitable interest in the Trust property and not merely a sentimental interest in seeing Trust fulfilled for advantage of other beneficiaries. *CLR vs .. Prouty, C CA. 1940, 115 F 2d 331, 133 A.L.R. 977. See also, Floodvs. Us., CCA. Mass. 1943, 133 F2d 173.*

Cite 34 "Substantial Adverse interest" is a relative term, to be measured by facts of each case. *Morton vs. CLR., C CA. 1940109 F 2d 47.*

Cite 35 Where Trustee possessed only 3.84% interest in Trust, which represented share of assets he would receive at termination, and Trustees had discretion to distribute income to holders of certificates of interest, of which grantors held 86.38%, Trustee's interest was not adverse as to the entire Trust but only as to his share, which thus could not preclude taxation of a portion of the income of the Trust to the grantor on the grounds that it was a grantor Trust. *Paxton vs. CLR, CA. 9, 1975,520 F 2d 923. certiorari denied 96 s.Ct. 459, 423 Us. 1016,46 L.Ed.2d 389.*

Cite 36 Mere fact that Trustee of inter Vivos Trust, not a beneficiary thereunder, was required by law to act solely in interest of beneficiaries did not make Trustee "adverse party" under this section and regulations which would have permitted grantors to exclude Trust's income from their 'individual gross income if Trustee had been "adverse party". *DuffY vs. Us., CA. Ohio*

1973,487 F 2d 282, certiorari denied 94 S.Ct. 1939,416 Us. 938, 40 L. Ed. 2d 289.

Cite 37 From Section 676: To prevent tax avoidance, Congress, may constitutionally prescribe general rules that Trust income must be included in computing net income of grantor if power to distribute income or revest corpus in grantor is vested in one not having a substantial adverse interest in disposition of income or Trust, on the reasonable assumption that more often than not, vesting of power in person who has no property interest as beneficiary of Trust would enable grantor to retain substantial mastery over corpus or income. *Flood vs. US., CCA. Mass.* 1943, 133 F 2d 173.

Cite 38 Where the wife of a grantor of a Trust was given the current income for life and a limited testamentary power of appointment over corpus and income, she had an interest in the corpus substantially adverse to that of the grantor, and capital gains of the Trust are not taxable to the grantor. *Revenue Act of 1936, para. 166. Childs' Estate vs. CLR., 1941, 44 B.7.A.* 1191.

Cite 39 Where husband created Trust for benefit of wife and child for purpose of insuring that a considerable part of income should go to wife, and wife as well as husband was a Trustee, wife had a "substantial adverse interest" in disposition of corpus and income within Revenue Act 1934, para. 166, and hence husband was not taxable on Trust income paid to wife.

Phipps vs. CLR., CCA. 2, 1943, 137F2d 141.

Cite 40 Where sole duty of commercial Trustee was to invest and reinvest Trust corpus and pay large income to beneficiaries, and Trustee received annual fee of \$700 and could revoke Trust at any time, Trustee had no "substantial adverse interest" within Revenue Act 1934, par 166. *Morton vs. C.I.R., C.C.A. 1940, 109 F 2d 47.*

Cite 41 Under Trusts created in Illinois for benefit of grantor's children, authorizing grantor's wife and brother, who with grantor were the Trustees, under Illinois law, could not vest the property in themselves, and hence had no "substantial adverse interest" within Revenue Act 1934, par 1966 (2). *Halvering vs. Stuart, 1942.63 S.Ct. 140, 317 Us. 154, 87L.Ed. 154.*

Cite 42 Where, under terms of Trust for benefit of wife and children, the wife upon death of any of children would receive interest in corpus and income of Trust, finding that she had such "substantial adverse interest" within Revenue Act 1936 para. 166 relating to revocable Trusts, that provision requiring her consent to termination of Trust would preclude taxing income thereof to grantor was warranted. *CLR. vs. Kat7. CCA. 7.1943.139 F2d 107.*

Cite 43 From Section 677: Where taxpayer, as beneficiary of Trust set up in divorce decree, could exercise her own judgment as to amount of Trust income necessary for suitable support of children, taxpayer had a "substantial adverse interest" to husband as grantor, and income from Trust was taxable to beneficiary and not to grantor. *Ketcham vs. CrR., CCA. 2, 1944. 142 F 2d996.*

Cite 44 Where taxpayer created Trust for wife, which could only be amended or altered by taxpayer with wife's consent, there was a "substantial adverse interest" and the income was not taxable to the settlor. *Heaslet vs. CLR .. 1942. 47 B. 7IA. 1006.*

Cite 45 Taxpayer's wife, as guardian of taxpayer's children, would be strictly accountable for children's share of income of Trust created for their benefit, and hence had a "substantial adverse income" in distribution of Trust in this section. *Halvering vs. Hornel CCA. 1940, 111 F 2d 1, affirmed 61 s.C! 719, 312 Us. 552.-85 -LEd. 1037.*

ELEMENTS THAT CAN MAKE TRUST INCOME NON-TAXABLE TO THE GRANTOR

Cite 46 From Section 441: That which is not in fact the taxpayer's income cannot be made such for tax purposes by calling it "income." *Bach vs. Rothensies, D.C Pa. 1941,37 F Supp. 217, reversed on other grounds 124 F2d 306, 142 A.L.R. 210, certiorari denied 62 s.C!. 1035,316 Us. 666, 86 L.Ed. 1742.*

Cite 47 From Section 676: Where three Trusts for benefit of married adult daughters and wife were made irrevocable in 1934, when income of deceased wife was made payable to children, and Trusts originally executed between 1921 and 1928 were to terminate on December 31, 1937, if grantor was then alive, in which case corpus was to revert to grantor otherwise to continue for 7 years after death when corpus were to be divided among children, and grantor reserved power to advise on management of Trusts by Trustee entitled to 2.5% on gross income collected though not required to follow advise, and power to substitute another Trust company for the Trustee, Trust income was not taxable for grantor within the Clifford doctrine. *Central National Bank of Cleveland vs. C.I.R., C.C.A. 6,1944, 141 F 2d 3521 153 A.L.R. 542.*

Cite 48 The fact that Trustor reserved right to replace Trustee did not make income from Trust fund taxable to the Trustor. *Norris vs. Jones, D.C Okla. 1940, 31 F Supp. 463, affirmed 122 F 2d 6.*

Cite 49 Where Trustor's wife was life beneficiary of income payments during Trustor's life and remainderman should she survive him, income paid her is not taxable to him under this section although he retained control of corpus and might terminate the Trust in her favor. *Anderson vs. CLR., 1947, 8 EC 921.*

Cite 50 Where taxpayers created Irrevocable Trusts for their children of which husband was Trustee and corpus consisted of stock of a company of which he was president, husband is not taxable on the income therefrom by reason of having retained as Trustee the right to, manage the Trust property and to vote the stock and the income or principal of the Trusts should beneficiary require financial aid in case of accident, etc. *Hemphill vs. CLK, 1947, 8 EC 257.*

Cite 51 Where no part of irrevocable Trust fund or of the income therefrom was used by the taxpayer for his own benefit during the taxable years and Trustee had only such powers of management as might properly be exercised by Trustee. Taxpayer was not taxable upon the income of Trust. *Black vs. CLK, 1945, 5 7:C 759.*

Cite 52 Where broad powers of management are vested in grantor who is Trustee of an irrevocable Trust, and no part of the corpus may be vested in the grantor and none of the income may be distributed to him or held for future distribution to him, the income of the Trust is not taxable to the grantor. *Sections 166, 167, (LR.C 1939 (now this section and section 677 of this side). Cherry vs. C.I.K., 1944, 3 r.C 1142*

Cite 53 Income from a long-term irrevocable Trust of which taxpayer was grantor and Trustee, and over which the Trustee had broad powers of management, was not taxable to taxpayer. *Small vs. CL, 1944, 3 r.C 1142*

Cite 54 The power of Trustees to accelerate payments of principal in whole or in part to beneficiary is not the equivalent of a power to terminate the Trust and revest the assets in the creator of Trust, as respects taxability of Trust income to creator on ground of revocability of Trust. *Chertoff vs. Cl.K, CCA. 6, 1947 160 F 2d 691.*

Cite 55 Where according to fixed provisions of Trust instrument, Trust was not revocable, income received by beneficiary was taxable to her, and revision to grantor when Trust terminated at death of survivor named beneficiaries did not make Trust revocable or income taxable to grantor. *Preston vs. Cl.R., CA. 2. 1951, 197 F 2d 531.*

Cite 56 The income of a Trust was not taxable to grantor under Revenue Acts 1934, 1936, para. 166, merely because grantor reserved right to receive principal upon death of his wife if he should then be living, since while power to revest or revoke may in economic fact be the equivalent of reversion, Congress confirmed Revenue Acts 1934, 1936, para. 166, to Trusts where there was power to revest, and did not extend it to Trusts which, might revert to, grantor. *Suhr vs. CLR., CCA. 1942 126 F 2d 283.*

Cite 57 Capital Gains of the Trust were not taxable to taxpayer in view of the impossibility of reversion to him. *Bush vs. Cl.R., 1941, 45 B.7CA. 609, reversed on other grounds 133 F 2d 1005.*

Cite 58 Where the income of a Trust was all to be distributed to the wife of the grantor and the corpus was to revert to him only in the event that he survived her and exercised the power to revoke, the income of the Trust was not taxable to him. *Revenue Acts of 1934 and 1936, para. 166. Estate of Fish vs. CLK., 1940, 42 B.TA. 260.*

Cite 58 Where power to revest title was only a contingent power, Trust income was not taxable to settlors under this section. *Chertoff vs. CLK, CCA. 6, 1947, 160 F 2d 691.*

Cite 59 The power of grantor to revoke Trust which is contingent upon happening of future remote events, over which grantor has no control and which may never come to pass, is not subject to his control, and does not render Trust income taxable as against him. *Revenue Acts of 1934 and 1936, para. 166. C.I.R vs. Betts, CCA. 1941, 123 F 2d 534. See also CLR vs. O'Keefe, CCA. 1941 118 F 2d 639.*

Cite 60 Where taxpayer created Trust for benefit of his wife and mother, and income received by mother under Trust was in excess of taxpayer's liability under State statute, Smith-Hurd Stats. C. 107 para. 1 for her support, and income received by

wife was not used for support, wife and mother were persons with "substantial adverse interest," notwithstanding relationship, and hence, power of taxpayer to revoke Trust with consent of wife and mother would not render Trust income taxable to taxpayer under Revenue Acts 1934, 1936, para. 166. *C.I.R. vs. Betts*, C.C.A. 1941. 123 F2d S34.

Cite 61 Income was not taxable to donor where Trusts could not be revoked, altered or amended for his benefit without the consent of the primary beneficiary or a person having a substantial interest in the disposition of the corpus or the income. *Bradley vs. C.I.R.*, 1943. 1 TC 566.

Cite 62 Where instrument recited that settlor transferred to his mother for life all dividend income from 250 shares of preferred stock and that he held the stock as Trustee for that purpose, and thereafter he caused stock to be conveyed to himself as Trustee, settlor thereby made a present gift of irrevocable interest in the stock, and income thereof was not taxable to him. *McHaffey vs. Helvering*, CCA. 8, 1944, 140F2d 879.

Cite 63 A provision permitting the grantor, as income beneficiary, to call for corpus if needed to make the total distribution for any year \$10,000, was lost to that beneficiary when he assigned all of his rights in the Trust income to his wife, and Trust was irrevocable so that income thereof was not taxable to grantor. *Huber vs. CLR* .. 1946. 67IC 219.

Cite 64 Where taxpayer reserved no powers or rights either as grantor of Trustee by which he could revert any of the principal or income of the Trust, the income thereof is not taxable to him. *Moore vs. C I. R.*, 1944, 37: C 1205.

Cite 65 Where, by Trust instruments operative during the taxable periods in question, taxpayer, as settlor, declares that he, as Trustee, holds certain stock in Trust irrevocably to pay net income therefrom to his wife and provides that the Trust shall terminate upon death of himself or his wife, whichever event first occurs, Whereupon corpus shall be paid over to grantor if living or his estate if dead and, further, provide that the Trustee shall not be; liable to pay certain loans made to taxpayer as collateral, Trust was not revocable and taxpayer was not liable for tax. *Frazier vs. CLR.*, 1940, 41 B. TA. 146.

Cite 66 Where grantor could never obtain any of capital gains of Trust created for benefit of his wife and mother except upon happening of a remote, uncertain and improbable contingency, the capital gains of Trust were not taxable to grantor. *CLR vs.*

Betts, C CA. /941. 123F2d534.

Cite 67 Where grantor of Trust has stripped himself of all command over income for an indefinite period, and under terms of the Trust instrument will probably never regain beneficial ownership of the corpus, Trust income should not be treated as grantor's income merely because grantor is Trustee with broad powers of management. *CLR. vs. Branch*, C CA. 1940, 114 F

2d 985, 132. *CLR.* 839.

Cite 68 The power granted by Trust of which the grantor was a co-trustee to deal with Trust fund and to manage the affairs as if Trustees were the absolute owners of the property constituting Trust fund did not directly benefit the grantor so as to render, income of Trust taxable to grantor. *Morse vs. Us.*, D.C Mass. 1946. 64 F Sup. 996, affirmed 159 F 2d 142.

Cite 69 Taxpayer's reservation of broad powers of control over income and corpus of his Trust for his children did not make income taxable to him, although he might receive income as parent of minor beneficiaries on their behalf. *Loes vs. CLR* .. , 1946, 7 EC 363. See also *Foster vs. C.I.R.*, 1947. 8 EC 197.

Cite 70 Where powers reserved to the grantor/trustees were solely for the benefit of the beneficiary they were not taxable upon the income of the Trusts. *Smith vs. CLR* .. , 1945, 4 EC 573.

Cite 71 Where Trust established by grantor for his children, in addition to granting extensive powers of control and management, authorized grantor to make such changes as he saw fit in management of Trust estate for the best interests of children, but power to revoke or retake any of the corpus or income was specifically denied to grantor, and on termination of Trust both corpus and income were to be distributed to children named or their issue, Trust income was not taxable to grantor under Section 22, 167 (LR.C 1939). *Jones vs. Nom's*, C CA. Okla. 1941. 122 F 2d 6.

Cite 72 The possibility that the corpus of a Trust might revert to the grantor does not make the income of the Trust taxable to the grantor under Revenue Act 1934, para. 166, 167. *Mc vs. C.I.R.*, 1940, 41 B.TA. 565, affirmed F2d 942.

Cite 73 Under Trusts created in Illinois for the benefit of grantor's children, authorizing grantor's wife and brother, who with the grantor were Trustees, to change during grantor's life the Trusts in any respect, grantor was not taxable as direct beneficiary of income, where under Illinois law it would be possible for Trustees to accumulate the income for or to distribute it to the grantor directly. *Halvering vs. Stuart*, 1942, 63 S.Ct. 140. 317 U.S. 154, 87 L.Ed 154.

Cite 74 Where Trustees had primary responsibility to pay indebtedness incurred in purchase of Trust corpus and settlors had only contingent liability to pay if Trustees should fail to do so, and indebtedness was incurred contemporaneously with establishment of Trusts and solely for accommodation of Trust and settlors had no right to Trust income, Trust income used to pay indebtedness was not used to pay personal indebtedness of settlors and hence was not taxable to settlors. Personal indebtedness of settlors and hence was not taxable to settlors. *Edwards vs. Greenwald CA. Ga.* 1954, 217 F

Cite 75 The possibility of indirect benefits to grantor of a Trust is insufficient to make Trust income taxable to grantor. *Morse vs. U.S.*, D.C Mass 1946, 64 F Supp. 996, Affirmed 159 F 2d 142.

Cite 76 Where Trust deed authorized grantor to change beneficiaries and modify their interests and to change Trustee, but provide that income should not be paid to or applied to use or benefit of grantor, the Trust income was not required to be included in computing the grantor's income tax under Section 167 (I.R.C. 1939 (now this section)). *CLR vs. Brsawn. C CA.* 7941. 122 F 2d 800

Cite 77 Taxpayer who was appointed guardian for his children and made absolute transfer to his children of building in which his office was located was not taxable for rent collected as guardian and applied to children's insurance, health, and education, beyond requirements of Montana law, where taxpayer retained few, if any, controls over Trust property, other than as tenant, and there were non-tax motives, grounded in economic reality, for transfer. *Brooke vs. U.S.*, CA. Mont. 1972, 468

F 2d 1155.

Cite 78 Although grantor of Trust who has power of disposition of Trust is generally treated as owner in income producing property, mere power to allocate income to designated beneficiaries of Trust does not alone render income of Trust taxable. *Brook vs. U.S.*, CA. Mont. 1969, 300 F Supp. 465, affirmed 468 F 2d 1155.

Cite 79 A Trust is defined as a "juristic entity" created under obligation of contract, and said contract under common law. This indicates the Trust to be a created "person." The substantiation that a Trust is identified as a person is found in Title 26 of the United States Code (annotated USCA), Section 6012, sub. a, sub. 4, and further referred to as a "separate and distinct taxable person," in the head-note of *Muir vs. C.I.R.*, C.A. 4, 1950, 182 F 2d 819.

Cite 80 A Trust is a separate and distinct entity from its beneficiaries tax purposes. *Brigham vs U.S.D.C Mass.* 1941, 38 F Supp. 625, appeal dismissed 122 F 2d 792 (reported in Title 26 LRC 31, page 356).

Cite 81 Courts have repeatedly ruled that Trusts are lawful, separate, profit making business organizations, any disallowance of the fiduciary fee paid to establish this Trust is in error. The fiduciary fee is a tax deductible business expense. *LR.C* "Sec. 212 (see *RN Bagley*, 8 T.-C 130, also *Treasury Regulation #6161t-5*).

Cite 82 "No particular form of words is essential to create a Trust, provided there be reasonable, certainty as to the property, the objects, and the beneficiaries." *Chicago, M & S PR Co. vs. Des Moines Union R. Co.* .. 254 U.S. 19641 S.Ct. 81, 65 L.Ed

219.

Cite 83 "When a Trust is established and acknowledged, it does not need to be constantly reiterated or confessed." *Chicago, M & St. PRo Co. vs. Des Moines Union R. Co.* .. 254 U.S. 196 41 S.Ct 81. 65 L.Ed 219

Cite 84 U.S. adopted Common laws of England with the Constitution. *Caldwell vs. Hill*, 178 SE 383 (1934).

Cite 85 If it is free of control by Certificate holders, then it is a Pure Trust. *Schuman-Heink vs. Folsom*, 159 NE 250 (1927).

Cite 86 A Pure Trust is a contractual relationship in Trust form. *Berry vs. McCourt*, 204 NE 2d 235 (1965).

Cite 87 Trustees are legal owners of property in Trust (fiduciary). *Johnson vs. Lewis*, 6 F 27 (1881).

Cite 88 Fair Market Value is determined by property received by taxpayer and not the F.M.V. of property transferred by taxpayer to the Trust. *Commissioner vs. Marshman, C.A.* 6279 F 2d 27 (1960).

Cite 89 Certificates are personal property and convey no interest in the Trust Property. *Parker vs. Mona-Marie Trust*, 278 SE 321.

Cite 90 Certificates in exchange are not taxable until a realized gain has occurred. *Bumet vs. Logan*, 283 U.S. 404 (1931).

Cite 91 Gift tax is only on less than adequate consideration. *Tyson vs. Commissioner*, 146 F 2d 50 (1944).

Cite 92 Even bad bargains in genuine business transactions do not result in taxable gifts. *Estate of Anderson*, 8 TC 706 (A) (1947)

THE CIRCUMSTANCES UNDER WHICH A TRUST MAY MAKE YEARLY CHARITABLE CONTRIBUTIONS UP TO 100 % OF ITS NET YEARLY INCOME.

Cite 93 Deduction for amounts paid or permanently set aside for a charitable purpose. -GENERAL RULE-In the case of an estate or Trust (other than Trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170 (a), relating to deductions for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170 (c) (determined without regard to section 170 (c, 2A). If the charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the Trustee or Administrator may elect to treat such contribution as paid during the taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

THE FOLLOWING IS AN EXPLANATION OF ALL SECTIONS AND SUBPARTS REFERRED TO ABOVE.

Section 170 (a). Payment must be made in the same taxable year, or by the 15th day of the 3rd month following the taxable year.

Section (c). A "charitable contribution" means a gift or contribution to (a)-A State, the United States, a possession of or any political subdivision of the United States, providing it is used for public use only. (b)-A corporation, Trust or Community Chest, fund or foundation created in the United States or any possession organized exclusively for religious, charitable, scientific, literary, or educational purpose, or to foster any amateur sports competition (only to the part of the athletics involve providing athletic facilities or equipment), or for the prevention of cruelty to children or animals. (c)-A post or organization of war veterans, or an auxiliary unit or society of or Foundation for any post or organization. (d)- Operation of a cemetery not operated for profit. Subpart B. The only exception is a Trust which has an indenture and/or by-laws specifically stipulating that income must be distributed in the year it is earned.

Cite 94 Latitude of power and activities of Pure Trust Trustee is greater than ordinary Trustees. *Ashworth vs. Hagan Estates.*, 181 S.E. 381 (1935).

Cite 95 The Power to tax is subject to the 5th and 14 Amendments (due process) provisions. Congress can deprive no one of due process. *Beeland Wholesale. Co. vs. Kaufman*, 174 So.516 (1937).

Cite 96 Community interest may be dissolved by either spouse by knowingly conveying interest to another. *Baldwin Estate vs. Baldwin*, 71 P 2d791 (1937).

Cite 97 Trustees must act jointly unless express authority is given to the contrary. *Brown vs. Donald* 216 SW 2d 679 01949}.

Cite 98 The fair market value is determined by property received by taxpayer, not by the fair market value transferred by the

taxpayer in exchange for property received. *Commissioner vs. Marshman*, CA 6279 F 2d 27 (1960).

Cite 99 A Trust may apply to a Court of Equity for an action of declaratory judgment to establish the meaning an intent of indenture. *Dunbar vs. Re4field* 61 P 2d 744.

Cite 100 Certificates are not chattels but are evidences of intangible rights. *Goodhue vs. State ST. Trust Co.*, 267 Mass 28.

Cite 101 A Trustee cannot acquire for himself property which it is his fiduciary duty to acquire for the Trust. *Hanuick vs. Bryan*, 21 F; Supp. 392 (1937).

Cite 102 Indenture is binding upon Certificate Holders. *Hardee vs. Adams Oil Assn.*, 254 SW 602 (1923).

Cite 103 Trustees of Pure Business Trusts (not corporations) are the owners of the Trust property in a fiduciary relationship. A relationship of partners does not exist between *Certificate Holders*. *Johnson vs. Lewis*, 6 F 27 (1881)

Cite 104 Federal Jurisdiction is not to extend beyond strict construction of the statute. *Kesberg vs. International Paper Co.*, 149 F 2d 911 (1945).

Cite 105 Agreement of which the preliminary step is an offer by one and acceptance by the other. *Lee vs. Travelers Ins. Co. of Hartford, Conn.*, 173 SC185.

Cite 106 Tax can only be shifted where the "Tree" (income) is conveyed. Mere anticipatory assignment is not good enough. *Lucas vs. Earl*, 281 US III (1930).

Cite 107 Certificates are without determinable fair market value, no gain or loss is recognized until the cost or other basis of the property disposed of has been recovered. *Master Tax Guide*, para. 910.

Cite 108 An unconstitutional law is not a law, it confers no rights, imposes no duties, and affords no protection. *Norton vs. Shelby County*, 118 US 425.

Cite 109 The organization of a Common Law (business) Trust was held not unlawful. Subscription to stock in a Common Law Trust was held to be NOT a gift but an investment. *Palmeret. al. vs. Tayloret. al.*, 269 SW 996 (1925).

THE FOLLOWING IS AN EXPLANATION OF ALL SECTIONS AND SUBPARTS REFERRED TO ABOVE.

Cite 110 An association does not include a Pure Trust and is not taxed as a corporation, partnership, etc. *Pennsylvania Co. vs. Us.*, (CA 3) 138 F 2d 869 (1943).

Cite 111 A labor contractor is taxable for income paid to it by a third party. *R & H Corp. vs. Us.*, 255 F Supp. 870 (1966).

Cite 112 It is established by legal precedent that Pure Trusts are lawful and valid business organizations. *Reeves vs Powell*, 267 SW 328 (1924).

Cite 113 A Trust is not limited to any given state in conducting business because it is a common law entity. *Shirk vs. City of Lafayette*, 52 F 857 (1892).

Cite 114 Exchange the giving of one thing for another in kind and excluding money as a basis of measure. *Trenton Cotton Co. vs. Commissioner*, 147 F 2d 33 (1945).

Cite 115 The argument of force in its worst form, recognizing the occasional tyrannies of governing majorities, they amend the institution so that free speech and assembly should be guaranteed. *Whitney vs. California*, 47S.Ct. 641.

Cite 116 The basis for the terminology "Common Law Trust," in this connection, is not that such organizations are the creatures of common law, as distinguished from equity, but that they are created under the common law of contracts and do

not depend upon any statute. *Schumann-Heink vs. Folsom*, 159 NE 250.

Cite 117 It has been held that public policy is not offended by permitting a business to be carried on by Trustees who limit their liability to the Trust estate. *Schumann-Heink vs. Folsom*, 328111.321.

Cite 118 Founded in equity, a Pure Trust enjoys the advantage that the Trustees may avail themselves by one of the exceptions to the general principle that Courts will not declare future rights and they may apply to a Court of Equity for directions in the execution of the Trust, or maintain a suit for a declaratory judgment to establish the meaning and the intent of the Trust instrument. *Dunbar vs. Redfield*, 7 Cal. 2d 515.

Cite 119 A Pure Trust is as general and as elastic as a contract. *Schumann-Heink vs. Folsom*, 159 NE 250

Cite 120 According to the generally accepted view, that is, the "Control Test," the status of a Pure Trust for the purpose of determining the liability of the shareholders depends upon who has the power of control over the business and property of the Trust. If the ultimate power of control is vested in the Trustees, who also hold the legal title to the Trust property, the organization is treated as a True (Pure) Trust, rather than as a partnership, and the shareholders are not liable for the debts or contractual obligations incurred by the Trustees. *America National Trust and Savings Association vs. Scully (Ca 10)*, 92 KF 2d 97 (Law of Calif); *Goldwater vs. Oltman*, 210 Cal. 408; *Schumann-Heink vs. Folsom*, 328 111.312; *Commercial Casualty Ins. Co. vs. Pearce*, 320111. App 221; *Rosemond vs. March*, 287 Mach. 580 (Rehearing denied, 287 Mich 270); *Carling vs. Buddy*, 318 Mo. 784 (re. Winter 133 NJ Eq. 245); *Rhode Island Trust Co. vs. Copeland*, 39 R1193.

Cite 121 If the organization is actually a Massachusetts Trust, or a Pure Trust, the shareholders are not liable for its debts. *Re: Conover* 295111. App 443. *Greco vs. Hubbard*, 242 Mass 37.

Cite 122 If the shareholders have the power of effectual control over the or over the affairs of the Trust, the concern is regarded as a partnership, and the shareholders are consequently liable. *America National Trust and Savings -Association vs. Scully, (Ca 1,0)*, 92 F-2d.(Law of Calif); *Rand vs. Morse (Ca 8)*, 289 F 339 (Law of Missouri); *Goldwater vs. Oltman*, 210 Cal 408; *SchumannHeink vs. Folsom*, 328111.321; *First National banks. Charter*, 305 Mass 316; *Neville vs. Clifford*, 242

Mass 124.

Cite 123 The motive in forming a trust is generally not considered by Courts in determining validity, and it has been held that a Pure Trust is not rendered illegal because of the fact that it was formed for the express purpose of reducing or avoiding taxation. *Weeks vs Sibley (DC)*, 269 F 155; *Phillips vs. Platcliford*, 127 Mass51 O.

Cite 124 The Court said, "It is not an evasion of legal responsibility to take what advantages may accrue from the choice of any particular form of organization permitted by the law." *Narragansett Mutual Fund Ins. Co. vs. Burnham*, 51 RI371

Cite 125 The provisions of the Declaration of Trust are binding upon the holders of beneficial interests of a Pure Trust and said Declarations of Trust determines their rights. *Todd vs. Ford*, 92 Colo. 392, *Weimer & CO. vs. Downs, Inc.*, 77 Colo. 377; *Hardee vs. Adams Oil Assn. (Tex. Civ. App.)*, 254 SW 602.

Cite 126 The Government must show a compelling interest that a relevant correlation or substantial relation exists between the government Its interests -and the information required to be disclosed. *NAACP -vs.- Alabama*, 357 U.S. 449, 460 (1958) 461,463, also see: *Buckley vs. Valeo* (1976) 424 U.S. 1, 96S.Ct. 612, 694, 46L.Ed2d 659, 759. *No such showing has been*

made as of the date of the signing of this document.

Cite 127 IRS LOSES: CORPORATE RECORDS: Reprint from The Grapevine, Walter Hommert ran the M & FI Plnrties (v.o. ansi owned all its stock with his wife and son. In a criminal investigation, the IRS issued a summons ordering Walter to produce his corporate records. Walter refused, invoking his Fifth Amendment Constitutional right against self incrimination. The IRS said the records had to be produced because a corporation has no Fifth Amendment rights, and only corporate

records had been summoned.

Tax Court: The sUlllDl0ned corporate records could be used against Walter personally, so he did not have to produce them.

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(M & H Plastics, Inc., ED Cal., No. SPARE M & H Plastic vs. US, Eastern District of California, S-85- 1523 RAR (Judge Ramirez) (Still Open 10/12/87) This May Overturn Doe vs. US? Cite on Doe is unknown MS Quotes it against Boyd-vs. US.

Cite 128 The Court said "A PURE TRUST IS NOT ILLEGAL IF FORMED FOR THE EXPRESS PURPOSE OF AVOIDING TAXATION." *Weeks vs. Sibley. (D.c.) 269 F 135*