Contract Law and Spendthrift Trusts

A "Trust" is defined by Black's Law Dictionary "as right of property, real or personal, held by one party for the benefit of another." The trustee(s) holds the legal and equitable title to the property for the benefit of the beneficiaries, Although the trustees hold the property title. they do not own the property. The trustees are designated the management authority for the Spendthrift Trust Organization.

A Spendthrift Trust Organization is "created" and given life, through a Contract In the form of a manifestation of intention in the Terms and Conditions of the trust of a Spendthrift Trust Organization" which is often referred to as the "instrument”.
A contract in the form of a Spendthrift Trust Organization does not owe its existence to any act of the legislature. The authority for its creation is the common law right of the parties to enter into a contract. In American Law, the government cannot impose a tax upon a right to contract. The “right to contract” is guaranteed under the United States Constitution Article §10. Courts can determine the enforceability of contracts, generally on public policy grounds. Because a Spendthrift Trust is not a creature of the 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.

Sales, Transfers and Demand Notes:

A contract between an individual/entity and a Spendthrift Trust is an agreement creating obligations enforceable by law. The basic elements of this contract are mutual assent, consideration, capacity, and legality.

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

Seizure of Trust Property:

Property held by a properly structured contract in the form of a Spendthrift Trust cannot be seized. Further, the trustees and beneficiaries are not liable for the debts of the Trust organization, Hussey v, Arnold 182 U.S. 461,21 S, C.

A Trust Organization is immune from tax liens, levies, and seizures, lawsuits, divorce claims and bankruptcy. The Spendthrift Trust Organization is not liable for the debts of the trustees or the beneficiaries and the assets held by the trust cannot be seized to satisfy their debts.

<u>IRS Code and Extraordinary Dividends</u>:

Internal Revenue TITLE 26. Subtitle A, CHAPTER 1. Subchapter -l, PART Subpart A, Sec 643 (a)(3),(4),(7) and (b) states:

(3) Capital gains and losses or exchanges of capital assets shall be excluded from income to the extent such gains are allocated to corpus.

(4) Extraordinary dividends and taxable stock dividends 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) 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.

<u>Tax Avoidance vs. Evasion</u>:

In Weeks v, Sibley DC 269, 155, Edwards V. Commissioner. 41512É!, 532 10th Cir, (1959) and 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, ovoid, minimize, or alleviate taxes by legitimate means is permissible". Pursuant to Narragansett Mut, F. Ins, Co. V. Burnhamun 51 r1371, 154a 909, It is not on evasion of legal responsibility to take what advantage may accrue from the choice of any particular form of organization permitted by law.

<u>Trusts holding Insurance Policies on Trustees or Beneficiaries</u>:

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

Payments of the Demand Notes, being after tax dollars when conveyed to the heirs, are also pass through.