

Clarification of Benefits in Trust

There have been many questions lately concerning benefits provided to the Beneficiaries of Trust and what is taxable income to the Beneficiary and what is not. Also, with regard to the Trustees who manage the Trust. To clarify these points the following needs to be understood.

First for Beneficiaries that are minors whatever is provided to them is not income to them at all and need not be reported. Medical, education and wellness are provided to Beneficiaries even after they reach adulthood and is not income to them if the source itself is paid directly on behalf of the Beneficiary. The Trust states and is acceptable under law:

“In the Trustee's absolute discretion, may pay to or expend for the benefit of such beneficiary as much of the Trust income, not to exceed the income to which such beneficiary would otherwise be privileged, as the Trustee(s) deems, in his or her absolute and sole discretion, necessary for the health, support and education of such beneficiary in accordance with the latter's station in life.” The Spendthrift Provision allows this.

“The Trustee(s) in his or her absolute and sole discretion shall distribute as much of the trust income and principal of any trust created under this subsection that the Trustee(s) deems necessary or advisable for the health, education, maintenance or support of the beneficiary for whom the trust was created.” Such provision if paid to the source for the Beneficiary is not income to the Beneficiary.

“The term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

1. Enrollment at private elementary, junior and senior high school including boarding school, religious school or academy.
2. Undergraduate and graduate study in any field at a college or university, private, State or religious.
3. Specialized, vocational or professional training or instruction at any institution, including private instruction; and
4. Any other curriculum or activity that the Trustee(s) may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

The term "education" **shall also include distributions made by the Trustee(s) for expenses** such as tuition, room and board, clothing, fees, special fees and memberships in organizations, societies, fraternities, clubs, and fees with regard to anything to do with the education of the beneficiary, books and supplies, tutoring and transportation and a reasonable allowance for living expenses." Education shall include the enjoyment of any Beneficiary; due to job insecurity in recent years many Beneficiaries must be reeducated after a particular field has been eliminated via technology. The Beneficial enjoyment of being provided these benefits does not end just because a Beneficiary is of age or even older or aged.

With regard to the Trustees of the Trust any benefit received by the Trustee that is not specifically for Trust business or affairs is income to the Trustee. The only two exceptions to the rule is one of two things; first if a Trustee conveys property or assets into the Trust they may take a "note" from the Trust for the value of the property or asset and through the Trust paying off the note to the Trustee the Trustee has no declarable income because they are receiving after tax dollars via the note payments to them. The other method is for the Trustee to make a loan to themselves from the Trust. This loan note must be collateralized and have a repayment amortization schedule with a reasonable interest rate.

"Power To Loan and Invest. To loan, re-loan, invest and reinvest the Trust Estate or any part thereof;" A Trustee has the power to extend loans to themselves, Beneficiaries or anyone on whatever terms they choose. Many Trustees and Beneficiaries alike choose to borrow funds from the Trust on various types of note structures that may be renewed. This can accumulate and be rolled into a new loan over time. However, if the loan is defaulted on that becomes taxable income to the borrower. If a loan note, the loan note must be collateralized and have a repayment amortization schedule with reasonable interest rate.

With regard to expenses, expenses and business affairs conducted on behalf of the Trust may be paid by the Trust and not considered income to the person receiving these items. However, any expense not Trust related to Trust Business is designated income to the receiver thereof.

With regard to operating a business or farm inside the trust, the income from these operations must be distributed to one or more beneficiaries as taxable income or to another Beneficial Trust.

This was written to clarify certain questions that have risen recently concerning these topics. In all cases the Tax Professional is the Tax Advisor, and it is paramount to listen to their advice on what can and cannot be considered with regard to all tax matters. What

is or is not deductible or considered income is decided by the Tax Professional not legal advice.